President's Message: Who May Report What Children Say?

Hon. Peter Boshier, Wellington, New Zealand

Ordinarily, you might expect an 8:30am plenary session on a Saturday morning to draw a fairly modest audience. Not so with the rivetingly interesting presentation staged at the recent AFCC Regional Conference in Columbus. Not only did we have the benefit of a former Justice of the Supreme Court of Ohio, but in addition, advocates on either side of a case called *Ohio v Clark*, 135 S. Ct.2173 (2015) No. 13-1352, a case that went all the way to the US Supreme Court.

Read more

AFCC 53nd Annual Conference

Modern Families: New Challenges, New Solutions
June 1-4, 2016, Sheraton Seattle Hotel

Register, apply for a scholarship, submit a poster proposal, make hotel reservations and more

Register before March 7 to Save!

Register by March 7, 2016, to receive the best rates on your conference registration. Not yet a member of AFCC? Join when you register! Take advantage of the member rate—save up to $175 from nonmember rates, then save an additional $10 on your first year's membership. You are strongly encouraged to register for the conference and book your accommodations early; previous annual

MONTHLY E-NEWSLETTER
VOL. 11 NO. 1
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Upcoming Conferences and Trainings

AFCC 53rd Annual Conference
Modern Families:
New Challenges, New Solutions
June 1–4, 2016
Sheraton Seattle Hotel
Seattle, Washington
More information

conferences and hotels have sold out in March.

Apply for a Scholarship

AFCC thanks the generous member donors who have supported the AFCC Scholarship Fund. Scholarships include registration for a pre-conference institute, conference, attendee meals, networking functions, and certificate of attendance. A limited number of stipends to help recipients offset the cost of travel and lodging are awarded based on need and anticipated travel expenses. **The deadline to apply is March 1, 2016**.

Submit a Proposal to Present a Poster

AFCC is accepting proposals for posters to be exhibited during the annual conference. Students, lawyers, mental health professionals, and academics are invited to propose posters concerning innovative interventions, initiatives, new programs, legal or policy changes, and/or research. **The deadline to submit a poster proposal is March 1, 2016**.

Thank You, AFCC Conference Sponsors

A big thanks to our Diamond Conference Sponsor: OurFamilyWizard.com; Platinum Sponsor: StablePaths and Transitioning Families; Gold Sponsors: OnlineParentingPrograms.com, Center for Divorce Education, and ChildrenBeyondDispute.com; Silver Sponsor: The Law Office of Stacy D. Heard, PLLC; and Bronze Sponsor: Soberlink. Please thank our sponsors for their generous support by visiting their websites and/or onsite exhibit tables.

Exhibit and Advertising Opportunities Available

Exhibiting and advertising at the AFCC annual conference are excellent ways to share your products and services with an interdisciplinary community of family law professionals. Exhibit space is limited and has sold out in previous years—ensure your space by committing early.

Ask the Experts: Ten Important Elements When Considering Child Custody in Military Families

Robert A. Simon, PhD, San Diego, California

Child custody determinations are highly complex matters that include considerations of children's needs, parental capacities and the resulting fit. Children who have a parent or parents serving in the military are part of a family system that presents unique factors and considerations not typically present in civilian families. There are also legal considerations involving members of the uniformed services that may not apply to civilian parents. This list aims to illuminate factors and legal considerations to increase the practitioner's understanding of how to better serve families who serve. Read more

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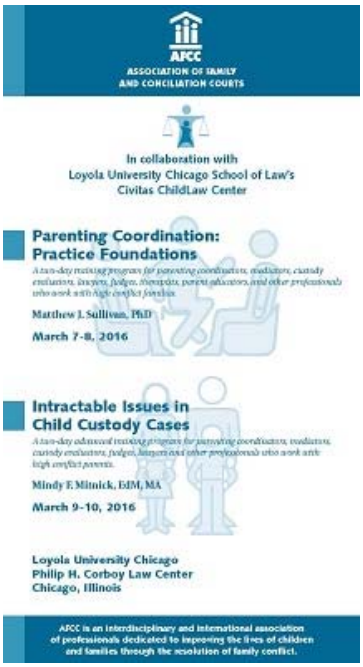

Parenting Coordination: Practice Foundations
Matthew J. Sullivan, PhD
March 7 –8, 2016
Loyola University Chicago
Chicago, Illinois
More information, online registration

Intractable Issues in Child Custody Cases
Mindy F. Mitnick, EdM, MA
March 9–10, 2016
Loyola University Chicago
Chicago, Illinois
More information, online registration

Parenting Coordination and Child Custody Trainings Loyola University, Chicago—March 2016

AFCC, in collaboration with Loyola University Chicago School of Law's Civitas ChildLaw Center, is offering two training programs. Learn the fundamentals and solidify your practice in *Parenting Coordination: Practice Foundations,* with Matthew J. Sullivan, PhD, March 7-8, 2016, and learn skills to help with the most difficult, complicated issues in child custody cases in *Intractable Issues in Child Custody Cases,* with Mindy F. Mitnick, EdM, MA, March 9-10, 2016. Continuing education credit is available. AFCC members receive a substantially reduced registration rate. Save even more when you register for both trainings.

Hotel rooms are available at the special reduced rate of $129/night for training participants at the Marriott Residence Inn Chicago Downtown/Magnificent Mile Hotel, located a half mile from Loyola. Unreserved rooms will be released for general sale February 8, 2016—make your plans today. Call 800-331-3131, mention AFCC-Loyola University to book a room at this great rate. Register today, see the training brochure

AFCC Scholarship Fund Helps Colleagues

Help less fortunate colleagues attend AFCC conferences by giving to the AFCC Scholarship Fund. This year's appeal is going well, but we need your help to keep it on track. Every $600 raised gives a colleague the opportunity to attend the annual conference. Your gift—$100, $50, $25, any amount that feels right to you—combined with the support of other dedicated AFCC members helps more professionals benefit from attending an AFCC conference.
Give your gift today
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Member News

The second edition of *Parenting Plan Evaluations: Applied Research for the Family Court* by **Leslie Drozd**, **Mike Saini**, and **Nancy Olesen** was released this month by Oxford University Press. This new edition includes discussion of new topics such as dealing with allegations of sexual abuse, children's memory, and how to handle overnight visits with noncustodial parents, as well as updated empirical evidence throughout, based on the most current published literature.

Chapter News

Congratulations to new chapter presidents:
Florida – Rose Patterson, BA, MBA
Indiana – Tiffany Simpson, PsyD
Maryland – Linda Delaney, JD

AFCC Chapter Annual Conferences

Texas Chapter Annual Conference
January 22, 2016
Thompson Conference Center, University of Texas
Austin, Texas
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Louisiana Chapter Annual Conference
January 22 –23, 2016
Paul Hebert Law Center
Baton Rouge, Louisiana
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Arizona Chapter Annual Conference
January 29–31, 2016
Hilton Sedona Resort
Sedona, Arizona
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California Chapter Annual Conference
February 19–21, 2016
InterContinental Mark Hopkins
San Francisco, California
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Missouri Chapter Annual Conference
March 31–April 1, 2016
St. Louis City Center Hotel
St. Louis, Missouri
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Nominations for AFCC Awards are Due March 15

AFCC awards acknowledge the many important contributions made by individuals and organizations to enhance the lives of children and parents involved in family courts. Your nominations help recognize and bring attention to these accomplishments. Even if your nomination is not selected this year, the act of nominating a colleague helps to highlight the broad range of achievements in the field and helps to cultivate a culture where individuals and organizations are acknowledged for their contributions.

Nominations for the following awards, to be presented at the AFCC Annual Conference in Seattle, will be accepted online through March 15, 2016*:*

- **John E. VanDuzer Distinguished Service Award** recognizes outstanding contributions and/or achievements by AFCC members;
- **Stanley Cohen Research Award**, sponsored by the Oregon Family Institute, recognizes outstanding research and/or achievements in the field of family and divorce; and
- **Irwin Cantor Innovative Program Award** recognizes innovation in court-connected or court-related programs created by AFCC members.

Submit a nomination online, see past recipients, learn more about the awards and criteria

Seeking an Editor-in-Chief for Family Court Review

AFCC seeks to appoint an editor-in-chief for *Family Court Review* who will work with the social science editor, managing editor and law student staff based at Hofstra University School of Law. *Family Court Review* is an interdisciplinary journal at the intersection of policy, research and practice that supports the mission of AFCC. *FCR* has over 5,000 subscribers worldwide. It is included in the legal databases of Westlaw and Lexis. It is cited regularly in court decisions and has influenced court rules and legislation on family law policy and practice. **Please submit application materials by February 1, 2016.**
Access a complete description and application instructions

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Ask the Experts: Ten Important Elements When Considering Child Custody in Military Families

Robert A. Simon, PhD, San Diego, California

Child custody determinations are highly complex matters that include considerations of children's needs, parental capacities and the resulting fit. Children who have a parent or parents serving in the military are part of a family system that presents unique factors and considerations not typically present in civilian families. There are also legal considerations involving members of the uniformed services that may not apply to civilian parents. This list aims to illuminate factors and legal considerations to increase the practitioner's understanding of how to better serve families who serve.

1. All members of the family are impacted by military service. It is essential to recognize that as a result of the service of just one parent, all members of the family are, in many ways, also in the service of their country. The spouse of the service member recognizes that their spouse has an allegiance to the uniformed services that most spouses do not have to their employer. If the service member becomes unhappy in their employment, they do not have the option of changing jobs until their enlistment is over. This can increase stress on the entire family system. The children of the service member recognize that their lives are embedded in military culture and are impacted by their parent's employment in ways that most children's are not.

2. Separation, even prolonged separation, is part and parcel for military families. We often think of the family as a stable unit in which the separation of a parent or parents from the rest of the family is uncommon and atypical.[1] This is not the case for military families. Members of the uniformed services are regularly separated from their families due to training and deployment. Military families must adapt and accommodate such separations as a way of life. Therefore, in the case of a divorce, determinations must be made about the best interests of children and common assumptions about the impact of a parent being absent may not be the same as for a civilian family.

3. The need for special cultural competence. While military personnel come from a variety of backgrounds, branches of the uniformed services have elements of their own culture. Family law professionals working with military families are wise to gain an

[1] Emery, R. E. (2011). *Renegotiating family relationships: Divorce, child custody, and mediation*. Guilford Press.

understanding of this culture and the ways in which it impacts families. For example, it is important to understand how the hierarchical nature of the uniformed services may translate into problem solving, communication and role expectations within the family structure. It is important to understand how separation from extended family, a common feature of military life, impacts the family unit, each member of the family, and how families in the military build a sense of "family" amongst themselves.

4. The deployment cycle brings with it a fairly predictable series of emotional and interpersonal experiences and changes.[2] For example, as the time for deployment nears, the service member's sense of affiliation with and belonging to their unit increases. They may talk more about the upcoming deployment, whereas the family is more focused on the impending loss and separation. There is emotional distancing within the family from the service member to potentially diminish the pain of separation. As deployment approaches there may be an increase in familial conflict. If not understood as a "normal" part of the deployment cycle, family law professionals may be less effective in understanding and supporting their client.

5. The mobility of military families presents one of the more complex challenges for family law professionals when child custody is at issue—the relocation case. For families in the military, geographic relocation is common and frequent. Therefore, when divorce occurs in a family that is or has recently been in military service, the impact of the potential relocation of one of the parents with the children may be different than for a civilian family. For example, if children have grown accustomed to living in a new location every 3-5 years and to being separated from one of their parents (while the parent is deployed) for long periods of time, the resulting psychosocial impact of post-divorce child custody relocation would be very different. Family law professionals working on such cases will want to bring this awareness to their work.

6. The presence or absence of family violence plays an important role when considering the best interests of children in custody determinations. The Department of Defense reports a steadily increasing rate of domestic violence in military families.[3] Though reports vary, the prevalence of domestic violence in military families is anywhere from two to five times the rate for civilian families. The literature on family violence demonstrates that among the common psychosocial risk factors for family violence are lower socioeconomic status, financial concerns, a relative paucity of psychosocial support systems, lower educational levels and residential instability of families. These factors are also common in military families.[4] While it is essential that

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[2] Rosen, L. N., Durand, D. B., & Martin, J. A. (2000). Wartime stress and family adaptation. *The military family: A practice guide for human service providers*, 123-138.
[3] US Department of Defense. (1996). DoD Targets Domestic Violence [American Forces Press Service]. Retrieved from http://archive.defense.gov/news/newsarticle.aspx?id=40762
[4] Simon, R. A. (2014). Special Considerations in Conducting Psychological Custody Evaluations with Military Families. *Family Court Review*, 52: 440–457. doi:10.1111/fcre.12103

family law professionals be sensitive to family violence in all families, it is particularly important to have competence in issues of family violence when working with military families.

7. Special laws apply to families in which a parent is a member of the uniformed services. Judicial child custody determinations are impacted by such laws. For example, in California, Family Code 3047 makes specific reference to military families and prohibits using a parent's absence from parenting time against that parent if the absence is/was due to military duty.[5] Several states including Arizona, Florida, New York, Kentucky and Wisconsin have enacted laws limiting the weight family courts can give to deployment-related circumstances when making custody determinations.[6] The Service Member's Civil Relief Act of 2010 (SCRA) states that family courts can alter child custody arrangements during the deployment of a parent, but that temporary suspensions are imposed on court proceedings that may affect the service member's rights during their deployment.[7]

8. Post-traumatic stress disorder (PTSD) is a psychiatric disorder that can occur following the experience of, or witnessing, a life-threatening event such as military combat, a natural disaster, terrorist incident, serious accident, or physical or sexual assault in adulthood or childhood.[8] The prevalence of PTSD amongst members of the uniformed services is reported to be at least 14%.[9] Depending on how a service member's PTSD symptoms are manifest, it is possible that active PTSD could interfere with parenting. Thus, when working with members of the military, family law professionals must be aware of functional impairments caused by PTSD, how they may manifest in parenting, and how they may respond to appropriate treatment and can therefore have a diminished or negligible impact on parenting with proper treatment.

9. Modern warfare has resulted in a marked increase in traumatic brain injury amongst service members. Traumatic brain injury occurs when an external mechanical force causes brain dysfunction, often resulting from a violent blow or jolt to the head or body, or an object, such as a bullet or shattered piece of skull, penetrating the skull. The result can be temporary and/or permanent functional impairments

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[5] Family Code Section 3040-3049, State of California, Retrieved from: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=03001-04000&file=3040-3049

[6] For details see article cited in footnote 2.

[7] Service Members Civil Relief Act (SCRA) 50 USC. App. §§501-597b, Retrieved from: http://www.justice.gov/sites/default/files/crt/legacy/2011/03/23/scratext.pdf

[8] Nebraska Department of Veterans' Affairs. "Post Traumatic Stress Disorder." Retrieved from www.ptsd.ne.gov/what-is-ptsd.html

[9] Veterans' and PTSD. "Veterans statistics: PTSD, Depression, TBI, Suicide." Retrieved from http://www.veteransandptsd.com/PTSD-statistics.html

including cognitive, affective and behavioral that can impact parenting. Family law professionals who observe such functional impairments are wise to be aware of appropriate treatments for these injuries and whether the impairments are likely to be temporary or permanent when it comes to making custody determinations.

10. When working with military families, it is essential that professionals be aware of their own attitudes, beliefs, opinions and biases about the military, and how the military has been and is used in response to recent geopolitical events. One must carefully and continuously examine, evaluate and be alert to biases, be they positive or negative, particularly if one is not accustomed to working with this population.

Robert A. Simon, PhD*, is a nationally recognized leader in forensic psychology consulting in the area of child custody disputes and family law. He is the co-author of the recently released book entitled* Forensic Psychology Consulting in Child Custody Litigation: A Handbook for Work Product Review*,* Case Preparation, and Expert Testimony *published by the American Bar Association. He has also published articles for academic journals such as the* Family Court Review *and* Family Law Quarterly*. Dr. Simon currently serves on the AFCC Board of Directors and the editorial board of* Family Court Review. *He is a member of the California Bar Association Committee on Professional Conduct and Responsibility and the California Bar Court Executive Committee. He is a past member of the California Psychological Association Ethics Committee. Dr. Simon is licensed in California and Hawaii.*

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So what is it about this case that stands out and why is it of such interest? I think it is all about the competing demands of, on the one hand, protecting children from abuse and making sure that when it happens there is proper accountability and, on the other hand, ensuring that fair trial rights of an alleged perpetrator are preserved.

This was a criminal case but I want to suggest that it has implications for all of us in the work we do, and beyond the United States.

So what were the essential facts here? The following is an official summary, 576 US_ (2015):

> *Darius Clark sent his girlfriend hundreds of miles away to engage in prostitution and agreed to care for her two young children while she was out of town. A day later, a teacher asked about red marks and bruises on the girlfriend's 3-year-old son, and the boy identified "D" as his abuser. The question in this case is whether the Sixth Amendment's Confrontation Clause prohibited prosecutors from introducing the child's statements to his teacher when the child was not made available for cross-examination.*

Mr. Clark was charged in relation to this alleged abuse and was convicted. As is so often the case, there was little direct evidence other than the clear fact of bruising and the child's disclosure to the teacher. The teacher's evidence in the case therefore assumed a great deal of importance.

Initially, Clark was convicted on five counts of felonious assault relating to both this child and another sibling. It is likely that the injuries caused here were significant. Clark was sentenced to 28 years imprisonment, but on appeal to the Supreme Court of Ohio, by a

4-3 majority, the court took the view that the child's out of court statements to the teacher were erroneously admitted into evidence as they violated the confrontation clause of the US Constitution. Essentially, that clause guarantees the right of the accused to face the accuser in a criminal trial, whoever that is, and test, face-to-face, the evidence. Would this mean that for the state to succeed, it needed to call the child? Surely a harrowing prospect.

The US Supreme Court released its decision on the case on 18 June 2015, and by a 9-0 majority found that the introduction of the child's statements to his teacher did not violate the Confrontation Clause of the US Constitution. The teacher could therefore testify as to the statements made to her by the child. The court noted that Ohio has a "mandatory reporting" law that requires certain professionals, including pre-school teachers, to report suspected child abuse to government authorities. My understanding is that in fact all states have mandatory reporting laws of some sort.

The concern of the defence in this case related to the reliability of the child's evidence and the fact that it was so vital to the state's case. And yet, how reliable could those statements be said to be without thorough testing of the truth of the disclosures via cross examination? The defence said that as the teacher's evidence was necessarily based on what she had been told by the child, the ability to rigorously confront the basis of the evidence was impossible and accordingly the statement should be excluded on that ground.

A very spirited discussion occurred at the plenary on the competing issues that this case brought up. Each side was scrupulously fair, but passionate all the same. Katherine Mullin from the Office of the Ohio Attorney General argued that it was too oppressive and restricting for important evidence such as this to be excluded. Children's welfare was at stake. On the other hand, Erika Cunliffe from the Cuyahoga Country Public Defenders Office said that courts must have a certain standard of reliable evidence and society is owed a process that ensures no person be convicted on evidence that cannot be wholly trusted.

What then are the implications of this case for those of us who work in the civil setting where we are not faced with the high standard of criminal proof? Can we afford to be more flexible in accepting, as evidence, statements of children made to a third party such as an evaluator, teacher, social worker or *Guardian ad litem*?

Many of us, in our family law work, undertake juvenile work as well; delinquency cases essentially require no less than the same protections as adult criminal cases. So in the abuse, neglect and dependency cases which one might term "quasi-criminal," there is a heightened need for convincing evidence before state action is taken.

What we now know is that statements of this sort that were made here are not excluded per se. That is not to say they will always be admissible. Each case will have to be seen in its own context and its own light. Because of the various appeals and procedural steps that have occurred in *Ohio v Clark*, a retrial is still awaited and no doubt actual

admissibility and reliability will be dealt with in good time. For me, this case highlights that when a statement of this importance is made by a child, to any of the professionals referred to, we should be conscious of its importance and perhaps obtain prompt advice on what to do as a result. Of course mandatory reporting laws requiring prompt disclosure to authorities must be followed. The case also raises important issues for our consideration about protecting the reliability of children's statements through standards of practice that limit multiple disclosures.

AFCC is all about identifying issues in family law practice which are challenging, and which require analysis and training. I can see that the breadth of practitioners who interact with children will justifiably clamour for further time to be spent in this area of their work. I would welcome it. I think it is an ideal way of furthering AFCC's mission statement that children are at the centre of our focus and that therefore knowing what to do when children need our expertise, we are in a positon to give it, and to ensure that there is a safe outcome.