



# Untangling the Obstacles for Equal Justice in Family Court

Finding Solutions and a Call to Action

Luanne P. McKenna

October 8, 2020

# OBJECTIVES

- ▶ Introduction and Disclaimer
- ▶ Brief Review of the Report of the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence
- ▶ Solutions to Barriers - Beginning at Home
- ▶ Opportunities to Make a Difference
- ▶ MD AFCC Initiatives - A Call to Action - TOWN HALL Pilot Project

“You don’t have to have it all figured out to move forward. Just take the next step.” Anonymous

# Workgroup to Study Child Custody Court Proceedings Involving of Child Abuse or Domestic Violence Allegations

- ▶ Example of a coordinated effort to identify potential biases or barriers to the equitable administration of justice
- ▶ Child advocates and protective parents identified challenges in the family courts
- ▶ Asserted lack of understanding, stereotypes, biases serve to place children at risk for continued abuse in child custody proceedings where family violence is alleged
- ▶ Parents, particularly mothers, who advocate for restrictions on access to the other parent because of domestic violence or child abuse are frequently labeled as “alienators” or “high conflict” when raising legitimate safety concerns<sup>1</sup>

1. Final Report, page 1, footnote 2, citing Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light of Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 Law & Ineq., 311, 313 (2017).

# Workgroup to Study Child Custody Court Proceedings Involving of Child Abuse or Domestic Violence Allegations

- ▶ Chapter 52 of 2019 created and tasked the Workgroup with:
  - ▶ Studying State child custody court process when child abuse or domestic violence allegations are made during court proceedings;
  - ▶ Studying available science and best practices pertaining to children in traumatic situations, including trauma-informed decision-making; and
  - ▶ Making recommendations about how State courts could incorporate in court proceedings the latest science regarding the safety and well-being of children and other victims of domestic violence.
- ▶ Workgroup met between June 2019 and July 2020 and heard from experts, protective parents, interested persons, and public participants
- ▶ Report with 24 recommendations was submitted to the Governor in September 2020

# Presentations Highlighted Potential Areas of Bias or Lack of Understanding By Courts and Affiliated Professionals in Child Custody Proceedings Involving Child Abuse or Domestic Violence Allegations

- ▶ Professor Joan Meier's research<sup>2</sup> findings related to GENDER BIAS noted in Final Report:
  - ▶ In cases with and without abuse claims, when Fathers alleged Mother were alienators, Fathers took custody 44% of the time. When Mothers alleged Fathers were alienators, Mothers took custody 28% of the time. (Final Report, p. 14).
  - ▶ In cases in which one party alleged abuse and the other responded with an alienation claim, Mothers accused of alienation lost custody to the Father they accused of abuse 50% of the time; Fathers accused of alienation lost custody to the Mother they accused of abuse 29% of the time. (Final Report, p. 14).
  - ▶ Fathers proved to have committed physical abuse still took custody 24% of the time; Mothers proved to have committed child abuse never received custody. (Final Report, p. 14).
  - ▶ See also impact of presence of GAL (BIA) or custody evaluator in cases as applied to Mothers and Fathers. (Final Report, p. 15).

2. See Final Report, beginning page 10, footnote 9, *citing* Meier, Joan S. and Dickson, Sean and O'Sullivan, Chris and Rosen, Leora and Hayes, Jeffrey, Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations (2019). GWU Law School Public Law Research Paper No. 2019-56; GWU Legal Studies Research Paper No. 2019-56. Available at SSRN: <https://ssrn.com/abstract=3448062> or <http://dx.doi.org/10.2139/ssrn.3448062>.

## Presentations Highlighted Potential Areas of Bias or Lack of Understanding By Courts and Affiliated Professionals in Child Custody Proceedings Involving Child Abuse or Domestic Violence Allegations

- ▶ Dr. Daniel Saunders presented results of a national nonrepresentative survey of 465 custody evaluators and 200 judges.
- ▶ He asserted that sexist beliefs, including that false allegations of domestic violence by mothers are common, were linked to recommendations of sole or joint custody, or unsupervised visitation, likely to harm protective parents and their children. (Final Report, p. 15).
- ▶ Dr. Saunders identified eleven (11) main problem areas that have been researched and suggested recommendations. (See Final Report, Appendix 2, pages 86-90).
- ▶ He noted that coercive behavior by a parent is often ignored when custody and visitation decisions are being made and criticized various assumptions common in the court setting.

## Presentations Highlighted Potential Areas of Bias or Lack of Understanding By Courts and Affiliated Professionals in Child Custody Proceedings Involving Child Abuse or Domestic Violence Allegations

- ▶ Professor Deborah Epstein presented issues regarding gender, specifically how the stories of women who share experiences of domestic violence or seek legal recourse are routinely disbelieved or dismissed. (Final Report, p. 15).
- ▶ She illustrated barriers to access to justice in the courts based on domestic violence victims' narratives which counter judicial expectations or experiences, thereby leading the court to discount credibility. (Final Report, Appendix 2, pp. 101-110).
- ▶ Examples:
  - ▶ Non-linear narrative, or gaps in story.
  - ▶ Prioritization of psychological or emotional abuse over physical abuse in narrative.
  - ▶ Decision to stay in an abusive relationship which is counter to decision-maker's personal experience so deemed less plausible.



## Recommendations of the Workgroup to Counter Identified Barriers to Equity in Child Custody Cases Involving Child Abuse and Domestic Violence Allegations

- ▶ Statutory provisions specifically governing custody determinations which appropriately account for child abuse and domestic violence
- ▶ Enhanced judicial training
  - ▶ Ways to assess credibility that go beyond “trusting your instinct” and go beyond even extensive workshops on implicit bias
  - ▶ Specialized training on domestic violence, child abuse, coercive control, gender bias
- ▶ Appropriate qualifications, uniform requirements for other professionals involved in child custody cases
- ▶ Increased access to relevant resources to parties without incurring financial hardship. (Final Report, p. 15).

# SOLUTIONS TO BARRIERS - BEGINNING AT HOME

## ▶ SYSTEMS OF THINKING

- ▶ Fast - System 1 - automatic/intuitive/emotional/unconscious
- ▶ Slow - System 2 - slow/deliberative/logical/conscious

## ▶ IMPLICIT BIAS

- ▶ “implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness.”<sup>3</sup>
- ▶ Unconscious cognitions that include beliefs, attitude, intuitions, gut feelings our brains use to automatically organize information into categories.

## ▶ MAKING UNCONSCIOUS, CONSCIOUS

- ▶ We all hold assumptions about each other, litigants, opposing parties, tied to our implicit biases that can impede access to justice if they remain operating in the background.

3. Kirwan Instit. for the Study of Race & Ethnicity, Understanding Implicit Bias 1, 1 (2015, available at <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>)

# SOLUTIONS TO BARRIERS - BEGINNING AT HOME

## ▶ Project Implicit

- ▶ The goal of this non-profit created by researchers interested in implicit social cognition is to educate the public about hidden biases and to provide a “virtual library” for collecting data on the internet. The Implicit Association Tests (IATs) are anonymous tools that can be used to examine your own potential biases in many areas, such as, race, gender, ethnicity, overweight, age, religion, disability, and sexual orientation. You can access online tests that measure attitudes and beliefs that people may hold and of which they may be unaware or unwilling to report. The results of the tests can help reveal implicit attitudes through identifying the strengths of automatic associations people hold between concepts.
- ▶ Not a definitive measure, but a useful starting point.
- ▶ Takes about 6 to 10 minutes per test.
- ▶ <https://implicit.harvard.edu/implicit/selectatest.html>

# SOLUTIONS TO BARRIERS – BEGINNING AT HOME

<https://implicit.harvard.edu/implicit/selectatest.html>



Project Implicit®

[LOG IN](#) [TAKE A TEST](#) [ABOUT US](#) [EDUCATION](#) [BLOG](#) [HELP](#) [CONTACT US](#) [DONATE](#)

## Disability IAT

**Disability ('Disabled - Abled' IAT).** This IAT requires the ability to recognize symbols representing abled and disabled individuals.

## Gender-Career IAT

**Gender - Career.** This IAT often reveals a relative link between family and females and between career and males.

## Native IAT

**Native American ('Native - White American' IAT).** This IAT requires the ability to recognize White and Native American faces in either classic or modern dress, and the names of places that are either American or Foreign in origin.

## Weight IAT

**Weight ('Fat - Thin' IAT).** This IAT requires the ability to distinguish faces of people who are obese and people who are thin. It often reveals an automatic preference for thin people relative to fat people.

## Religion IAT

**Religion ('Religions' IAT).** This IAT requires some familiarity with religious terms from various world religions.

## Presidents IAT

**Presidents ('Presidential Popularity' IAT).** This IAT requires the ability to recognize photos of Donald Trump and one or more previous presidents.

## Asian IAT

**Asian American ('Asian - European American' IAT).** This IAT requires the ability to recognize White and Asian-American faces, and images of places that are either American or Foreign in origin.

## Arab-Muslim IAT

**Arab-Muslim ('Arab Muslim - Other People' IAT).** This IAT requires the ability to distinguish names that are likely to belong to Arab-Muslims versus people of other nationalities or religions.

## Age IAT

**Age ('Young - Old' IAT).** This IAT requires the ability to distinguish old from young faces. This test often indicates that Americans have automatic preference for young over old.

## Weapons IAT

**Weapons ('Weapons - Harmless Objects' IAT).** This IAT requires the ability to recognize White and Black faces, and images of weapons or harmless objects.

## Transgender IAT

**Transgender ('Transgender People - Cisgender People' IAT).** This IAT requires the ability to distinguish photos of transgender celebrity faces from photos of cisgender celebrity faces.

## Gender-Science IAT

**Gender - Science.** This IAT often reveals a relative link between liberal arts and females and between science and males.

## Race IAT

**Race ('Black - White' IAT).** This IAT requires the ability to distinguish faces of European and African origin. It indicates that most Americans have an automatic preference for white over black.

## Sexuality IAT

**Sexuality ('Gay - Straight' IAT).** This IAT requires the ability to distinguish words and symbols representing gay and straight people. It often reveals an automatic preference for straight relative to

# SOLUTIONS TO BARRIERS - BEGINNING AT HOME

## ▶ **Who Me Biased?**

New York Times Video Series 2016

Series of very short videos that describe concepts associated with implicit bias.

<https://www.nytimes.com/video/who-me-biased>

## ▶ **How to overcome our biases? Walk boldly toward them.**

Verna Myers TEDxBeaconStreet November 2014

TED Talk on recognizing our own biases provided by diversity trainer. She offers specific suggestions on how we can personally confront our own internal defaults of relating to others.

[https://www.ted.com/talks/verna\\_myers\\_how\\_to\\_overcome\\_our\\_biases\\_walk\\_boldly\\_toward\\_them?language=en](https://www.ted.com/talks/verna_myers_how_to_overcome_our_biases_walk_boldly_toward_them?language=en)

# SOLUTIONS TO BARRIERS - BEGINNING AT HOME

## ► American Bar Association

<https://www.americanbar.org/groups/diversity/resources/>

[https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit\\_bias/](https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit_bias/)

[https://www.americanbar.org/groups/diversity/resources/toolkits/s/resources/implicit\\_bias/](https://www.americanbar.org/groups/diversity/resources/toolkits/s/resources/implicit_bias/)

## ► There are numerous projects accessible to the public on the ABA website.

### Some examples are below:

- Syllabus: 21-Day Racial Equity Habit-Building Challenge ©
- Implicit Bias Videos and Toolkits for Judges, Attorneys
- How to Be an Ally Toolkit
- Women of Color Research Initiative Program
- Interrupting Racial and Gender Bias in the Legal Profession Research Report
- Planning Accessible Meetings and Events
- Model Entity Evaluation Self-Assessment Tool

## ► Check Local Bar Associations

- Example Howard County Bar Association – recent training on implicit bias

# SOLUTIONS TO BARRIERS - BEGINNING AT HOME

- ▶ **SUMMARY OF RECOMMENDATIONS TO COMBAT IMPLICIT BIAS**
  - ▶ **Self-Assessment/Inventory of Implicit Biases/Break Out of Denial**
  - ▶ **Expand Your Circle/Walk Towards the Other/Cultivate Inclusivity**
  - ▶ **See Something, Say Something/Engage in Difficult Conversations**
  - ▶ **Solicit Feedback from Outside Observers**
  - ▶ **Solicit Feedback from Litigants**
  - ▶ **Learn to Slow Down and Catch Automatic Decisions**
    - ▶ **Implement a system to check your own biases**
    - ▶ **Standardize processes to avoid snap or “gut” reactions**

# OPPORTUNITIES TO MAKE A DIFFERENCE

## ▶ **Delivery of Legal Services – MSBA**

- ▶ Purpose of the Section is to promote the fair administration of justice in the State of Maryland. The Section promotes and encourages free or low cost services for people of limited means through legal services programs for indigent, public interest legal organizations, *pro bono publico*, reduced fee and other alternatives to fee-for-service to provide access to the courts, and court alternatives for the resolution of disputes. The areas include legal practice and legal reform for the indigent and persons of modest means, for example, civil rights consumer advocacy, civil and criminal legal services, and lawyer referral services.
  - ▶ \$10 annually to join the section.
  - ▶ Bi-monthly newsletter.
  - ▶ Educational events.
  - ▶ Mentoring law students.

## ▶ **Legal Services Providers – some identified issues**

- ▶ Digital divide
- ▶ Systemic racism, poverty, intersectionality
- ▶ Cuts in funding



# OPPORTUNITIES TO MAKE A DIFFERENCE

## **Pro Bono Legal Services**

### **Maryland Legal Services Corporation**

<https://www.mlsc.org/news-resources/find-legal-help/>

You can find a listing of all MLSC grantees, jurisdiction(s) served, services provided at MLSC web-site, above.

Selected programs below:

### **Asian Pacific American Legal Resource Center**

<https://www.apalrc.org/>

### **Community Legal Services**

<https://www.clspgc.org/>

### **Disability Rights Maryland**

<https://disabilityrightsmd.org/how-to-get-help/>

### **FreeState Justice**

<https://freestate-justice.org/>

### **Homeless Persons Representation Project**

[http://www.hprplaw.org/get legal help](http://www.hprplaw.org/get_legal_help)

## **House of Ruth Maryland**

<https://hruth.org/>

## **Maryland Legal Aid Bureau**

<https://www.mdlab.org/>

## **Maryland Volunteer Lawyers Service**

<https://mvlslaw.org/>

## **Mid-Shore Pro Bono**

<http://midshoreprobono.org/>

## **Pro Bono Resource Center**

<https://probonomd.org/for-legal-help>

## **Sexual Assault Legal Institute**

<https://mcasa.org/survivors/sali>

## **Women's Law Center**

<http://www.wlcmd.org/how-we-help/>

Income Eligibility – generally 50% median income; opportunities for training, mentoring, and clinics!

# OPPORTUNITIES TO MAKE A DIFFERENCE

## PRO BONO RESOURCE CENTER (PBRC)

AG's COVID Task Force

See paper on court access and legal assistance for low-income at

<https://probonomd.org/proceeding-remotely/>

MLSC Race Equity Group

Trauma-Informed Lawyering

PBRC Pro Bono Coordinating Council - focus implicit bias

Annual Partners for Justice Conference - Race Equity Panel

Statewide Volunteer Opportunities - training and support

<https://probonomd.org/>

## MD LEGAL AID BUREAU

Clients face systemic racism, poverty, language access barriers

Many clients increased risk for COVID due to living conditions and need to work outside home

Trainings for Volunteer Attorneys - contact Julianne Tarver to register - [jtarver@mdlab.org](mailto:jtarver@mdlab.org)

- Estate Planning 10/9
- Youth in Restraints 10/12
- New Lawyer 10/19-23
- Employment Law COVID 10/28
- Social Security 101 10/29
- Family Law 101 11/6
- Language Access 101 12/8
- Housing Law 12/9

Lawyer in the Library

<https://www.mdlab.org/>

## MD VOLUNTEER LAWYERS SERVICE (MVLS)

Neutral laws have disparate impacts on communities of color

Recognition/clarification that much of the time low-income means people/communities of color

Black clients over-represented in legal services considering population demographics - many forced to navigate system on their own

Statewide training/volunteer opportunities

<https://mvls.org/available-cases/apply-to-be-a-volunteer-lawyer/>

<https://mvslaw.org/events/>

# OPPORTUNITIES TO MAKE A DIFFERENCE

## CIVIL JUSTICE, INC.

Civil Justice is a Maryland non-profit corporation formed for the purpose of increasing the delivery of legal services to clients of low and moderate income while promoting a statewide network of solo, small firm and community-based lawyers who share a common commitment to increasing access to justice through traditional and non-traditional means.

<http://www.civiljusticenetwork.org/Programs/MarylandLawyerReferralService.aspx>

## COLLABORATIVE LAW PROJECT OF MARYLAND

The Collaborative Project of Maryland (“Collaborative Project”) offers individuals and families of modest means the option of using the Collaborative Process to resolve their disputes. We are a group of dedicated Collaborative Professionals who volunteer our time and services. The Collaborative Project links parties going through disputes, including divorce, other family transitions, and other civil matters, with Collaborative Professionals who provide services on a pro bono or reduced fee basis. <https://collaborativeprojectmd.org/>

## COURT WATCH MONTGOMERY

We are the only organization in Maryland collecting and analyzing data about what is actually happening in domestic violence courtrooms. Our findings show that too few domestic violence victims in Maryland are obtaining comprehensive legal protection, despite our state’s strong protective order law. Court Watch Montgomery holds county judges and other court personnel accountable for providing a safe and respectful court environment for domestic violence victims. By doing this unique work, we create a ripple effect that challenges all Maryland judges and all court personnel to use **promising practices** that give victims the legal tools they need most.

<https://courtwatchmontgomery.org/what-we-do/>

## THE CLIENT NOTEBOOK

The Client Notebook is a tool to assist self-represented litigants organize their facts, evidence and case file in a standardized manner to help limited scope and *pro bono* attorneys more seamlessly, efficiently and cost-effectively provide legal assistance. The Client Notebook is a communications device that bridges all resources together to empower and guide self-represented litigants. <https://clientnotebook.com/>

# A CALL TO ACTION - MD AFCC TOWN HALL Pilot Project

- ▶ **MD AFCC - Access to Justice Subcommittee**
  - ▶ Investigating how MD AFCC can help increase opportunities for litigants, attorneys, courts to use critical social science research in the best interests of children and families
- ▶ **TOWN HALL Pilot Project**
  - ▶ Incorporates Ambassador Board
  - ▶ Builds on Road Shows
  - ▶ Provides Opportunity for Stakeholders in Local Communities to Address Concerns Specific to Jurisdiction
  - ▶ Welcomes Dialogue
  - ▶ Gives Opportunity for Listening to Needs
  - ▶ Institutes a Process to Collect Data and Plan for Systemic Response

# A CALL TO ACTION - MD AFCC TOWN HALL Pilot Project

- ▶ **TOWN HALL Pilot Project**
  - ▶ MD AFCC Anticipates Small Pilot - 2<sup>nd</sup> Judicial Circuit
  - ▶ Look for Survey from MD AFCC
  - ▶ Complete Survey and Forward to Interested Persons for Completion
  - ▶ Note Interest in Town Hall Participation
  - ▶ Issues Will be Identified from Surveys Received
  - ▶ Program Will be Developed with Local Stakeholders
  - ▶ Opportunities Will be Provided for Meaningful Exchange of Ideas
  - ▶ Themes and Recommendations Will be Developed From Events
  - ▶ Your VOICE Matters
- ▶ **GET INVOLVED AND BECOME PART OF THE SOLUTIONS**
- ▶ **JOIN MD AFCC AND/OR REACH OUT TO PARTICIPATE IN THIS EFFORT!**

# THANK YOU!

## CONTACT WITH QUESTIONS OR COMMENTS:

LUANNE P. MCKENNA  
CHILD JUSTICE, INC.  
8850 COLUMBIA 100 PARKWAY, SUITE 302  
COLUMBIA, MARYLAND 21045  
[Luanne.McKenna@Child-Justice.Org](mailto:Luanne.McKenna@Child-Justice.Org)  
[luannemckenna@gmail.com](mailto:luannemckenna@gmail.com)  
443-535-5355