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Better Outcomes for Older Youth of Color in Foster Care

By Martha L. Raimon, Kristen Weber, and Amelia Esenstad – March 25, 2015

The disturbing truth is that children and youth of color, particularly African American and Native American children, are disproportionately represented in child welfare systems throughout the nation. And the troubling result is that for many older youth of color, the systems that were designed to assure their safety and well-being too often result in unacceptable outcomes. While there is no easy, quick formula to ensure better outcomes for youth of color, helping professionals and advocates should know about and attend to at least three critical areas: implicit bias, systemic/institutional barriers, and positive youth development.

National and local data show that youth of color experience longer stays in foster care than their white counterparts, more restrictive foster care placements, and lack of access to meaningful and relevant services, among other poor outcomes. As currently structured, child welfare systems frequently fail to understand and respond to the cumulative life experiences of youth of color, including the circumstances of race, racism, and culture. Youth of color are often viewed by intervening professionals as problematic, pathological, or damaged. Oronde Miller et al., Ctr. for the Study of Soc. Policy, Changing Course: Improving Outcomes for African American Males Involved with Child Welfare Systems (2014). This article focuses on older youth of color in the child welfare system—examining what the data tells us and exploring ways to shift the system narrative and structure interventions that can build protective factors in these youth and better promote their healthy development and well-being.

The Data

Nationally, in 2012 African American children comprised 14 percent of the general child population, but represented 26 percent of children in foster care. In the same year, Native American children made up 1 percent in the general population but 2 percent of the foster care population. Annie E. Casey Found. Kids Count Data Ctr., Child Population by Race vs. Children in Foster Care by Race (2014). Yet these national numbers don’t tell the full story. For children under the age of 18 in placement, 13 out of every 1,000 Native American/Alaska Native are in foster care, representing the highest rate of any other racial or ethnic group of children. Admin. on Children, Youth & Families, U.S. Dep’t of Health & Human Servs., Recent Demographic Trends in Foster Care (Data Brief 2013-1), at 2 (2013).

The picture of racial and ethnic disparities differs when examining local data. While Latino children are slightly underrepresented nationally in foster care (comprising 24 percent of the child population and 21 percent of the foster care population), they are overrepresented in six states. Further, Latino children make up the majority of children in foster care in California—underrepresented in some counties and overrepresented in others. In order to understand the extent and nature of disparate treatment and outcomes, advocates and policymakers must look not only at national data but also at local and regional data and conditions to identify what is
happening to produce these effects and whether youth and families of color in particular localities have access to culturally responsive services and policies.

Data show differences by race and ethnicity in rates that children and youth of color are removed from their homes, the types of out-of-home care settings in which they are placed, and the rates they reunify with family or find alternative permanent placements. For example, national data show that African American children spend an average of 29 months in out-of-home placement, Latino children an average of 23 months, and white children an average of 18 months. Recent Demographic Trends in Foster Care, supra, at 4. Data also show poorer outcomes for older youth of color who are involved with the child welfare system than for white youth. For example, African American youth over age 10 are significantly less likely to be reunited with family than white youth, even when controlling for risk factors, child behavior, and agency actions. Keesha Dunbar & Richard P. Barth, Annie E. Casey Found., Racial Disproportionality, Race Disparity, and Other Race-Related Findings in Published Works Derived from the National Survey of Child and Adolescent Well-Being 35–37 (2007).

Through a number of qualitative reviews, the Center for the Study of Social Policy (CSSP) has found that older youth of color too often experience a child welfare system that lacks effective, culturally respectful engagement and services and that frequently fails to sufficiently address a youth’s unique needs. CSSP also found that child welfare systems often pay insufficient attention to the trauma, grief, and loss experienced by youth and their families, a trauma that is often exacerbated for youth of color due to historical patterns of differential treatment and racism. Rather than acknowledging the trauma and loss many youth have suffered, older youth are instead often described in case files as hostile, aggressive, and pathological. As an example, CSSP reviewed a case in which a teenage African American boy repeatedly threw himself down a set of stairs after visiting his mother in jail. The caseworker’s notes labeled him as psychotic, and he was administered psychotropic medication. Nowhere in the file was there evidence that the professionals treating him linked his self-injurious behaviors to the trigger of his recent visit to his mother, whom he had not seen in a few years.

Further, although well intentioned, interventions for older youth frequently serve to undermine family connections and further disrupt relationships and communities. The family systems of youth of color traditionally involve networks of grandparents, godparents, aunts, uncles, cousins, and real and fictive kin. CSSP found that in efforts to place youth in out-of-home settings, the child welfare system and courts tend to look to one relative to support the youth, but may fail to explore the complex network of informal supports who can offer respite to caregivers and ongoing connection for youth. Finally, youth of color face additional significant challenges as a result of sustained disinvestment in their community—many struggle to find adequate housing and jobs, healthy and affordable food, safe and academically challenging schools, and clean, secure parks and neighborhoods.

New data from the Los Angeles foster youth survey, a telephone survey of 784 youth ages 12–21 involved with Los Angeles’s child welfare system, offers insight about the need to also look at
intersectionality, the expression of sexual orientation, gender identity, race, ethnicity, and disability, all important parts of a youth’s identity. The Los Angeles survey found that 85 percent of respondents were youth of color, and 19 percent identified as lesbian, gay, bisexual, or transgender. Bianca D.M. Wilson, Univ. of Cal. L.A., “Yes, There Are Way More Than 3!: Estimating LGBTQ Youth in the Foster Care System,” YouTube (Nov. 12, 2014). Understanding the intersectionality of these identities is critical to recognizing the multiple biases and disadvantages that some youth experience.

To summarize, although there are significant regional differences, older youth of color are overrepresented in foster care and too often experience poor life outcomes. How can child welfare systems and advocates better support older youth of color? What are the solutions?

Implicit Bias
In multiple jurisdictions, through the institutional analysis methodology, an assessment intended to better understand system contributors to racial disparities, CSSP found multiple examples of workers describing youth of color as problematic without evidence to support this characterization. These sorts of responses are examples of “implicit bias.” The science of implicit bias posits that biases are activated involuntarily. Research also suggests that staff are more susceptible to the effects of implicit bias under conditions that are often found in institutions: ambiguous or incomplete information, time constraints, and high caseloads. Kirwan Inst., State of the Science: Implicit Bias Review 2014 (2014).

Youth of color often report feeling that their workers do not understand them and that they are not provided with the ability to interact with their peers in ways that are comfortable to them. Data shows youth of color are placed in more restrictive settings than their white counterparts. Miller et al., supra. In one jurisdiction working to transition youth back from out-of-state specialized and frequently restrictive placements, the youth of color were the last youth to return. In another jurisdiction, Latino youth who crossed into the United States on their own were not provided services unique to their specialized needs. And in another jurisdiction, a 15-year-old African American male with active mental health issues ran away from placement, and the record provided no evidence of active efforts to find him as workers described him being old enough to take care of himself. Results like these may be outward expressions of implicit bias.

Workers need focused training on implicit bias to recognize what it is, which is the first step toward changing policies and practice to eliminate the often unintended but nevertheless damaging effects on youth of color. Workers need to be supported through supervision and in feedback from the people they serve to understand how their actions can demonstrate respect and understanding as opposed to further demoralizing a youth. Further, even small changes to environments that youth frequent (offices, visiting rooms, waiting areas) can help to promote a better sense of belonging and positive identify for youth with diverse backgrounds and cultures and serve to counter the negative effects of implicit bias.
Systemic Barriers
Many policies and practices that guide child welfare systems unintentionally disadvantage communities of color. For example, in an effort to promote the safety of children and youth in out-of-home placement, relative caregivers must have criminal background checks completed in order to be approved as a placement. In communities of color that have experienced excessive policing and mass incarceration, many relatives have criminal records stemming from prior drug or property-related drug charges that can prevent them from being considered placement resources, even when they have historically been a youth’s caretaker and they can provide a safe and secure home. Other relatives may be undocumented and therefore not considered viable resources.

CSSP found that youth of color are too often placed in communities that are distant from providers offering required services, visitation sites, and court hearings. Historical inequities in transportation patterns and how buses are routed through communities can disparately affect the ability of youth of color and their families to travel to and participate in visitation and other mandated services in a timely manner. Sometimes child welfare systems mandate that youth attend programs such as substance abuse, parenting, or domestic violence programs with providers that are not accessible to communities of color or not culturally relevant. Often these services fail to address the underlying trauma experienced by youth of color and do not support them in the healthy development of their racial/ethnic identity. Systems of accountability rarely look at questions of service accessibility and cultural relevance. Child welfare and related human services systems must work much more closely with communities of color to analyze the ways in which laws, policies, and practices serve to advantage or disadvantage particular populations. This kind of assessment is unlikely to occur in the normal course of events, and so systems must make concerted efforts to engage with communities of color to understand how children and families of color experience the services system and to ensure that available services are of high quality, community-based, accessible, and affordable.

Positive Youth Development
Adolescence is a time of transition and instability for all youth, but represents a period of particular risk for youth of color in the child welfare system. Scientists consider adolescence the second most critical and most vulnerable developmental period in the lifespan, surpassed only by early childhood. Ronald E. Dahl, “Adolescent Brain Development: A Period of Vulnerabilities and Opportunities,” 1021 Annals N.Y. Acad. Sci. 1 (2004); Marlene M. Moretti & Maya Peled, “Adolescent-Parent Attachment: Bonds That Support Healthy Development,” 9 Paediatrics & Child Health 551 (Oct. 2004). During this period, the brain is developing unevenly: the structure and functions in the limbic system that control emotions develop more rapidly, whereas the area of the brain responsible for cognitive skills such as decision making—the prefrontal cortex—is still evolving well into early adulthood. Jim Casey Youth Opportunities Initiative, The Adolescent Brain: New Research and Its Implications for Young People Transitioning from Foster Care 20 (2011).
In this vulnerable stage, negative stressors are potential threats to an adolescent’s healthy development and well-being. While all youth confront stressful experiences in the course of growing up, youth in foster care and far too often youth of color experience more than their share of stressors: separation from family, frequent moves, violence, and the collateral consequences of poverty and parental incarceration to name a few. These “non-normative” sources of stress are not regarded as predictable experiences characteristic of this developmental period. Kathryn E. Grant et al., “Stressors and Child and Adolescent Psychopathology: Moving from Markers to Mechanisms of Risk,” 129 Psychol. Bull. 447 (2003). Sources of stress often experienced by racial/ethnic minority youth have been termed “chronic environmental stress.” Louis P. Anderson, “Acculturative Stress: A Theory of Relevance to Black Americans,” 11 Clinical Psychol. Rev. 685 (1991). Chronic environmental stress is defined as a constant background level of threat based in the environment physical and social structure. It includes racism and economic inequity, but also heightened danger and the intrusion of social problems into everyday life. Chronic environmental stress impinges on optimism, sense of control, and goal-directed behavior. Patrick H. Tolan et al., “Building Protection, Support, and Opportunity for Inner-City Children and Youth and Their Families,” in Investing in Children, Youth, Families, and Communities: Strengths-Based Research and Policy (Kenneth I. Maton et al. eds., 2004).


Negative outcomes, however, are not inevitable, even when children and youth experience complex trauma. The Adolescent Brain, supra; Desmond K. Runyan et al., UNC Injury Prevention Research Ctr., Ensuring Safety, Well-Being and Permanency for Our Children: Findings, Practice and Policy Implications from LONGSCAN (2014); Alexandra Cook et al., “Complex Trauma in Children and Adolescents,” 35 Psychiatric Annals 390 (2005); M. Ann Easterbrooks et al., “Resilience among Military Youth” 23 Future of Children 99 (2013); Middlebrooks & Audage, supra. New research suggests that positive experiences and opportunities during adolescence can help create neural pathways, build new brain architecture, and help youth heal from trauma and develop into successful adults. Shonkoff & Garner, supra.
“Even when stress is toxic, supportive parenting, positive peer relationships, and the availability and use of community resources can foster positive adaptation.” Easterbrooks et al., supra, at 102. That is, youth can learn to demonstrate resilience and to thrive when supported by trusted, nurturing, competent, and caring adults who offer positive guidance, provide opportunities for productive decision making and constructive engagement in various social contexts, and promote the development of self-regulation, self-reflection, self-confidence, self-compassion, and character. Charlyn Harper Browne, Ctr. for the Study of Soc. Policy, *Youth Thrive: Advancing Healthy Adolescent Development and Well-Being* (2014); *The Adolescent Brain*, supra. In contrast, CSSP’s institutional analyses found that, rather than provide youth of color with the support they need, child welfare workers too often responded punitively and failed to be flexible enough to help the youth develop appropriate decision-making skills.

In 2011, incorporating breakthroughs in the field of adolescent brain development and responding to efforts at the federal level to promote well-being of children and youth in foster care, CSSP introduced its Youth Thrive Protective and Promotive Factors Framework. Youth Thrive is a strength-based, research-informed framework that emphasizes how all adolescents and young adults ages nine through 26, and particularly those most vulnerable, can be supported in ways that advance healthy development and well-being and reduce the likelihood or impact of negative life experiences. Browne, supra. Based on research on resilience, positive youth development, neuroscience, and trauma, the Youth Thrive framework identified the following five protective and promotive factors as key components of healthy youth development:

- **Youth resilience.** Managing stress and functioning well when faced with stressors, challenges, or adversity; the outcome is personal growth and positive change.
- **Social connections.** Having healthy, sustained relationships with people, institutions, the community, and a force greater than oneself that promotes a sense of trust, belonging, and that one matters.
- **Knowledge of adolescent development.** Understanding the unique aspects of adolescent development (e.g., brain development, the impact of trauma); implementing developmentally and contextually appropriate best practices (e.g., positive youth development strategies).
- **Concrete support in times of need.** Understanding the importance of asking for help and advocating for oneself; receiving a quality of service designed to preserve youth’s dignity, provide opportunities for skill development, and promote healthy development (e.g., strengths-based, trauma informed practice).
- **Cognitive and social-emotional competence.** Acquiring skills and attitudes that are essential for forming an independent identity and having a productive, responsible, and satisfying adulthood (e.g., self-regulation, executive functions, and character strengths).

These five factors play a particularly critical role in serving youth of color, who may be at a disadvantage in having fewer positive experiences or opportunities than their white counterparts. Racial and ethnic or tribal identity as well as gender identity are also important to a youth of
color’s healthy social and emotional development. Creating social connections can also be especially important to those youth in foster care who have lost community and/or family.

Judges, law guardians, guardians ad litem (GALs), court-appointed special advocates (CASAs), parents’ attorneys, and other youth workers must become knowledgeable about adolescent development and, specifically, about the effect of trauma on the adolescent brain. Each of these child welfare stakeholders has multiple opportunities to advocate that youth be provided with the positive experiences and opportunities they need for healthy development and to overcome toxic stress. For example, courts can order that youth obtain essential activities, law guardians and CASAs can seek suitable learning environments for youth, and parents’ attorneys can educate and support parents in giving youth opportunities to take reasonable risks while avoiding dangerous consequences. These and other adults that touch youth’s lives can also provide them opportunities to develop constructive peer and adult relationships that are indispensable to youth as they reach milestones and learn to manage stress productively.

**Conclusion**

Adolescence is a time of rapid change and transition for all youth, but for youth of color in foster care it presents even greater challenges. There is a lot that child welfare systems can do to help youth overcome these challenges, beginning with a recognition that adolescence is a pivotal time in which the brain is developing rapidly. Workers must be trained about and recognize implicit bias and its malevolent effects on youth of color. Experiences and opportunities provided to youth at this critical juncture will be key in assisting youth to become healthy and productive adults. Court partners and other stakeholders working with youth must diligently address the specific needs of the adolescents they serve, paying particular attention to the levels of toxic stress in their lives, and provide them with experiences and opportunities that advance their healthy development.

**Keywords:** litigation, children’s rights, foster care, minorities, implicit bias, systemic barriers, brain development, chronic environmental stress, toxic stress

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What Child Welfare Attorneys Need to Know about Shaken Baby Syndrome
By Katherine Judson – March 25, 2015

Shaken baby syndrome (SBS), now more commonly called abusive head trauma (AHT), is a frightening diagnosis, evoking scenes of an angry parent or caregiver violently shaking a baby back and forth, causing serious brain damage. It is a devastating abuse charge against a parent in family court. While it is indisputable that some children are abused, and some abuse results in head injuries, that is not the general understanding of the term “abusive head trauma.” Instead, the term is typically applied to cases in which subdural hematoma, retinal hemorrhage, and cerebral edema are present, either separately or in some combination, with or without other injuries, and with or without external findings. This diagnosis is often incorrect because there are no standard diagnostic criteria, the medical findings are nonspecific, and the mechanism is unknown. It is necessary to seek a medical second opinion and consult with experts, particularly if the child has a history of illness or ongoing health problems, or the caregiver reports a possible alternative, like a fall or other accident.

Incorrect allegations of child abuse based on medical misdiagnosis harm children in two ways. First, if the diagnosis is incorrect, the real causes of a child’s symptoms may be masked or ignored, leading to delayed care for other medical issues. If, for example, a metabolic disorder is mistaken for child abuse, the child will not receive proper care for the underlying disorder, potentially leading to more serious harm or a progression of the disease. Second, if the allegations are false, the child is wrongly deprived of a loving parent or caregiver (and so, potentially, are other children, like siblings or other family members). It is crucial, therefore, to carefully examine claims of child abuse based solely or largely on medical opinion.

What Findings Does the Child Have, and What Do They Mean?
Allegations based solely or largely on medical diagnoses are problematic because diagnoses of all kinds can be incorrect. A 2012 article published in the *Journal of the American Medical Association (JAMA)* stated that “[c]ases of delayed, missed, and incorrect diagnoses are common, with an incidence in the range of 10% to 20%.” Mark L. Graber et al., “Bringing Diagnosis into the Quality and Safety Equations,” 308 *JAMA* 1211, 1211 (2012). No standardized diagnostic criteria for child abuse exist, and there are no objective medical tests to determine abusive causation. As a result, diagnoses are based on a combination of medical findings and patient history. Medical findings themselves can be misidentified. For example, in one notable case, the improper administration of a CT scan caused physicians to believe an infant had a fracture where none existed. See Valari Hyatt, “Painful Memories Persist for Parents,” *Pekin Daily Times*, Oct. 17, 2012; Valari Hyatt, “Spreading the Word: Family Speaks Out about Unfounded Abuse Claims,” *Pekin Daily Times*, Mar. 19, 2011. Patient history can be elusive and is often subject to opinions about whether the interviewee is being truthful, rather than objective fact. In a fairly common SBS/AHT scenario, a caregiver brings an ailing child to the hospital. Medical personnel find subdural hematoma, retinal hemorrhage, and cerebral...
edema. The caregiver reports an accident, like a fall, or simply claims to not know what is wrong with the child. This might then be characterized as an “inconsistent history,” and used later to solidify a case for abuse. Statements like these could certainly be lies. But they might instead be entirely true.

Illnesses and Other Nontraumatic Causes
The subdural hematoma, retinal hemorrhage, and cerebral edema often associated with SBS/AHT can be caused by a number of illnesses and natural causes. The alternative causes of these medical findings are diverse and complex. They include congenital malformations, childhood stroke, coagulopathies, metabolic disorders, infectious disease, vasculitis, autoimmune conditions, cancers, poisons and toxins, complications from medical and surgical procedures, birth injuries, and genetic conditions. See, e.g., Andrew P. Sirotnak, “Medical Disorders that Mimic Abusive Head Trauma,” in Abusive Head Trauma in Infants and Children: A Medical, Legal, and Forensic Reference 191 (Lori Frasier et al. eds., 2006). While many conditions that mimic these findings have been identified, some certainly remain unknown, and some are extremely rare and require extensive and unusual testing, increasing the possibility that they might be missed in a routine work-up. In one case, an infant suffered repeated incidents of subdural bleeding and retinal hemorrhages over a period of years during which abuse was investigated but ruled out; all routine blood tests were normal, as were other, more complicated tests. Marc De Leeuw et al., “Delta-Storage Pool Disease as a Mimic of Abusive Head Trauma in a 7-Month-Old Baby: A Case Report,” 20 J. Forensic Leg. Med. 520 (2013). Eventually, researchers discovered a rare disease using platelet aggregation and electron microscopy—testing that is rarely done. Unsurprisingly, parents whose children have undiagnosed illnesses cannot tell a doctor or social worker “what happened.”

Accidents
The constellation of findings associated with SBS/AHT has been seen in accidents of widely varying apparent severity; these findings have multiple mechanisms. Similar findings have been seen in falls from toys, falls down stairs, falls from playground equipment, and falls from furniture. See Scott Denton & Darinka Mileusnic, “Delayed Sudden Death in an Infant Following an Accidental Fall: A Case Report with Review of the Literature,” 24 Am. J. Forensic Med. & Pathology 371 (2003); Patrick E. Lantz & Daniel E. Couture, “Fatal Acute Intracranial Injury, Subdural Hematoma, and Retinal Hemorrhages Caused by Stairway Fall,” 56 J. Forensic Sci. 1648 (2011); John Plunkett, “Fatal Pediatric Head Injuries Caused by Short-Distance Falls,” 22 Am. J. Forensic Med. & Pathology 1 (2001). Crush injuries have been known to cause similar findings, including a report of an infant who was crushed when his mother fell while carrying him in a carrier on the front of her body, a toddler who was crushed when a television fell on top of him, and an infant who was crushed when an older child fell on him as he was lying on the floor. See P.E. Lantz et al., “Perimacular Retinal Folds from Childhood Head Trauma,” 328 BMJ 754 (2004); Gregg T. Leuder et al., “Perimacular Retinal Folds Simulating Nonaccidental Injury in an Infant,” 124 Archives Ophthalmology 1782 (2006); Patrick Watts & Ebube Obi, “Retinal Folds and Retinoschisis in Accidental and Non-Accidental Head Injury,” 22 Eye 1514 (2008). Closed head injuries and fractures occur in stair falls, crib falls, falls from

It can be very difficult, if not impossible, to tell whether an injury was inflicted or accidental by looking at the injuries alone. Lawyers must be cautious when facing a claim that certain injuries could not have been caused by accident, especially when a parent or caregiver describes exactly that. It is crucial to examine the medical record closely and consult with appropriate experts, which may include physicians and engineers. Accidents are not always benign and abuse is not always fatal; simply because an injury is serious does not mean that it was inflicted.

**Determinations about Possible Perpetrators**

Sometimes the claim is made that certain injuries must have been inflicted with intent to injure or kill and that a child suffering from them would be immediately or almost immediately comatose, so the person with the child at the time of collapse can readily be identified as the perpetrator. Science and medicine do not support such an unequivocal claim.

The time between an injurious event and collapse is often called a “lucid interval.” When the medical findings are the result of disease and not trauma, the term “lucid interval” is largely meaningless, because there is no single causative event. In cases like this, disease onset may be sudden and severe, or it may evolve over time, perhaps appearing better or worse at times, possibly culminating in collapse.

In accident and abuse cases, where trauma is the cause of the neurological findings, the lucid interval phenomenon is well-documented, and symptoms vary between individuals. Lucid intervals can be short or lengthy. Some patients experience severe symptoms right away, others do not. Some studies show intervals of 72 hours or more between injury and symptoms in cases that were serious enough to result in death. See, e.g., M.G. Gilliland, “Interval Duration Between Injury and Severe Symptoms in Nonaccidental Head Trauma in Infants and Young Children,” 43 J. Forensic Sci. 723 (1998). Even concerned caregivers who are closely watching for symptoms of brain injury following a fall may not see them. In fact, the signs and symptoms of brain injury can be so subtle that children with them present as lucid even to experienced health care providers. In one notable case, an injured child was under medical supervision for over 12 hours following her head injury but before her collapse, during which time she was evaluated and treated by physicians, none of whom recognized the seriousness of her situation. During this time, she was described as “fussy” and “clingy” but was awake and interactive; none of her

Violent Shaking as a Mechanism of Injury
Shaking is an unlikely mechanism for the injuries often attributed to it. Biomechanical studies using models, laboratory animals, and computer simulations consistently show that shaking, even violent shaking of an infant by an adult, is an unlikely mechanism for the injuries often attributed to it, particularly when there is no external injury. The biomechanical research also makes it clear that, while violent shaking cannot be good for a child, the requisite forces would produce serious and obvious injury to the neck and cervical spine long before producing any brain injuries, but such neck injuries are rarely, if ever, seen. Shaking has not been corroborated or scientifically well-supported as a cause of subdural hematoma, retinal hemorrhage, and cerebral edema. It is important to remember that all of the concerns outlined above apply regardless of whether the claimed mechanism is shaking, impact, or blunt force trauma, or when no mechanism is named at all, or when the claim is simply that the findings are “abuse” or “nonaccidental.”

Conclusion
SBS/AHT diagnoses are complicated, fraught with errors, and rest on an uncertain foundation. When faced with an abuse case that rests entirely or largely on a medical diagnosis, it is crucial to:

1. understand the basis for the diagnosis and recognize that medical findings often attributed to abuse can have many other causes;
2. understand that medical diagnoses of all kinds can be incorrect and that diseases and accidents can be mistaken for abuse;
3. recognize that it is usually not possible to tell, from medical findings alone, whether a particular injury is the result of abuse or accident; and
4. recognize that diagnoses of abuse based on ambiguous or uncertain medical findings require second opinions.

Given the complicated nature of SBS/AHT allegations, the related scientific ambiguity, and the irreversible damage a false accusation can inflict on a family, it is vitally important for practitioners for all parties to carefully examine the medical evidence in a case of alleged SBS/AHT.

Keywords: litigation, children’s rights, shaken baby syndrome, abusive head trauma, child abuse, medical misdiagnosis, false accusations

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Baker & McKenzie and Google Host Children's Rights Summit
By Amanda Kottke and Trenny Stovall – March 25, 2015

On December 2, 2014, Baker & McKenzie LLP’s North American pro bono practice teamed with Google Inc. to cosponsor the “Children’s Rights Summit: Disrupting Barriers Innovating Solutions” at Google’s headquarters in Mountain View, California. This first-of-its-kind summit convened current and former foster youth, child attorneys, in-house counsel, law firm attorneys, and corporate and technology leaders to consider ways that social innovation could be used to transform public systems and improve outcomes for vulnerable children and youth. Attendees discussed challenges faced by vulnerable youth in an overburdened system, the significance of accessing and protecting youth data and records, and ways that innovation and technology can create solutions to these pressing social issues.

Agents of Change
The idea for a summit had been on the minds of Baker & McKenzie’s pro bono leaders for many years. “We often talked about hosting an event to bring together those in our community dedicated to children’s rights issues,” commented Keith Wurster, the Palo Alto Pro Bono Committee cochair. The idea was simple. Bring together agents of change to make a joint commitment and raise awareness about the needs of our most vulnerable population. In 2014, the timing was right to make the event possible. The planning committee structured the day to maximize interaction among the participants, including discussion groups, a town hall meeting, and brainstorming sessions.

“The first call was to Google to partner with us in this effort and they were eager to join us,” noted Wurster. Angela Vigil, Baker & McKenzie’s Pro Bono Partner, and the rest of the San Francisco/Palo Alto Pro Bono Committee reached out to their contacts at youth law and youth advocacy organizations, inviting them to attend the event, speak, and share their stories. Jennifer Rodriguez, executive director of the Youth Law Center, commented, “My child advocate colleagues and I were excited to be part of this unique event where we could share our insights and simultaneously learn from others. Our backgrounds differ, but our passion for more just lives for our most vulnerable children is shared.”

Lawyers and advocates gathered in Google’s headquarters to take an afternoon away from their busy days and apply their intellect to the issues facing the most vulnerable youth in the state of California and our country. In-house counsel and nonlawyer professionals answered the call, attending from over 25 significant companies in Silicon Valley.

Summit attendees discussed many of the challenges facing vulnerable youth, and took the opportunity to brainstorm potential ways to address the most pressing needs of our children. Many of these ideas were grounded in the fundamental idea that technology can be better leveraged to address these issues. Susan Jang, associate corporate counsel at Google, noted, “Technology isn’t a solution to all these issues, but it can help us make smarter decisions about..."
where to allocate resources, design smarter systems to protect vulnerable children, and create
new online platforms to empower them.”

The key theme was a shared appreciation for the urgent and universal appeal to give every child
a better future. The purpose was to provide a forum and start a dialog among agents of change.
Ideas for change creation began to flow almost immediately. Rodriguez, a former foster youth
herself, described the event: “It was energizing and inspiring to vision how our diverse
partnership might help solve the challenges facing vulnerable children and youth in our justice
and child welfare systems.” According to Vigil and others in attendance, the energy was
palpable, and organizers plan to harness that energy and capitalize on this unique opportunity.
“Our goal is not to have this be just a half-day of reflection,” Vigil explained, “we want to use
the Summit as a means to create ground-breaking meaningful change.”

Vulnerable Children and Youth: A Pressing Social Issue
By fostering an open dialog, the Children’s Rights Summit provided a collaborative environment
in which to confront these challenging issues. Most people see the plight of abused, neglected,
exploited, and homeless children as a tragic problem that only affects the victims. However, the
data makes it clear that this issue has broad-reaching social consequences. In 2013, there were
20.8 million youth between the ages of 14–17 in the United States. The National Alliance to End
Homelessness estimates that during a given year, approximately 380,000 unaccompanied, single
youth under the age of 18 experience an episode of homelessness for longer than one week.
experience homelessness because they have run away from abusive situations. “Nearly 70% of
young people who become homeless say they became homeless in order to escape physical and
sexual abuse as a child, neglect, and other violent crimes happening in their homes[.]” “**Helping
Homeless Youth,**” *Safe Horizon*. Many of these same children and youth end up in the foster
care or juvenile justice systems. In 2012, there were 396,792 children in foster care, of which
162,029 were between the ages of 11–20 years old. Annie E. Casey Found., *Children in Foster
Care by Age Group* (2014).

Negative well-being outcomes increase exponentially for youth who have been involved with the
child welfare system. Homelessness, incarceration, sexual exploitation, and unemployment are
much more common for system-involved youth than for teens and young adults raised in more
stable environments. As thousands of foster youth reach adulthood each year, their worsening
circumstances affect public systems and strain the economic resources of communities. The
Children’s Rights Summit addressed these issues head-on and focused on potential avenues to
improve these outcomes.

**A Case Study: Hannah’s Story**
After six years in foster care, 17-year-old Hannah was poised to finally have a happy ending.
Permanency, high school graduation, and college were within her grasp. But just before her
senior year, she learned that her graduation was in jeopardy because of multiple placement and
school changes. Then a change in agency policy threatened her chance to have a guardian and a
permanent home. Sadly, this was hardly the worst experience of Hannah’s life. Before entering foster care, she had survived the death of her mother only to be repeatedly betrayed by caregivers who failed to protect her from multiple perpetrators and years of abuse.

Regrettably, this time Hannah was failed by a system charged with her protection and rehabilitation. By the time she turned 17, she had been placed in four psychiatric residential facilities and attended five different high schools. Her medical and school records rarely followed her. She was prescribed a plethora of psychotropic medications by multiple providers. She also experienced continual disruption of her education. Because of ever-changing case workers, no one possessed sufficient knowledge of her case history to adequately oversee her treatment and education. Accordingly, Hannah’s mental health and education suffered. Yet she survived. With the support of caring adults and her child attorney, Hannah is preparing to graduate this spring and is blossoming into a bright, stable, and talented young woman.

By child welfare standards, Hannah’s story is a “success.” But she still faces an uncertain future. Former foster children are entitled to aid and support after leaving foster care. But the same systemic issues that impede the progress of children in foster care often become even greater obstacles after those children transition to independence. Competing policies, limited resources, and the challenges of maneuvering a convoluted and archaic system create barriers that prove to be insurmountable for many former foster youth. The abysmal outcomes of former foster youth epitomize a widening divide that continues to affect vulnerable youth long after their involvement with public systems ends.

**Innovation as a Solution to Social Issues**

We live in a culture in which innovation, collaboration, and technology are integral to the success of most industries and systems. The Children’s Rights Summit attendees explored ways of introducing social innovation into the child welfare space through new strategies designed to meet the social needs of vulnerable children. Technology and innovation are being used to address many pressing social issues. Some of these developments already target problems that many system-involved children and youth experience. For example, the 100,000 Homes Campaign created the Homeless Connector mobile app to connect homeless persons to permanent housing resources. Vision 2020 uses a mapping system to fight sexual exploitation globally; and EduKit helps disadvantaged youth connect to youth development programs. Innovation is also being used to impact other global social issues. A social worker in New York founded Music & Memory, a program that supplies MP3 players to combat the effects of Alzheimer’s. Google Earth Outreach is helping the Brazilian Amazon’s Surui tribe use android phones to fight deforestation.

However, even with this growing trend of using innovation, technology, and unlikely collaborative partnerships to solve social problems, little has changed for the systems that serve vulnerable children and youth. As we saw in Hannah’s case, many of the challenges that affect this population involve inadequate service coordination, limited resources, and the inefficient management of vital data and information. In an era in which technology, innovation, and
collaboration are key to improving systems, Baker & McKenzie and Google’s Children Rights Summit takes a bold step to ignite the idea that social innovation can change the trajectory of vulnerable children and youth.

What’s Next?
Participants in the Summit made a joint commitment to answer the call to action and raise awareness about the needs of our most vulnerable population. During the Summit, participants signed up on “I’m In” boards showing their solidarity and commitment to the overall mission as well as identifying their specific interest in targeted areas.

Earlier this year, attendees received the first of what Baker & McKenzie and Google expect to be several communications called “Change for Children” to encourage participants to reaffirm their interest in specific areas of change discussed during the day. The plan is to develop a set of goals for each of these working groups and to define success. The email to participants distilled down the discussions and ideas from the Summit into four different working groups.

1. Connectivity and fluency: driving technology solutions for foster youth. Google was an ideal backdrop for the Summit’s focus on technology. The technology available to help meet the needs of vulnerable children lags far beyond what is capable in 2015. Information that should be secret, such as arrest records and mental health details, is accessible by too many, while information that children need immediately, like doctor visit information and educational status, is frustratingly inaccessible on a timely basis. This group will discuss

- information storage;
- bridging communication between systems that affect foster youth;
- management and protection of foster youth personal data;
- protecting children from dangerous websites; and
- fluidity of information through a “cloud” for foster children.

2. Fighting trafficking of children through reexamination. There is no official estimate of the total number of human trafficking victims in the United States. With 100,000 children estimated to be in the sex trade in the United States each year, it is clear that the total number of victims nationally reaches into the hundreds of thousands when estimates of both adults and minors and sex trafficking and labor trafficking are aggregated. Victims are trafficked both within and across international borders. Migrants as well as internally displaced persons are particularly vulnerable. This group will explore creative ways to tackle seemingly insurmountable challenges. These include

- campaign for an online public information sessions focusing on victims of sex trafficking;
- strategies to identify victims in the system;
- awareness campaign of the trafficking issues;
- develop strategies to end treating rape as prostitution;
• develop strategies to end prosecuting minor offenders as adults; and
• extreme focus on providing holistic care for victims.

3. Reimagining foster parenting and foster care. Wildly apparent at the Summit was the failure of a system that neither celebrates nor adequately supports foster parents and placements for children. The moment a child requires the sanctity of a foster placement, he or she needs to be going to safe, expert, and well-supported caretakers. To make that happen, society needs to think more highly of and provide more expertise and resources to foster parents and the systems that support them. This working group will to consider big picture challenges of the foster care system, such as

• reconsider efforts to recruit foster parents by thinking through the nonlegal lens of other skills and disciplines;
• a “campaign” for the empowerment of foster youth;
• a marketing campaign about the U.S. foster care system and how it needs to change;
• getting corporate employees to directly engage/experience issues of foster youth;
• consider school-based solutions to foster youth needs and using schools for early intervention for at-risk youth; and
• consider a revamp of the system we use to care for youth who have been abused, neglected, and abandoned.

4. Reconsidering detention and criminal justice for children. At the highest levels of judicial consideration in the last five years has been the question of what is an appropriate answer to children who commit crimes—especially serious crimes. We are at a crossroads of change about how to think about child offenders and how to truly serve and rehabilitate them. There remain challenging failures in the juvenile justice system that must be addressed.

• Youth detained even pretrial are denied access to the one tool that is the bridge to success, education, and personal development in this age—the Internet.
• Examinations of the system are needed to make it work better to serve children involved rather than punishing them.
• Children accused of crimes emerge from unsuccessful schools and in communities where little is expected of them and little support is provided.

Each of these working groups is starting to organize meetings and calls, and the groups are looking for more like-minded individuals interested in making the ideas and solutions discussed during the Children’s Right Summit actionable. Beyond these organized meetings, and perhaps even more inspiring, there are individuals and small groups working on their own, bolstered by
the energy and spirit of the Summit to make change in their own way. Whether developing a software application to inform and educate parents, or starting a dialog across the public and private sector aisle, good things are happening.

Vigil commented, “By working together we are more efficient and effective. Together we are better.” These words proved true. Baker & McKenzie and Google are already in discussions for the Children’s Rights Summit 2.0. Look for its release in early December 2015. Between now and then, the participants in the inaugural Summit will be hard at work making change for children a reality. For more information, and to get involved, please contact Keith Wurster or Amanda Kottke.

Keywords: litigation, children’s rights, Children’s Rights Summit, foster care, social innovation, human trafficking, juvenile justice

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Every year, thousands of students graduate from law school, ready to embark on their career in the legal profession. A fraction of these future attorneys will choose a path of public-interest law, fueled with the desire to help those who do not have the resources to help themselves. In 1963, the Supreme Court unanimously ruled, in *Gideon v. Wainwright*, 372 U.S. 335, that state courts are required under the Fourteenth Amendment of the U.S. Constitution to provide counsel in criminal cases to defendants who are unable to afford their own attorneys. Three years later, the Supreme Court guaranteed the right to counsel to defendants in criminal cases; and in *Miranda v. Arizona*, 384 U.S. 436 (1966), held that counsel would be appointed if a defendant were indigent. As result of these monumental Supreme Court decisions, defendants accused of committing crimes, no matter how big or small, will receive legal representation.

Young attorneys who wish to champion the cause of representing indigent criminal defendants often find employment with their local public defender’s office. These public defenders are salaried employees of the state and provide a great amount of indigent criminal defense in the country. Small cities often do not have a public defender’s office; therefore, the state must find other ways to retain counsel for those who cannot afford an attorney. Some courts enter into a contract with a law firm and allow associates from that firm to represent low-income defendants. There might also be a legal-aid or legal-services organization serving the community. In other places, attorneys are appointed on a case-by-case basis as legal counsel for those who cannot afford representation, or are assigned to represent indigent defendants on the court’s criminal docket. These attorneys act as independent contractors and are paid a fixed amount by the court. Although the court’s list of appointed attorneys may be long, it is very competitive among newly minted attorneys. Here are a few pointers for young attorneys on how to represent indigent defendants in criminal cases when they reside in a city where there is no public defender’s office.

**Get to Know the Judges and Clerks in the Municipal Court**

The criminal docket in the municipal court, which might also be known as city court, hears local-ordinance violations and misdemeanor criminal offenses. This is the perfect court for a young lawyer to cut his or her teeth as a criminal-defense attorney, by representing defendants charged with minor offenses. To be able to accept cases in this court, the attorney should, consistent with professional ethics, introduce himself or herself to the judge and his or her clerk. This might be beneficial in that the clerk has the authority to add attorneys to the appointed-counsel list. In addition, traditional wisdom suggests that developing an appropriate professional rapport with the judge might be advantageous in regard to giving an attorney the benefit of the doubt in a close case, keeping in mind the criminal burden of proof of beyond a reasonable doubt. Also, the judge will determine whether an attorney remains on the appointed-counsel list.
Observe Other Appointed Attorneys
A great way to become an effective indigent-defense attorney is to observe other indigent-defense attorneys in court. The attorneys who have served as defense counsel in that court have experience with the inner workings of the court as well as a professional working relationship with the court officers. The new lawyer should pay close attention to how an experienced attorney addresses the court, interacts with clients, and negotiates with the prosecutor. The newbie should also take notes and not hesitate to ask questions. An experienced attorney is the greatest asset in the early stages of a career.

Talk to the Prosecutor
Contrary to what is seen on television, defense counsel and prosecutors are not always personally contentious with each other. At the end of the day, both sides would like to see that justice is served. The prosecutor may offer advice on how better to serve a criminal client, and may also assist by offering the best plea bargain that would be advantageous to the client, while also serving the city’s or the state’s best interest. Talking to the prosecutor about the client will also sharpen negotiation skills. If defense counsel believes a guilty verdict might be difficult for the prosecution to procure, then by all means he or she should stick to the zealous-advocacy guns for the client. Otherwise, counsel should negotiate the best possible plea agreement for the client.

Know the Law
This goes without saying. An attorney cannot represent an indigent client to the best of his or her abilities without knowing the elements of the alleged crime and the potential defenses to that crime. Not knowing the law is irresponsible and not in the best interest of the client. Therefore, proper legal research and case preparation are necessary, even in a seemingly minor case: It is not minor to the client, and inadequate preparation could result in an ineffective-assistance claim by the now-former client, a possible date with the disciplinary committee of the state bar, and damage to the reputation that the new lawyer wants to build.

Advantages
Being a criminal-defense attorney for indigent clients may not seem like the flashy image that is associated with being a lawyer. There will not be a six-figure salary, nor will the new lawyer likely become the next Johnny Cochran. However, there are several major perks to representing impoverished clients. First is the gain of invaluable trial experience in criminal court. Being in front of a judge and advocating for a live client, who has so much at stake, gives the feeling that the three years spent in law school were actually worthwhile. Putting the skills and knowledge gained in law school to practical use in court is one of the best feelings in the world. Second, by providing legal assistance to those who need it the most in our society, the lawyer is ensuring that their constitutional right to legal representation is protected and that they are protected from systemic injustices.
Starting a career as an attorney is very difficult. Most new lawyers are not aware of the alternatives to representing indigent defendants when there is no public defender’s office in their city. Having read this, new attorneys now have an alternate path to gain courtroom experience and to fulfill a critical public service.

**Keywords:** litigation, access to justice, young lawyer, indigent defense

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NEWS & DEVELOPMENTS

March 2, 2015

Are We Closing the School Discipline Gap?

The Center for Civil Rights Remedies at the Civil Rights Project of UCLA has released the report *Are We Closing the School Discipline Gap?*. This report analyzes discipline data at elementary and secondary schools for every district in the nation and estimates 18 million days of lost instruction in just one year. The report highlights the individual states and districts with the most egregious discipline records, with Florida found to be the highest suspending state for all students at both the elementary and secondary levels. However the report also found that many districts have made progress at improving discipline in their schools.

This report provides companion spreadsheets enabling anyone to compare or analyze data from every district in the nation. Further, there is a simplified web tool available that allows visitors to compare—through graphic depictions—the elementary and secondary suspension rates for any two districts. The web tool is updated with the data from the report.

—Cathy Krebs, Committee Director, Children’s Rights Litigation Committee

February 10, 2015

Black Girls Matter: Pushed Out, Overpoliced, and Underprotected

In recent years, a multitude of research, data, and policy initiatives have reflected the disproportionate impact of zero-tolerance and other harsh disciplinary policies in schools on boys and young men of color. However, as highlighted by a new report by the Columbia Law School Center for Intersectionality and Social Policy Studies (CISPS) and the African American Policy Forum (AAPF), very few studies focus on the effect these policies have on females of color and the similarities and differences between girls and their male counterparts. Through focus groups and interviews performed in Boston and New York, CISPS and AAPF determined that girls and young women of color were also youth in crisis, experiencing victimization and achievement gaps due to the current disciplinary environments seen in many educational institutions.

The study’s key observations ranged from issues of educational achievement and engagement to personal safety and familial responsibilities. Academically, while both boys and girls of color are subject to larger achievement gaps and harsher discipline, females often experience greater disparities in treatment and attention than male peers. The at-risk youth surveyed described their discipline-centric environments as unsafe, not conducive to learning, and lending to
disengagement in the classroom. Other data gathered highlighted the high incidence of interpersonal violence, pregnancy, and familial caretaking obligations as outside influences lending to school detachment. The study also found that the use of punitive punishments rather than restorative techniques contributes to the problems facing these youth and leads to a disproportionately high number of young women of color in the juvenile justice system.

The study recommends a number of approaches, including expanding research frameworks to include young women of color, developing equitable funding efforts to support education across all genders and races, and enforcing positive anti-harassment and anti-bullying measures. The report additionally advocates for reforms to the juvenile justice system and for the public to become involved to engage, support, and assist these young women with the myriad of challenges they face.

—Jessalyn Schwartz, attorney, Boston, MA; Member of the ABA Children and the Law Advisory Task Force