Child Advocacy Program
Art of Social Change:
Child Welfare, Education, & Juvenile Justice

Professor Elizabeth Bartholet
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ASSIGNMENT PACKET for Session #4
October 3, 2013

Use and Misuse of Social Science Evidence in Child Welfare

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Response Panelist:

Andrew L. Cohen, Director of Appellate Panel,
Children and Family Law Division, Committee for Public Counsel Services

Session #4
October 3, 2013

Assignment

Speaker Biographies

Session Description

Readings: **Pages**

Elizabeth Bartholet:

- E. Bartholet, Excerpts from *Creating a Child-Friendly Child Welfare System: The Use and Misuse of Research*, forthcoming in Whittier Journal of Child and Family Advocacy — 1-12

Brett Drake:

- B. Drake and M. Jonson-Reid, *NIS Interpretations: Race and The National Incidence Studies of Child Abuse and Neglect*, Children and Youth Services Review, 33 (2011) — 13-16

- B. Drake, et. al., *Racial Bias in Child Protection? A Comparison of Competing Explanations Using National Data*, Pediatrics, Vol. 127, Number 3, March 2011 — 17-23

Andrew L. Cohen:

- Summary of Committee for Public Counsel Services Children and Family Law Division — 24-26

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Speaker Biographies

Dr. Brett Drake is a Professor at the Brown School of Social Work at Washington University in St. Louis. His substantive area is child maltreatment and public child welfare systems, with an emphasis on early system contacts, including reporting and substantiation. He formulated the popular "Harm / Evidence" model of substantiation and has a particular interest in poverty and its strong association with child maltreatment. The majority of Dr. Drake's federally funded work features longitudinal analyses of children reported to child welfare, in comparison to socioeconomically matched controls. Dr. Drake's work features the incorporation of geographic variables (e.g. neighborhood poverty) into child maltreatment research, and explores a range of policy issues, such as mandated reporting, and questions of class and racial bias in child welfare reporting. Dr. Drake also focuses on research methodology, and is the author of a popular social work research textbook. Some of his most recent work highlights the degree to which standard poverty measures underestimate the neighborhood poverty experienced by African-American and Hispanic children. In addition, Dr. Drake has recently published work clarifying findings from the National Incidence Studies of Child Abuse and Neglect and has done related work exploring disproportionality among African-Americans, Whites and Hispanics using data from a range of varied sources. Prior to his academic career, Dr. Drake had several years of field experience as a child protective services worker.

Andrew L. Cohen has represented parents and children for the Committee for Public Counsel Services Children and Family Law (CAFL) Division since 1995. In his current position as CAFL Director of Appellate Panel, Mr. Cohen oversees the work of 110 private child welfare appellate attorneys, conducts trial and appellate trainings, and maintains a small trial and appellate caseload. He has argued many appeals before the Massachusetts Supreme Judicial Court and Appeals Court, including Care and Protection of Sophie, Adoption of Vito, and Adoption of Olivette. He also regularly files amicus curiae briefs in child welfare matters on behalf of his agency. He has authored articles and book chapters on evidence, parent representation, and child welfare trial and appellate practice. Mr. Cohen has lectured at the American Bar Association, the National Center for Adoption Law & Policy, the International Commission on Couple and Family Relations, and the Massachusetts, Boston, and Juvenile Bar Associations. Before joining the CAFL Division, he worked for four years doing commercial and bankruptcy trial and appellate litigation and clerked for The Hon. Carolyn Dineen King of the Fifth Circuit Court of Appeals in Houston. He is a graduate of Harvard College and the University of Pennsylvania Law School. Mr. Cohen is a former chair of the Boston Bar Association Family Law Section and a former member of the Boston Bar Journal's board of editors. He currently serves on the steering committee for the American Bar Association's National Parents' Counsel Organization.

Session #4
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Session Description

The proper role of law and policy around child maltreatment evokes strong emotions. When and how should the state intervene into the private lives of children and families? Is the state intervening too often and too aggressively, needlessly stripping children away from their birth families and cultural heritage, placing them into inadequate foster homes? Or, instead, is the state's role miserably weak, allowing children to suffer indelible harm at the hands of birth parents and other kin who are incapable of providing the basic parenting they need?

Underlying the policy debate is a debate about the basic facts on the nature and extent of child maltreatment. Former front-line child protection worker turned social science researcher Professor Brett Drake will give brief background on child welfare in America: outlining the history of child abuse reporting, providing a picture of what the majority of child abuse and neglect cases actually look like based on the best evidence, and raising broad questions about the proper role of the child protection system. Drake will focus his remarks on the role of science, discussing how he thinks data has been used and misused in child welfare policy, particularly in the most controversial arenas of race and poverty. Drake will address the provocative question: Are black and white children abused and neglected at the same rates? Or, as Drake will argue, does the evidence clearly indicate that black children are maltreated at significantly higher rates than whites?

Andrew Cohen directs the Appellate Panel of the Children and Family Law Division (CAFL), the agency charged with providing legal services to indigent parents and children in abuse and neglect cases. Among other roles, CAFL attorneys zealously defend clients whose parental rights are in jeopardy, parents at risk of losing custody of their children. Cohen will respond to Drake's remarks, explaining his view of the "facts" and related child welfare policy. He will further describe how his understanding of the facts informs his work and priorities at CAFL, including how CAFL trains its attorneys, selects cases to appeal, and makes determinations about which amicus briefs to file.

DRAFT

5/10/13

Creating a Child-Friendly Child Welfare System:

The Use and Misuse of Research

Elizabeth Bartholet[1]

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MY TOPIC

My topic today: *Creating a Child-Friendly Child Welfare System: The Use and Misuse of Research*. We have what we call a child welfare system, that is supposed to be protect children against parental abuse and neglect. But does this system really serve *child* welfare? In my view, it does not. Instead the system largely serves various adult interests, and is often quite hostile to children.

My topic more specifically is child welfare research. This field is blessed with an unusual amount of research, research that provides the potential to shape policy in ways that would serve kids. In my own work I have found the research hugely helpful in thinking through policy issues.

So, for example, I was guided by the research in thinking about transracial adoption. When I first looked at this issue in the 1980s, many condemned such adoption as causing racial identity confusion and other problems for children. These claims were used to justify strict race-matching policies designed to ensure that children were raised by same-race parents. Race

[1] Professor of Law, Harvard Law School. This article is a slightly revised version of the FitzRandolph Memorial Lecture I gave at the Center for Children's Rights, Whittier Law School, February 5, 2013. That lecture was based in significant part on my article, *Creating a Child-Friendly Child Welfare System: Effective Early Intervention to Prevent Maltreatment and Protect Victimized Children*, 60 Buffalo L. Rev. 1323 (2012). Documentation for various points made here is contained in that article.

matching in turn resulted in delays in placing children in adoption, and often the denial of adoption altogether, since there were many more white than black prospective adoptive parents. I set out to read all the social science related to the issue and found that it called for a dramatic change in policy. The social science showed clearly that what kids need as early in life as possible is a good nurturing home. And that, actually, the skin color of the parent doesn't much matter. What matters is that someone loving is there, prepared to get up in the middle of the night and take care of the child, committed to being there for the child forever.

I was similarly guided by the research in discovering the value of early home visitation programs. Few interventions have any demonstrated success in improving parents' ability to provide nurturing care and avoid maltreatment. But one program stood out based on its research – the Nurse Practitioner model of home visitation designed by David Olds. His research demonstrated convincingly both that his particular model of home visitation helps reduce the levels of child maltreatment, and that it is cost-effective within a relatively short period of time. Both findings are hugely important. Cost-effectiveness may be key to actually getting promising reforms adopted in a world of scarce resources.

I will focus today on the *misuse* of research. I will talk about the deliberate promulgation of bad research, and the use of that research to promote bad policy.

My claim is that overall the research in this field is skewed in an adult-rights direction for the very same reasons that policy is skewed in that direction. And this should be no surprise because the same entities fund the research as fund policy advocacy -- a small set of monumentally wealthy private foundations. I'm all for advocacy by private entities. We should not leave policy entirely to the government. But there is a danger when you have politically unaccountable private foundations playing a huge role both in policy advocacy, and in the research that's supposed to illuminate policy decision-making. That danger has played out in this child welfare area.

So here's another reason that you in this room are tremendously important. There is a lot of research out there. It isn't that easy to understand the research and to tell good research from bad. We need good, trained advocates analyzing this research, assessing its relevance for policy, and encouraging the development of the right kind of research in the future.

I'm going to talk about one example of good research ignored, and then two examples of bad research deliberately promulgated to promote bad policy.

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BAD RESEARCH PROMULGATED & USED TO PROMOTE BAD POLICY

What do I mean by bad research? I mean research that is dishonest, that claims that the best interest of the child should govern, but then fails to evaluate programs with a view to child interests. I mean research that is designed to serve a predetermined family preservation agenda, research designed to vindicate that agenda rather than genuinely evaluate it. I mean research that asks narrow questions, questions such as whether a program furthers family preservation, without asking whether more family preservation serves child best interests. I mean research that gives misleading, even dishonest answers.

My first example of bad research is the early research related to intensive family preservation services (IFPS). This is the best-known example of bad research. Indeed, many people now cite this research as an example of what used to be done in the bad old days.

IFPS was the darling of the child welfare establishment in the 1970 s through '90s. The idea was an unconvincing one from the get-go. It was that abuse and neglect were caused by a momentary crisis in a family. The program was to send in social workers 24/7 for six weeks, to help fix the problems and get the family through the crisis. The goal was to keep as many kids as possible home in the meantime. Kids identified as abused and neglected were defined as "at risk of removal," rather than as at risk for further abuse and neglect. The risk of removal could be solved by not removing them. The program was sold in part on the basis that it would save the state money by reducing foster care costs.

The powerful Edna McConnell Clark Foundation worked with others both to promote this program, and to conduct the research evaluating the program. This research asked an extremely narrow question – does this program succeed in keeping kids at home, more kids than would have been kept at home under traditional policy? This is a classic example of the problem in child welfare research. We have a program designed to keep kids at home. Now we will study whether we succeeded in keeping kids at home. And then we will claim success based on achieving our goal. Oddly enough the research claim for success in these terms turned out not even to be accurate. It wasn't clear that IFPS had really succeeded in keeping more kids at home and thus reducing foster care costs.

But the more profound problem with the research was that it never asked whether the kids kept home by IFPS programs were at greater risk in maltreatment and other terms than they would have been had they been removed. Given the rather obvious risk to children identified as victims of maltreatment from not being removed, this was an outrageous omission. Wouldn't you think that that child welfare research would ask the question whether a program

advances or undermines child welfare?

By the late 1990s, the field had generally recognized this self-serving research as a scandal. For example, Amy Heneghan published in 1996 a review of the IFPS research which amounted to a devastating critique. She noted its methodological failures, its failure to prove success in reducing removal, its failure to focus on child wellbeing including, for children kept at home, whether maltreatment had reoccurred, or how other measures of wellbeing were affected, and its failure to compare IFPS to alternatives such as adoption and foster care. She concluded that IFPS may be "placing children at risk."

Today many concede that the early IFPS research was a disgrace. However most act as if this is a unique example, when in fact the exact same types of problems characterize other child welfare research.

Perhaps the most significant recent example of egregious research misconduct has been in service of the Racial Disproportionality Movement, one of the latest forms family preservation ideology has taken. I wrote an article several years ago challenging this Movement, titled "The Racial Disproportionality Movement: False Facts and Dangerous Directions." Our Harvard Child Advocacy Program followed up on this article by co-sponsoring a conference on the topic with a highly respected research center called Chapin Hall at the University of Chicago.

The Racial Disproportionality Movement was led by the Casey Alliance, which consisted of the extraordinarily rich and powerful Casey Foundations together with some non-profit advocacy groups. They managed to get the sign-on of virtually every establishment organization in the child welfare field including, for example, the Child Welfare League of America, the American Bar Association Center on Children and Law, the North American Council on Adoptable Children, the Pew Commission on Foster Care, the National Association for Public Child Welfare Administrators, the National Council of Juvenile and Family Court Judges, and the Administration on Children and Families of the U.S. Department of Health and Human Services. They got this support based in part on their claims about what the research showed, and in part on the general readiness of the child welfare establishment to go in the family preservation direction.

The Movement's goal was to reduce the removal of black kids from their homes into foster care, so that the black foster care percentage would match the black child population percentage. The goal was based on a claim of racial discrimination, a claim that current high rates of black child removal to foster care reflected discrimination by the child welfare system.

The discrimination claim was based on what I think was a seriously fraudulent use of research. So the claim was based primarily on a set of research reports called the *National Incidence Studies* or NIS, designed to measure the *actual* incidence of maltreatment, as opposed to the

official statistics on maltreatment. These NIS reports, including the most-cited NIS-3, published in 1996, made the claim that black and white actual maltreatment rates were the same, and that since blacks were removed to and represented in foster care at higher rates than whites, you could assume that the system functioned in a racially biased way.

This NIS claim was cited in hundreds of other research reports, reports which were then used along with the NIS to justify policies designed to reduce the number of black children removed to foster care.

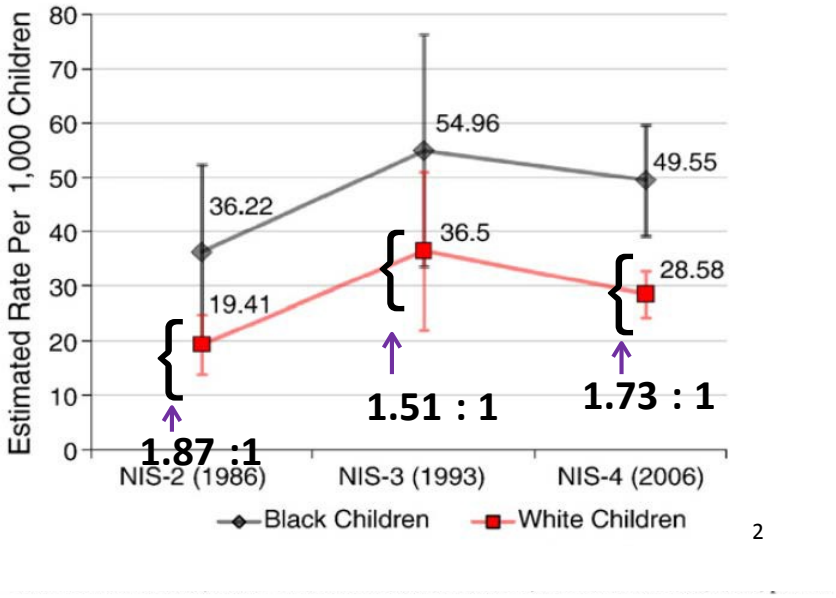
The Casey Alliance used its wealth both to promote policy advocacy on these issues and to fund related research. For example, the Alliance approached states throughout the country and said, we'll help you study your racial disproportionality problem, write the resulting report stating the nature of your problem, and then we'll help you solve your problem with appropriate new policies. If you read the research reports that resulted from this process you will see that the claims of bias almost all come back to the NIS claims.

So what did NIS-3 say specifically? NIS-3 said black and white maltreatment rates were the same, period. No footnote. This claim seemed more than a little surprising because there are so many reasons to think they wouldn't be the same. Blacks are at the bottom of the socio-economic ladder, and all the most common predictors of maltreatment are associated with poverty. Indeed NIS-3 itself demonstrated a powerful correlation between poverty and child maltreatment.

So it was surprising that NIS found that black and white maltreatment rates were the same.

Surprising and, as it turns out, simply not true. Nor did the NIS authors have any basis for thinking that the claim was true.

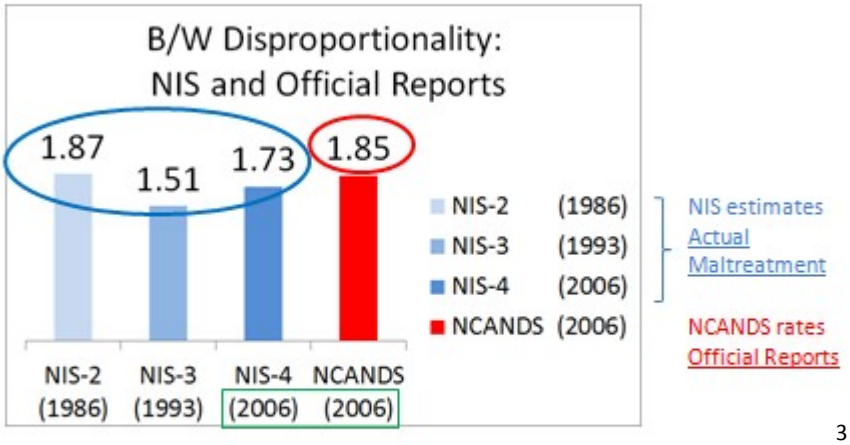
By the time we gave our Racial Disproportionality conference, NIS-4 had been published. In this report the NIS authors said that they now had a larger sample and had found a statistically significant difference between black and white maltreatment rates. An enterprising social scientist, Brett Drake, had dug out by the time of our conference the actual data from the earlier NIS reports, statistics that had been hidden away in a later-published gigantic appendix. *His presentation at our conference demonstrated that the NIS-2 and NIS-3 studies showed similar differences between black and white maltreatment rates as those revealed in the NIS-4 report:*



[2]

[2] Prof. Drakes's PowerPoint presentation, slide 12 at http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppdrake.ppt, at conference held at Harvard Law School, Jan. 28-29, 2011, "Race & Child Welfare: Disproportionality, Disparity, Discrimination*;* to see Prof. Drake's video presentation, go to video 2 at http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html

And the Drake presentation showed that the differences between actual black and white maltreatment rates revealed by NIS-2 through NIS-4 resemble the difference in black and white official removal rates:



[3]

So there never was any basis in the NIS data for concluding that black and white actual maltreatment rates were either the same or meaningfully different from the official removal rates, and thus there never was any basis for presuming bias.

Yet here's what the NIS-3 authors had said:

> *The NIS-3 found no race differences in maltreatment incidence.* The NIS-3 reiterates the findings of the earlier national incidence studies in this regard. That is, the NIS-1 and the NIS-2 also found no significant race differences in the incidence of maltreatment or maltreatment related injuries. Service providers may find these results somewhat surprising in view of the disproportionate representation of children of color in the child welfare population… *The NIS findings suggest that the different races receive differential*

[3] See Prof. Drakes's PowerPoint presentation at conference referred to *supra* n. 2, , slide 14, at http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppdrake.ppt

> *attention somewhere during the process of referral, investigation, and service allocation, and that the differential representation of minorities in the child welfare population does not derive from inherent differences in the rates at which they are abused or neglected.* (NIS-3 Final Report, Page 8-7) (emphasis added).

Some version of that NIS-3 statement was repeated hundreds and hundreds of times in other research reports written and promoted by the Casey Alliance. That's the basis for the discrimination theory adopted by dozens of states which passed legislation designed to address their alleged racial bias problem, and a federal congressional committee recommending related federal legislation.

The only real difference between the actual underlying date for NIS-4 and the earlier NIS reports is that in the earlier studies there was not a big enough sample to find a *statistically significant* difference. But the NIS authors did not say that nor did they ever reveal (except hidden away in the later-published appendix) that they had found differences between black and white maltreatment rates. Instead these sophisticated social scientists stated that the rates were the same and thus racial bias could be assumed to be the explanation for removal rate differences.

I am not a social scientist, but I've read enough over the last three decades to know that the NIS-3 claim was not a fair or accurate statement based on the underlying data. Absence of proof that differences are statistically significant is not the same as proof that rates are the same. It provides no evidence whatsoever of discrimination. It's hard to understand how sophisticated social scientists could in good faith make the fundamental error reflected in the NIS-3 statement.

The NIS-3 authors and the Casey Alliance leaders all had many reasons to believe that actual black maltreatment rates were higher than white, and indeed likely reflected or exceeded official removal rates. They had the underlying NIS-2 and NIS-3 data revealed in the Brett Drake slides. They had the poverty-related predictors I talked about earlier. They had lots else that I wrote about in my Racial Disproportionality article including self-report studies, which showed blacks admitting to much higher rates of abuse and neglect than whites, and suspicious death research, which showed much higher black child death rates than white. They had all sorts of evidence indicating that black maltreatment rates were much higher than white. They chose to ignore all of this in favor of the NIS-3 claims that were so useful for their racial bias theory.

I will end with my final example of research problems, which has to do with what I learned in connection with early prevention and protection programs. My hope in challenging the Racial Disproportionality Movement was to persuade the child welfare field to focus on doing something to address the real problem – the fact that too many black children, as well as white,

were victimized by maltreatment. If we really care about black kids, we should be trying to reduce maltreatment rather than pretending it doesn't exist.

So my Harvard Child Advocacy Program followed up on the Racial Disproportionality conference with a Brainstorming Workshop on early prevention and protection. I was hoping this would be a really upbeat event, focused on promising developments designed to prevent maltreatment upfront, and also to intervene more actively to protect children once maltreatment is identified.

And the Workshop did reveal some exciting ideas and programs. One was a new emphasis on a public health approach to prevention. Could we think about child maltreatment the way we think about disease, and plan to protect communities from maltreatment the way we try to protect them from being exposed to disease. A concrete suggestion here involved the use of early home visitation on a truly universal basis, reaching out to all new parents, and then targeting more intensive home visitation for the families in greatest need. Presentations describing a program in Durham County, North Carolina, illustrated how this could be done at a reasonable cost per child.

Another exciting idea presented was the use of family drug courts to reach substance exposed infants (SEI). Today we send almost all these infants home with their drug and/or alcohol abusing parents. Desperate, needy, hard-to-parent child going home with desperate, needy, addicted parent is a prescription for disaster. The family drug court programs that reach substance exposed infants are rare. But I invited to this workshop two programs with apparently promising programs designed to reach infants.

We also learned at the Workshop about our surprising ability to predict which infants out of all those born will be at risk for maltreatment. If we can predict with great accuracy which children will likely be victimized, then we should be able to design targeted prevention programs to prevent that victimization. Emily Putnam-Hornstein and Barbara Needell reported that, based on risk factors available in all infant birth records, they could predict that a child characterized by seven risk factors had an 89% likelihood of being reported for maltreatment before the age of five. No new laws needed to gather this information since it sits in existing birth records. And if you can predict with this level of accuracy which kids will be reported for abuse and neglect, you should be able to protect a lot of kids, at least if you are willing to make use of this information.

We also learned something really interesting about the need for more effective coercive intervention systems. Emily Putnam-Hornstein found that the vast majority – some 82% -- of all children in California referred for maltreatment before their first birthday were kept at home rather than removed to foster care. Of those kept at home, more than half were referred again

before the age of five. *Out of those kept at home following substantiation of the charges and receiving services, 65% were re-referred by the age of five*. Pretty stunning failure rates for our current family preservation system.

To me Emily's research suggests at least doing research that might illuminate for us whether kids would do better if we removed more to foster care, and moved more on to adoption. The maltreatment rate in foster care is less than one percent. The maltreatment rate in adoptive homes is lower yet, and lower than the rate in biological parent-child homes.

All this was exciting, but the Workshop also revealed how family preservation ideology limits reform potential in the child welfare field, how little people seem prepared to pick up on the potential of the Putnam-Hornstein and Needell research, and how sadly similar present-day research often seems to that now-oft-condemned IFPS research.

The research still often ignores what should be the central issue -- whether programs serve or disserve child interests. It still often simply assesses how well programs with a family preservation goal work to serve that goal.

And the early intervention home visitation programs continue to ignore a problem identified in the early history of home visitation – the fact that roughly one-third of the families offered home visitation refuse to participate. But those promoting home visitation continue to promote it as an entirely voluntary system. And if you even mention mandatory to anybody who believes in home visitation, they tend to get very upset. This is presumably at least in part because mandatory is seen as the kiss of death given the value placed by so many on adult autonomy rights and family preservation. But it's broadly understood that the one-third who refuse to participate in home visitation are the families where the children are most at risk.

At our workshop the "universal" Durham Connects home visitation program presented statistics demonstrating its success with those it reached, but nothing on what it might do to reach that final and vitally important one-third it failed to reach. Indeed the only promising work related to that troublesome one-third that Workshop participants mentioned was one project investigating whether financial and perhaps other incentives might be used to encourage participation in home visitation.

Both the family drug court programs at our Workshop demonstrated their loyalty to the family preservation goal. Both cited research statistics demonstrating the degree to which that goal had been served.

The most fully developed SEI program was one set in Sacramento, California. Its literature described the goal as being to keep every single substance-exposed infant, if at all possible, at home. It described the program research as demonstrating success in achieving that goal. This

program dealt with many cases in which the infant at issue was the second, third, fourth, or fifth child born drug-affected to the same mother.

If we care about child welfare shouldn't we have research designed to compare how well substance-exposed infants do if kept at home as compared to those removed to foster care, and as compared to those moved relatively promptly from foster care to adoption? I think I know what that research would show. And I think one reason this kind of research isn't done is because it would not serve the family preservation agenda.

CONCLUSION

I will close with a visionary known to all of you, Henry Kempe, famous for his 1962 battered child syndrome article which helped transform, in a more child-friendly direction, our child welfare system. Kempe wrote another article that should have been seen as similarly groundbreaking, but has largely been ignored. It was called "Approaches To Preventing Child Abuse," and was published in 1976. In this article he states the following:

> We must now insist that each child is entitled to effective comprehensive health care, and that *when parents are not motivated to seek it, society, on behalf of the child, must compel it***.** It seems incomprehensible that we have compulsory education, with truancy laws to enforce attendance and, I might add, imprisonment of parents who deny their child an education, and yet we do not establish similar safeguards for the child's very survival between birth and age 6….
>
> We must [work with problem families] first by persuasion and education and trying to be as helpful as we can, *but if that fails, we must initiate active intervention through child protection services….*
>
> *When marriages fail, we have an institution called divorce, but between parent and child, divorce is not yet socially sanctioned.* I suggest that voluntary relinquishment should be put forth as a desirable social act – to be encouraged for many of these families.
>
> When that fails, legal termination of parental rights should be attempted. However, such termination is a difficult thing to achieve in our country…. *But each child is on a schedule of his own emotional development…. He needs loving parents right now, and the same parents, not a series of ten foster homes.* For 20 years, courts have lectured me on the rights of parents, but only two judges in my state have spoken effectively on the rights of children….
>
> *The really first-rate attention paid to the health of all children in less free societies makes you wonder whether one of our cherished democratic freedoms is the right to maim our own children. When I brought this question to the attention of one of our judges, he said, "That may be the price we have to pay." Who pays the price? Nobody has asked the child….*

> *Let us now resolve to fight for [our children's] total civil rights. Let us not, I beg of you, settle for anything less.* [4]

So basically Henry Kempe is saying that if parents won't agree to home visitation we should make it mandatory, just as we make education mandatory. He's saying that children, like adults, should have a right to divorce when the relationship doesn't work for the child. Given the child's urgent need for nurturing parents now, they should not be made to wait forever for that divorce. And Kempe is saying we must fight for child rights.

I agree. I think that Henry Kempe is right on. Child welfare policy needs to move in a more child-friendly direction. And child welfare research needs to illuminate rather than ignore child interests.

[4] C. Henry Kempe, *Approaches to Preventing Child Abuse: The Health Visitors Concept*, 130 Am. J. Dis. Child. 941 (1976) (emphasis added).

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NIS interpretations: Race and the National Incidence Studies of Child Abuse and Neglect

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ABSTRACT

The National Incidence Studies (NIS) of Child Abuse and Neglect are the primary estimates of actual child maltreatment rates in the United States. Findings from the NIS-2 of 1986, and the NIS-3, of 1993, have been presented as demonstrating that Blacks and Whites are maltreated at equal rates. The NIS-4, using 2006 data, was presented as showing markedly different findings from the prior NIS studies with regard to race. A supplementary NIS-4 report on race argued that differences between the NIS-3 and NIS-4 were due to better precision and an expanding income gap between Blacks and Whites between 1993 and 2006. This paper will demonstrate that the NIS-2 and NIS-3 did not, as is commonly believed, show equivalence between Black and White maltreatment rates and that the NIS-2, NIS-3 and NIS-4 do not differ markedly in their racial findings. Further, the large historical increase in the Black/White income gap cited in the NIS-4 race supplement derives from a simple failure to account for inflation. If left unaddressed, misinterpretations of NIS data will continue to misinform policy, cloud the issue of racial bias in the child welfare system and obscure the ongoing role of concentrated poverty in driving racial disproportionality.

1. Introduction

Do Black children experience more child maltreatment than White children in the United States? The Fourth National Incidence Study of Child Abuse and Neglect (NIS-4) has been interpreted as showing such an effect for the first time, in contrast to the Second and Third National Incidence Studies of Child Abuse and Neglect (NIS-2 and NIS-3), which were interpreted as showing no such effect (Sedlak, 1987; Sedlak, 1991; Sedlak & Broadhurst, 1996; Sedlak, Hantman, & Schultz, 1997; Sedlak, Mettenburg, et al., 2010; Sedlak, McPherson, & Das, 2010). The "NIS is a congressionally mandated, periodic research effort to assess the incidence of child abuse and neglect in the United States" (DHHS, 2010). It is analogous in within-area impact to the National Survey on Drug Use and Health or the National Crime Victimization Survey. As such, the NIS series has been a prime driver of policy.

This paper will show that contrary to the claims of the study authors, the NIS-2, NIS-3 and NIS-4 have very similar findings with regard to race. Confidence intervals in the NIS-2 and NIS-3 were so large that very different point estimates of maltreatment by race failed to achieve statistical significance. Unfortunately, all published sources of which we are aware portray this as affirmative evidence that Black and White maltreatment rates are equivalent. Finally, a key substantive explanation offered by the NIS-4 research team for the "new" race findings, a claimed large increase in the Black/White income gap, is incorrect, being due to a failure to account for inflation between 1993 and 2006.

2. Current interpretations of the NIS studies

This section reviews how the NIS-2, NIS-3 and NIS-4 race findings have historically been interpreted in comparison with each other and with official report data. The impact of the NIS on the policy debate is presented.

2.1. Review of the NIS studies

This brief background of the NIS is by no means an exhaustive review, and readers are encouraged to consult the detailed reports available (Sedlak, 1987; Sedlak, 1991; Sedlak & Broadhurst, 1996; Sedlak, Hantman, & Schultz, 1997; Sedlak, Mettenburg, et al., 2010; Sedlak, McPherson, & Das, 2010). The following information is drawn largely from these sources. The NIS are periodic surveys that were instituted to help understand the national incidence of child abuse and neglect. A probability sample of counties was selected. The NIS-2 used 29 counties, the NIS-3 used 42 counties and the NIS-4 used 122 counties. Both child protective services staff and community sentinels (law enforcement, medical staff, teachers, etc…) provided data on maltreated children of whom they were aware. Cases were eligible if they resulted in demonstrable harm (actual injury) called the "harm standard"—a higher standard than would be required for a CPS agency to substantiate a case; or were at risk of harm, called the "endangerment standard". The latter category was added after the

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NIS-1 to insure that cases reflected those that would be substantiated (Sedlak, 1991, p. 2–7). Identifying information was used to unduplicate reports. The similarity of the endangerment standard to substantiated cases has advantages and drawbacks. One advantage is the ability to compare findings to the detailed victim data in NCANDS (DHHS, 2008). One drawback is that recent empirical work indicates that many unsubstantiated cases include serious risk and harm (Hussey et al., 2005; Kohl, Jonson-Reid, & Drake, 2009).

2.2. Interpretations of the NIS-2 and NIS-3 relative to race

The NIS-2 original report stated there were no significant differences by race, though a revised report mentions "three marginal noteworthy but insignificant trends related to race/ethnicity" specific to physical abuse, physical neglect and fatalities (Sedlak, 1987; Sedlak, 1991). The NIS-3 final report states that "The NIS-3 found *no* race differences in maltreatment incidence" (italics in original text) and that "The NIS findings suggest that the different races receive differential attention somewhere during the process of referral, investigation, and service allocation, and that the differential representation of minorities in the child welfare population does not derive from inherent differences in the rates at which they are abused or neglected" (Sedlak & Broadhurst, 1996, p.8–7). It is also stated that "Thus, the NIS-2 and the NIS-3 have both failed to uncover any evidence of disproportionate victimization in relation to children's race" (p. 4–30). At many other places in the report, it is noted that there is no "statistically significant" difference by race (e.g. p. 4–28, p. 8–7).

2.3. Interpretations of the NIS-4 relative to race

"Unlike previous NIS cycles, the NIS-4 found strong and pervasive race differences in the incidence of maltreatment." (Sedlak, Mettenburg, et al., 2010, p.9). Due to the critical nature of this finding, a supplementary report was released in March, 2010. Sedlak and colleagues argue therein that the differences between the NIS-4 and NIS-3 are due to (1) increased precision and (2) the widening of the income gap between Black and White families between 1993 and 2006 (Sedlak, McPherson, & Das, 2010).

2.4. Official victimization rates: NCANDS

NIS findings are frequently compared and contrasted to findings from the National Child Abuse and Neglect Data System (NCANDS). NCANDS provides annual national counts of child abuse and neglect reporting, victimization rates, and services provided by child welfare in the United States (DHHS, 2008). In 2006, 48 states and the District of Columbia reported a victimization rate for Black children of 19.8 per 1000 children and a victimization rate of 10.7 per 1000 for White children (Department of Health and Human Services and Services, 2008). Black children were therefore 1.85 times as likely as White children to be officially reported to child welfare agencies and classified as victims of maltreatment.

2.5. Shaping the policy debate

The NIS-2 and NIS-3 have been universally interpreted as showing equivalence between Black and White children's rates of *actual* maltreatment. This apparent conflict with NCANDS has been taken to suggest that the current reporting and child welfare investigation system is biased towards over-reporting and/or differentially screening in and validating Black children as victims. For example, the Children's Bureau of the Department of Health and Human Services has indicated that "The Third National Incidence Study (NIS-3) … did not find racial differences overall. These findings suggest that the overrepresentation of African-American children in the child welfare system is not attributable to higher rates of maltreatment in this population, but to factors related to the child welfare system itself" (Chibnall, Dutch, Jones-Harden, Brown, & Gourdine, 2010). The state of Washington summarizes the findings of the NIS-3 similarly, stating "…multiple waves of the National Incidence Studies show that despite their higher representation in the ranks of the poor, there is no higher rate of abuse in Black or American Indian families" (Washington State Department of Social and Health Services, 2008, p. 10–11). The governor of Oregon, in a recent executive order, asserted that "national studies have shown that children of color are not abused at higher rates than white children" and that "disparate treatment can happen at many steps along the decision-making process within the child welfare system including reporting, investigation, substantiation and foster care" (Kulongoski, 2009). Calls for legislative change in academic journals have also been based upon these interpretations (Dixon, 2008). At least eleven states are currently addressing disproportionality and disparity in legislation or policy, both at the level of reporting and also at the level of services following reports (Alliance for Racial Equity in Child Welfare, 2009).

3. Correcting misinterpretations of the NIS

This analysis uses NIS endangerment standard rather than harm standard estimates. Discussion is restricted to the "all maltreatment" category, citing rates per 1000 children, with confidence intervals in parentheses when available. Justification for these choices can be found in the discussion section. Rates are always per 1000 children. The data presented in Table 1 are derived from the NIS-3 final report appendices and the NIS-4 supplementary report (Sedlak, Hantman, & Schultz, 1997).

3.1. Race and maltreatment in NIS: The data

The NIS-2 found a maltreatment rate of 19.41 for Whites and 36.22 for Blacks, this difference being statistically non-significant (Sedlak, Hantman, & Schultz, 1997). The NIS-3 found a rate of 36.50 (21.93–51.06) for Whites against a rate of 54.96 (33.61–76.30) for Blacks, also statistically non-significant (Sedlak, McPherson, & Das, 2010). The NIS-4 found statistically significant different rates of 28.58 (24.43–32.73) for Whites and a 49.55 (39.25–59.85) for Blacks (Sedlak, McPherson, & Das, 2010). These data are presented in Table 1 and graphically in Fig. 1.

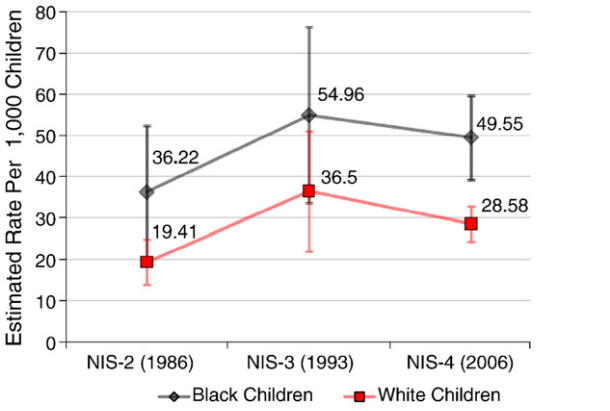
Although not significantly different, the NIS-2 and NIS-3 race point estimates were consistent with each other and with the NIS-4, both in general magnitude and valence. Black children were 87% more likely than White children to be victims of maltreatment in the NIS-2, 51% more likely in the NIS-3, and 73% more likely in the NIS-4. The statistically significant NIS-4 racial difference is 22 percentage points higher than the statistically non-significant NIS-3 difference, but is 14 points *lower* than the statistically non-significant NIS-2 difference. NIS-4 "splits the difference" between the two prior studies.

A common logical fallacy occurs when one argues that the lack of ability to prove an assertion stands as disproof of the assertion

Table 1
Endangerment standard (all maltreatment) rate estimates from the NIS-2, NIS-3 and NIS-4 with confidence intervals.

NIS Version	Whites	Blacks	Percentage difference
NIS-2 (1986)	19.41 (13.87–24.95)	36.22 (19.96–52.48)	Blacks 87% higher (NS)
NIS-3 (1993)	36.50 (21.93–51.06)	54.96 (33.61–76.30)	Blacks 51% higher (NS)
NIS-4 (2006)	28.58 (24.43–32.73)	49.55 (39.25–59.85)	Blacks 73% higher ($p<.05$)

Note: NIS-2 estimate from Sedlak et al., 1997, p. D-27. NIS-2 Confidence Intervals from Sedlak, 2010. Other Estimates from Sedlak, McPherson & Das, 2010, p. A-2.



Note: NIS-2 estimate from Sedlak, Hantman, & Schultz, 1997, p. D-27. NIS-2 Confidence Intervals from Sedlak, 2010. Other Estimates from Sedlak, McPherson & Das, 2010, p. A-2.

Fig. 1. Estimated rates under the endangerment standard ("all maltreatment") in the NIS-2, NIS-3 and NIS-4.

(Walton, 1999). In the medical literature, this fallacy has been captured by the familiar phrase "Absence of evidence is not evidence of absence" (Altman & Bland, 1995, p.485). In the case of the NIS-2 and NIS-3, large confidence intervals prevented the large gap in race estimates from attaining statistical significance, as shown in Table 1 and Fig. 1. This inability to show significant difference by race has been universally misinterpreted as positive confirmation that racial differences did not exist.

3.2. Explanations of the "new" racial findings in the NIS-4: increased precision

All NIS-3 and NIS-4 estimates show large confidence intervals with a single exception; NIS-4 rates for White children. Sedlak and colleagues appear to be correct in citing "increased precision" as contributory to the "new" findings in the NIS-4 (Sedlak, McPherson, & Das, 2010). Such a change in precision could be due to sampling as the NIS-2 sampled 29 counties, the NIS-3 sampled 42 counties, and the NIS-4 sampled 122 counties (Sedlak, 1991; Sedlak & Broadhurst, 1996; Sedlak, Mettenburg, et al., 2010).

3.3. Explanations of the "new" racial findings in the NIS-4: the "expanding" income gap

The association of child maltreatment with low economic status is a settled issue in the literature, with both a strong theoretical and empirical basis (Pelton, 1978; Drake & Zuravin, 1998; Drake & Pandey, 1996). The NIS-2, NIS-3 and the NIS-4 also showed a strong association between poverty and maltreatment (Sedlak, 1987; Sedlak, 1991; Sedlak & Broadhurst, 1996; Sedlak, Hantman, & Schultz, 1997; Sedlak, Mettenburg, et al., 2010). Poverty can, perhaps, best be understood as an environmental stressor with established negative sequelae across a range of domains such as health, education and mental health (Drake & Rank, 2009).

Sedlak and colleagues argue that the racial differences found to be statistically significant in the NIS-4 but not in the NIS-3 reflect an economic effect. They state that "changes in the socioeconomic circumstances of Black and White children during the interval between the two NIS cycles may have contributed to changes in maltreatment rates" (p.4) and that "… among all the demographic shifts in family characteristics that are related to maltreatment risk, differential changes in family incomes stand out as the one change that could potentially account for the higher relative risk of Black children at the time of the NIS-4" (Sedlak, McPherson, & Das, 2010, p.11). The empirical basis for this argument can be found in data derived from the United States Census (Sedlak, McPherson, & Das, 2010). In their 2010 supplementary report, Sedlak and colleagues state "the gap between median incomes of these race groups increased substantially, from a difference of $23,556 in 1993 to a difference of $33,808 in 2006" (Sedlak, McPherson, & Das, 2010, p.11). As Table 2 shows, these data were not adjusted for inflation (U.S. Census Bureau, 2010a, b). The table referenced by Sedlak, McPherson & Das 1010 includes both "Current Dollars" and "2008 Dollars". If constant (2008) dollar column is used, the impressive 43.52% increase in the income gap shrinks to 4.46% (Sedlak, McPherson, & Das, 2010).

Table 2
The Black/White income gap: 1993–2006.

Measure	Current dollars	Constant (2008) dollars
White median income 2006	$68,557	$73,211
White median income 1993	$42,227	$61,959
Increase (1993–2006)	+$26,330	+$11,252
Black median income 2006	$34,749	$37,108
Black median income 1993	$18,671	$27,396
Increase (1993–2006)	+$16,078	+$9712
Income gap 2006	$33,808	$36,103
Income gap 1993	$23,556	$34,563
Dollar gap increase (1993–2006)	+$10,252	+$1540
Percentage gap increase (1993–2006)	+43.52%	+4.46%

Data from "Families With One or More Children Under 18 Years Old" sections, "White alone, not Hispanic" (2006), "White not Hispanic" (1993), "Black Alone" (2006) and "Black" (1993) categories (U.S. Census Bureau, 2010a, b).

Low economic status can be conceptualized in a number of ways, including family income or a family's position relative to the poverty line. Median income measures are, by definition, a measure of the middle class. Poverty measures, on the other hand, allow us to understand the number of people experiencing poverty *per se*. The poverty gap between Blacks and Whites narrowed during the 1990s (Lichter, Qian, & Crowley, 2006). Between 1993 and 2006, the poverty rate among White families with children moved from 11.6% to 9.3%. During this same period, the poverty rate for Black families with children moved from 34.1% to 28.4% (U.S. Census Bureau, 2010b). The 1993 Black/White poverty gap was therefore 22.5 percentage points. By 2006, the poverty gap had narrowed to 19.1 percentage points. Had Sedlak and colleagues used this metric, they would have noted a slight decrease in the economic gap, rather than the claimed substantial increase (Sedlak, McPherson, & Das, 2010). The large increase in the income gap referenced in the supplementary analysis does not, in fact, exist and cannot therefore explain the NIS-4 findings.

4. Discussion

How might we reinterpret the NIS series of reports around issues of race and maltreatment? We discuss alternative interpretations, the limitations of the present analyses and implications for child maltreatment prevention and child welfare policy.

4.1. Reinterpreting the NIS-2, NIS-3 and NIS-4

Based on this review, the NIS bivariate racial effects should be interpreted as follows:

- Contrary to common reportage and widely accepted interpretation, the NIS-2 and the NIS-3 do not affirmatively demonstrate Black/White equivalency in actual maltreatment rates at the bivariate level. Interpretations to this effect are fallacious.
- The NIS-4 does not show very different estimates from the NIS-2 or NIS-3 around the issue of racial differences in maltreatment rates at the bivariate level (Fig. 1). Any assertion that the NIS-4 findings represent new findings regarding race are misleading.

- The interpretation that census data show a substantial widening of the Black/White income gap between 1993 and 2006 is incorrect and an artifact of inflation. Given that the Black/White poverty gap *decreased*, the suggestion that claimed racial differences between the NIS-3 and NIS-4 are due to economic factors is untenable.
- The NIS-4 estimate of the racial maltreatment differential in *actual maltreatment rates* (1.73:1) is very similar to the racial maltreatment differential found in *validated child abuse and neglect reports* at the national level (1.85:1). Since the *actual* and *reported* racial differentials are similar, it is impossible to safely conclude from available national data that the reporting system is systematically biased on the basis of race.

4.1. Limitations

We have focused on the NIS endangerment standard, rather than harm standard because it is a more general measure of maltreatment and because it is most analogous to the "victim" classification in NCANDS, allowing comparison to national report data. Fortunately, the key NIS findings with regard to race do not vary markedly by definitional standard. The endangerment standard was added in the NIS-2 to respond to critiques of the more restrictive standard used in the NIS-1 (Sedlak, 1991). The NIS-1, which used 1980 data, did not show any marked differences in maltreatment by race, but contained extremely large confidence intervals for Black children. We do not further review the NIS-1 findings related to race here because it is seldom singled out in the policy debate, because of differences in the methods used, lack of use of the endangerment standard and concerns over the NIS-1 methodology (Sedlak & Broadhurst, 1996). We choose to use the "all maltreatment" measure as compared to breaking out maltreatment by type both for simplicity and policy relevance. Virtually all discussion of NIS findings addressing the issue of Black/White disproportionality has used the "all maltreatment" metric. We only touch briefly upon the broader scientific literature on racial disparities in child welfare. It is not our intent or interest to compare the NIS to other scientific studies, a contentious issue (Drake, Lee, & Jonson-Reid 2009; Ards & Chung, 2001; Bartholet, 2009). We fear that such a divergence of focus would detract from key points regarding how the NIS reports have been interpreted. We would prefer to clarify the NIS findings with regard to race and to compare those clarified findings to the NCANDS data. We have chosen not to address the multivariate analyses of the NIS series reports for several reasons. First, their findings are often consistent with the bivariate findings described previously. Second, and most critically, it is the bivariate, not the multivariate findings which inform the policy debate about child welfare system bias. Third, we again wanted to maintain focus on the key points raised. We did not reevaluate the NIS using the raw data for several reasons. First, we do not assert that the NIS data themselves are flawed, beyond the obvious progressions and changes in sampling and measurement that make comparisons between waves problematic (Sedlak, 1987; Sedlak, 1991; Sedlak & Broadhurst, 1996; Sedlak, Mettenburg, et al., 2010). Nor are we arguing that the analyses reported by NIS investigators are flawed. We only assert that the provided, and now widespread, interpretations of the NIS analyses as showing racial equivalence in maltreatment rates are fallacious, and that economic data were used inappropriately in the supplementary report. We address only Blacks and Whites in this paper, as the NIS findings regarding Hispanics have not generally been interpreted fallaciously. Most importantly, with regard to our arguments and analyses as a whole, it is imperative that the reader understand that the arguments presented in this paper in no way bear on discussions of racial disproportionality within the child welfare system once cases move beyond the stage of reporting, screening and validation. In particular, these findings do not address foster care disproportionality.

4.2. Implications

The NIS has been cited as the core empirical justification for a number of policy initiatives aimed at reducing disproportionality at the front end of the child welfare system. When correctly interpreted, the NIS data provide no such justification. The correct interpretation of NIS data is that our best evidence shows a stable and powerful overrepresentation of Blacks among maltreated children. This overrepresentation is closely parallel with current official victimization rates. Taken together, the NIS and NCANDS data provide no evidence of system bias in public child welfare agencies. Current efforts to alter child welfare systems in response to an illusory discrepancy between NIS and NCANDS data are misguided and potentially harmful. While racial bias undoubtedly exists to some extent in every system in the United States, the key policy question must be the *degree* and the *stage* of such bias. While continued vigilance and efforts to reduce any existing racist bias among reporters and child maltreatment agencies is morally necessary, targeting this stage as a key point in addressing racial disproportionality is not empirically justifiable. *Efforts to reduce reports, screen-ins or official validation rates for Black children could drive such rates out of alignment with actual incidence rates as determined in the NIS-2, NIS-3 and NIS-4.* In the worst possible case, pressure on reporters, hotline screeners or investigative workers to avoid, screen out or not verify reports on Black children could result in decreased capability to secure the safety of Black children.

What remains is the overwhelming importance of poverty as a correlate of child maltreatment. The NIS-2, NIS-3, the NIS-4 and every other recent study of which we are aware shows that poor children are overwhelmingly more likely to be actually maltreated, reported and officially validated compared to non-poor children. Going one step further, statistics showing the large poverty gap between Black and White children do not adequately capture the far greater disparities relating to concentrated poverty (Drake & Rank, 2009). Given such differences in the environmental barriers to effective parenting and community support, it is perhaps more surprising that the reported gaps in incidence and reporting are not even larger by race. Prevention of racial disproportionality in actual and reported child maltreatment can only begin with addressing the poverty in which Black children live. Alternatively, and less desirably, supporting effective maltreatment prevention programs specifically designed for, evaluated with, and provided to low income populations might also reduce disproportionality in actual and reported maltreatment. We hope this paper will draw attention to these issues.

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Racial Bias in Child Protection? A Comparison of Competing Explanations Using National Data

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KEY WORDS
children, abuse, policies, research

ABBREVIATIONS
CA/N—child abuse and neglect
NIS—National Incidence Study of Child Abuse and Neglect
DR—disproportionality ratio
CPS—child protective services
SIDS—sudden infant death syndrome

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WHAT'S KNOWN ON THIS SUBJECT: Black children are involved in reported and substantiated cases of child abuse and neglect at approximately twice the rate of white children. It is unknown if this disproportionality is attributable to higher risk or to bias in reporting or assessment.

WHAT THIS STUDY ADDS: Results based on national child abuse and neglect and child health data indicated that racial disproportionality in black children is attributable to higher risk rather than reporting bias. Our findings also suggest that in Hispanic children cultural protective factors apply to child maltreatment (the "Hispanic Paradox").

abstract

OBJECTIVE: Cases of child abuse and neglect that involve black children are reported to and substantiated by public child welfare agencies at a rate approximately twice that of cases that involve white children. A range of studies have been performed to assess the degree to which this racial disproportionality is attributable to racial bias in physicians, nurses, and other professionals mandated to report suspected child victimization. The prevailing current explanation posits that the presence of bias among reporters and within the child welfare system has led to the current large overrepresentation of black children. A competing explanation is that overrepresentation of black children is mainly the consequence of increased exposure to risk factors such as poverty.

METHODS: We tested the competing models by using data drawn from national child welfare and public health sources. We compared racial disproportionality ratios on rates of victimization from official child welfare organizations to rates of key public health outcomes not subject to the same potential biases (eg, general infant mortality).

RESULTS: We found that racial differences in victimization rate data from the official child welfare system are consistent with known differences for other child outcomes. We also found evidence supporting the presence of cultural protective factors for Hispanic children, termed the "Hispanic paradox."

CONCLUSIONS: Although our findings do not preclude the possibility of racial bias, these findings suggest that racial bias in reporting and in the child welfare system are not large-scale drivers of racial disproportionality. Our data suggest that reduction of black/white racial disproportionality in the child welfare system can best be achieved by a public health approach to reducing underlying risk factors that affect black families. *Pediatrics* 2011;127:000

The American Academy of Pediatrics recommends "that physicians remain alert for the signs and symptoms of child abuse and neglect in the medical visit."[1] Seventy-one percent of surveyed nurses and physicians rated identification of child abuse and neglect (CA/N) as being rather difficult or difficult, and "few clinicians routinely screen patients who do not have apparent injuries."[1,2] Evidence-based protocols for reporting CA/N are sparse, and available screening tools lack specificity.[3–8] The complexity and subjectivity involved in assessing CA/N cases have contributed to concerns that the overrepresentation of black children among officially identified CA/N victims may be attributable to bias in reporting and in the handling of reported cases.[9–11] Results of case file studies have suggested that minority children, especially toddlers, may be more likely both to have skeletal surveys ordered and to be reported to child welfare.[12] Surveys that include vignettes and similar methods have been used with mixed results in attempts to determine race and class bias in reporting suspected CA/N. Results of 1 study showed some racial bias among physicians but not among nurses, whereas in another study racial disparities were found, but only among clients with private insurance.[13,14] If significant bias exists in reporting by medical professionals, the bias would suggest a need for training in cultural competency and oversight as a means to ensure that medical professionals use greater caution in reporting of children of color. It is therefore important to understand if such bias is common.

National data on disproportionality of reported child maltreatment come from 2 main sources. Official maltreatment victimization counts from the National Child Abuse and Neglect Data System (NCANDS) have revealed that black children are almost twice as likely as white children to be victims in verified reports of CA/N.[15] The 4 waves of the National Incidence Study of Child Abuse and Neglect (NIS) are the largest and most long-standing efforts to catalog rates of actual, as opposed to reported, CA/N. The results of the first 3 iterations of the NIS were interpreted to indicate similar CA/N rates for black, white, and Hispanic children.[16–18] This difference between known reported disproportionality and estimated actual disproportionality has been put forward as evidence that CA/N cases involving black children have been overreported, overscreened, and/or oversubstantiated. At least 11 states have already initiated task forces or polices intended to reduce this apparent imbalance, which is currently 1 of the most intensive areas of policy activity in child welfare.[19] Two theoretical models have been proposed that may explain the overrepresentation of black children in the child welfare system.[20,21] We used available national data to test these 2 competing models.

Theoretical Framework

In this analysis we avoided the variously defined term disparity, which is often used to connote racial bias.[11,22,23] Instead we used the term disproportionality to describe differences in event rates that may be attributable to race. We calculated the disproportionality ratio (DR), the rate of an event in a minority population divided by the rate in the white population. For example, for an event rate of 3 per 1000 in a black population and 2 per 1000 in a white population, the DR would be 3 divided by 2, or 1.5.

Barth et al[21] have suggested that 2 different pathways might account for the disproportionality in CA/N. We have termed these the risk model and the bias model.

Our risk model (Fig 1) has only 3 constructs. Increased exposure of individuals in minority groups to risk factors (especially poverty) associated with CA/N increases actual occurrence of CA/N, which causes higher reported occurrence rates.

In the bias model (Fig 2), 2 new constructs are introduced, unspecified moderating factors specific to minority groups and large systemic bias in reporting or in the child protective services (CPS) system. The risk and bias models both stipulate that individuals in minority groups have higher exposure to risk factors than white individuals, and that children who are members of minority groups have higher official CA/N rates than white children. We also tested 2 key differences in the models.

Testable Theoretical Assertion: Moderating Factors

If strong moderating factors exist (bias model), high DRs associated with risk will not be reflected by high DRs for actual CA/N. If strong moderating factors are not in effect (risk model), the high DRs associated with risk of CA/N will be mirrored by similar DRs for actual CA/N.

Testable Theoretical Assertion: Reporting/CPS Bias

Under the bias model, we would expect DRs for CPS-substantiated CA/N to be higher than DRs of actual CA/N. If no such bias is operative (risk model), we would anticipate similarity between DRs for CPS-substantiated CA/N and actual CA/N.

METHODS

In this study we performed an empirical test of the above theoretical assertions. The most direct test would be to compare actual observed CA/N and CPS-substantiated CA/N rates. Unfortunately we lacked reliable and valid data on rates of actual CA/N. Although

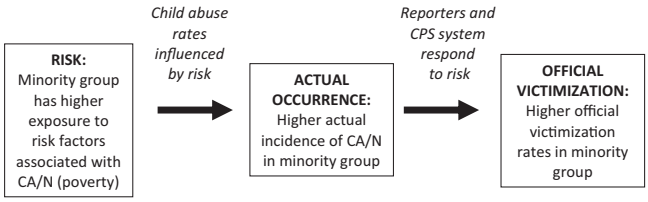

FIGURE 1
The risk model.

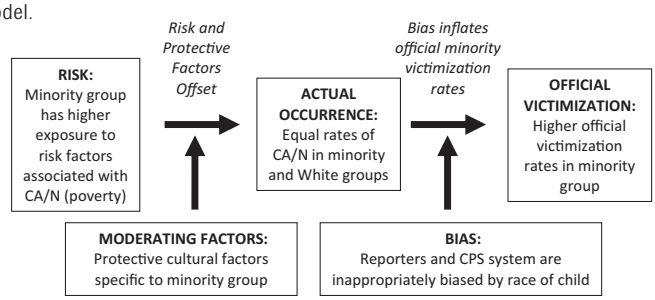

FIGURE 2
The bias model.

the investigators conducting NIS-1 through NIS-4 have attempted to provide such a nationally generalizable measure of actual maltreatment, bias in sampling and measurement error have occurred during the study waves, and large amounts of data are missing.[24] Published NIS estimates of actual CA/N rates according to race generally have large SEs and therefore large confidence intervals.[25] Another complication is that the reported findings of the NIS-3 and NIS-4 are divergent. The NIS-3 investigators reported "*no* race differences in maltreatment incidence" (italics in original), whereas the NIS-4 investigators did find a difference; according to their results black children are 73% more likely than white children to suffer CA/N as defined by the endangerment standard.[16,18,25]

Although we cannot measure actual CA/N with confidence, other measures of child well-being should be sensitive to the same risk factors but not sensitive to bias in reporting or decision making. At a national level, valid estimates of rates of infant mortality, low birth weight, and premature birth according to race are available. Racial DRs can be established for each of these conditions for black children compared with white children and Hispanic children compared with white children. It seems reasonable that culturally specific moderating factors that would protect against CA/N, especially the most common form, neglect, might also protect against infant mortality, prematurity, and low birth weight. For example, poverty is a risk factor for each of these outcomes, but extended family supports and/or cultural emphasis on the maternal role could plausibly help poor families in negotiating the many challenges involved in pregnancy and in appropriately caring for their children.

Demonstration that DRs of CPS-substantiated CA/N rates are substantially higher than DRs for known actual rates for negative child outcomes (infant mortality, low birth weight, and prematurity) would strongly support the bias model, which asserts that reporters and the child welfare system are biased toward overidentification of minority children as possible victims of CA/N. On the other hand, demonstration that DRs from CPS-substantiated CA/N rates are consistent with DRs of similar known and unbiased negative child outcomes (mortality, low birth weight, prematurity) would lend support to the risk model. In the face of the latter results, and for the bias model to remain viable, one would have to argue that culturally specific moderating factors suppress CA/N (particularly neglect) but do not suppress infant mortality, low birth weight, and prematurity.

In this study we used full population counts. No sampled data were used, with the exceptions of the 2008 Census data and the NIS data. Yearly census estimates of poverty are not actual counts, but have been shown to be consistent with decennial census poverty counts. Sampling error is thus minimal, and external validity is evident. NIS-4 estimates, which are also not population counts, are provided for comparison purposes only. Some of our measures (general infant mortality, low birth weight, and prematurity) are subject to virtually no subjective interpretation. One can imagine some exceptions (eg, a child near 2.5 kg not seen at a hospital in the first week of life) but these are likely to be uncommon, and the focus is on large, not marginal, effects. Other measures (infant mortality subtypes, sudden infant death syndrome [SIDS]) may be subject to more classification error and thus provide a useful test for the presence of bias.

Variables

Poverty rates were used as a proxy for risk. They are the most powerful predictor for the occurrence of CA/N as well as infant health outcomes.[26–28] Poverty rate data were included for all persons of the indicated race/ethnicity and were taken from 2008 Census estimates.[29]

Mortality and birth status data included information on general infant mortality as well as the following causes for infant mortality: accidents (suffocation and strangulation only);

homicide-maltreatment; homicide-other; and SIDS.[30–31] These data are taken from death certificates and represent more than 99% of all resident deaths in the United States. Among nonvehicular accident categories, only suffocation and strangulation had sufficient numbers to allow racial breakdown in reporting, and even then, disaggregation by Hispanic status was not available. Data that indicated low birth weight and low gestational age, representing >98% of all live births, were also included.[32] We restricted mortality data to infants so that extrafamilial influences could be minimized. For example, although it may be plausible that the rates of child accidental suffocation should be consistent with actual rates of neglect, it is less plausible that many common causes of death after infancy (eg, automotive accidents) would be.

Child maltreatment victimization rates were taken from *Child Maltreatment 2007*. [15] For these data breakdowns by race were available at the level of officially validated reports (those classified as "substantiated," "indicated," or "alternative response victim"). The 3 main types of maltreatment were disaggregated and are presented separately. NIS-4 estimates of actual maltreatment rates were included for reference. Other factors that could plausibly be associated with child maltreatment (childhood malnutrition, domestic violence) were not available in the form of universally reported national data. Because we report full population counts, not sampled estimates, tests of statistical difference between DRs were inappropriate. The focus was on the magnitude of the differences between known counts.

RESULTS

Results are reported in terms of DRs of black and Hispanic children compared with white children (Fig 3 and Table 1).

Risk

Incomes for black families (DR: 2.87) and Hispanic families (DR: 2.70) were both ~3 times more likely to be below the poverty level than white families.

Variables Not Subject to Substantial Classification Error

For black children compared to white children, DRs for infant mortality, low birth weight, and low gestational age were between 1.92 and 2.56. By contrast, there was no marked disproportionality between Hispanic children compared to white children for these measures (DRs between 0.96 and 1.13).

Variables With Higher Apparent Potential for Classification Error

Several mortality measures were available only for black and white children. The DR for infant accidental mortality (suffocation and strangulation) was 2.97, the DR for infant homicide (maltreatment) was 2.40, and the DR for infant homicide (other) was 2.51. SIDS rates showed disproportionality for both black children (DR: 1.79) and Hispanic children (DR: 0.51), although valence was inverted.

TABLE 1 Disproportionality Ratios

Subject Matter	Source	Rate			Ratio	
		White	Black	Hispanic	Black/White	Hispanic/White
Risk						
Below poverty line (% of race/ethnicity) 2008[a]	DeNavas-Walt et al (2009),[29] Table 4	8.6	24.7	23.2	2.87	2.70
Mortality and birth outcomes not subject to substantial classification error						
Infant mortality (per 100 k LB) 2006	Heron et al (2009),[30] Table 5	564.20	1339.20	590.60	2.37	1.05
Birth weight <2.5 kg (% of LB) 2007	Hamilton et al (2009),[32] Table 8	7.20	13.80	6.9	1.92	0.96
Birth at <32 wk (% of LB) 2007	Hamilton et al (2009),[32] Table 8	1.60	4.10	1.8	2.56	1.13
Mortality measures with higher apparent potential for classification error						
Infant accidents (per 100 k LB) 2007**	Heron et al (2009),[30] Table 31	14.00	41.60	—	2.97	—
Infant homicide: maltreatment (per 100 k LB) 2007**	Heron et al (2009),[30] Table 31	1.50	3.60	—	2.40	—
Infant homicide: other (per 100 k LB) 2007**	Heron et al (2009),[30] Table 31	5.10	12.80	—	2.51	—
SIDS (per 100 k LB) 2005	Mathews et al (2008)[31]	55.40	99.40	28.10	1.79	0.51
Official child maltreatment victimization rates (National Child Abuse and Neglect Data System)						
CA/N: total (per 1 k children) 2007	DHHS (2009), Table 3–7	9.10	16.70	10.30	1.84	1.13
CA/N: neglect (per 1 k children) 2007	DHHS (2009), Table 3–7	5.49	9.99	6.23	1.82	1.13
CA/N: physical (per 1 k children) 2007	DHHS (2009), Table 3–7	0.92	2.25	0.92	2.46	1.01
CA/N: sexual (per 1 k children) 2007	DHHS (2009), Table 3–7	0.79	0.99	0.68	1.26	0.86
NIS-4 estimates under the endangerment standard						
CA/N: total	Sedlak et al (2010)[17]	28.6	49.6	32	1.73	1.12

LB indicates live births; DHHS, US Department of Health and Human Services. Dates given in the leftmost column indicate timeframe of data collection, not publication dates.

[a] White (non-Hispanic), black (including Hispanic), and Hispanic categories;

[b] White (including Hispanic) and black (including Hispanic) categories. All other data are white (non-Hispanic), black (non-Hispanic), and Hispanic categories.

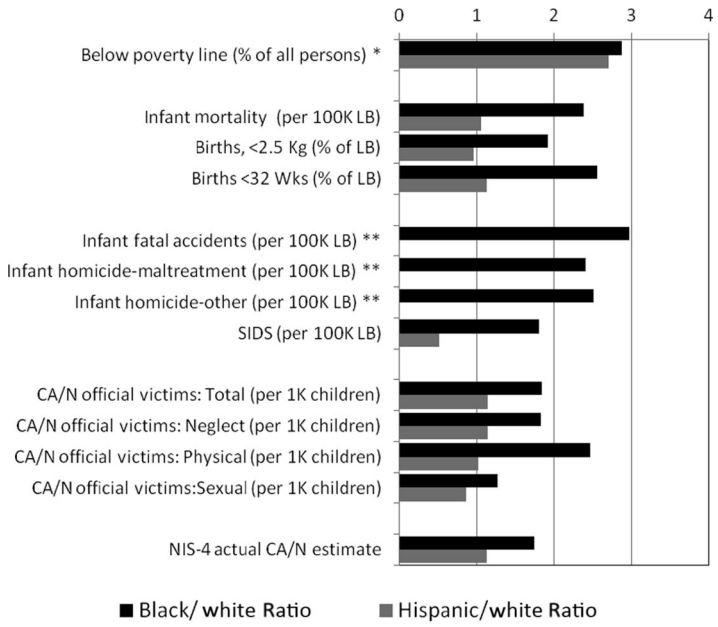

FIGURE 3

Black/white and Hispanic/white disproportionality ratios. *White (non-Hispanic), black (including Hispanic), and Hispanic categories. **White (including Hispanic) and black (including Hispanic) categories. All other date are white (non-Hispanic), black (non-Hispanic) and Hispanic categories.

Child Welfare Official Victimization

The DR for total CA/N for black children compared with white children was 1.84, and for Hispanic children compared with white children it was 1.13. Hispanic DRs for subtypes of CA/N ranged somewhat narrowly from 0.86 (sexual abuse) to 1.13 (neglect). DRs for black children compared with white children were higher, with physical abuse having a DR of 2.46, neglect having a DR of 1.82, and sexual abuse having a DR of 1.26.

NIS-4 Estimates

The NIS-4 endangerment standard estimates for actual maltreatment are 49.6 per 1000 for black children, 32.0 per 1000 for Hispanic children, and 28.6 per 1000 for white children, which yielded DRs of 1.73 for black children compared with white children and 1.12 for Hispanic children compared with white children.[25]

DISCUSSION

In discussing our results, we first review the findings with respect to the bias and risk models, then the study's strengths, limitations and implications are covered.

The Presence of Unspecified Moderating Factors in Hispanic Families

Our data are unequivocally consistent with the presence of protective moderating factors that offset the relationship between poverty and poor outcomes for Hispanic children. The DR for poverty for Hispanic children compared with white children (2.70) was similar to that for black children compared with white children, and yet the DRs for negative health outcomes for Hispanic children were similar to those for white children. Our findings reflect the "Hispanic Paradox," an effect commonly reported in the health literature. Hispanic families have relatively good child health profiles despite high poverty rates and poor access to health care.[33] This paradox may be driven by a combination of protective social and cultural factors.[34–35] Similarly, perinatal outcomes such as lower infant mortality and higher birth weight in Hispanic infants have been attributed to "strong cultural support for maternity, healthy traditional dietary practices, and the norm of selfless devotion to the maternal role (marianismo)," termed the "Latina Paradox."[36]

The Presence of Unspecified Moderating Factors in Black Families

DRs for black children compared with white children were 1.79 to 2.97 for negative outcomes and 2.87 for poverty. Some DRs for black children compared with white children, particularly those associated with SIDS and low birth weight, seemed to be slightly lower than the DR for poverty. However, unlike the DRs for Hispanic children compared with white children, DRs for negative outcomes for black children compared with white children were consistently >1, a result that indicates that any moderating factors, if present, do not fully offset the much higher levels of risk encountered by black families.

Evidence Regarding the Presence of Reporter and System Bias

A systematic overidentification of children of color should have been evidenced by higher DRs in measures with higher apparent potential for classification error (eg, infant mortality attributable to homicide or maltreatment) compared with measures not subject to substantial classification error (eg, infant mortality). No such relationship was found in the data.

For Hispanics children, DRs for variables that could not plausibly be subject to bias (mortality, low birth weight, prematurity) were consistent with DRs for validated child maltreatment reports and NIS-4 estimates of actual maltreatment rates. For black

children, the official CA/N victimization DR of 1.84 was consistent with or slightly lower than mortality and birth status DRs, 5 of 7 of which were >2.3. This result is the opposite of what should have manifested if reporters and the CPS system were strongly biased toward unwarranted overrepresentation of black children. These data are clearly inconsistent with the bias model.

Strengths and Limitations

This analysis has a number of methodologic strengths, including firm theoretical grounding, the use of generally accepted national data, and the use of a novel approach, which enhances the utility of the findings in triangulating with other sources. Confidence in this study depends on 2 points. First, variables which we claim to represent actual occurrence (eg, general infant mortality) must plausibly succeed in very closely approximating the actual rate of occurrence (eg, actual infant mortality, and not only reported infant mortality); that is, these data must be almost completely unbiased. Second, we assume that bias and risk models will function similarly for 2 domains of negative child outcomes (health and child maltreatment). Although this assumption may seem a leap to some readers, we believe it is a leap worth taking. There are sound reasons to presume that the models will function similarly with regard to child maltreatment, mortality and birth status outcomes. Both are strongly associated with poverty. In addition, many potentially protective cultural factors, such as a strong emphasis on the family, large extended families, or marianismo would theoretically be protective for birth outcomes and child maltreatment, particularly neglect, the most common subtype. Furthermore, some of the mortality and child welfare system measures have substantial overlap. It is interesting to note that 2 of our most similar categories, CA/N physical abuse and infant homicide caused by maltreatment, had almost identical DRs of 2.46 and 2.40, respectively, for black children compared with white children. Finally, child maltreatment DRs were generally in close agreement with the mortality and birth status DRs for both black children compared with white children and Hispanic children compared with white children, despite completely different dynamics between risk factor and outcome DRs for black children and Hispanic children.

CONCLUSION

Our data generally support the risk model over the bias model, the exception being our findings that support the presence of strong unspecified moderating factors for Hispanics. We do not deny the importance of uncovering bias in reporting or the need to understand culturally specific factors that may help buffer risk.[37] Racial bias is an abhorrent form of misconduct in our society. No reasonable person would argue that a single black person refused service at a restaurant would comprise a trivial or unimportant event that should be overlooked. The same is true of reporting or child welfare system behavior that might underserve or overserve children and families on the basis of race. Our concern is that too strong an adherence to a pure bias model for medical professionals may result in underreporting of suspected CA/N, which would put black children at risk.

We make the following recommendations: First, the use of an unelaborated bias model to characterize the general functioning of reporters and the child protection system should be abandoned. Second, any future versions of a bias model should include constructs and relationships that have been empirically demonstrated or are theoretically plausible. Third, the policy goal of reducing disproportionality in reporting, screening, and validation should be reevaluated. If current DRs for black children compared with white children accurately reflect risk, then the adoption of a policy goal to change these DRs makes little sense. Finally, any policies intended to redress disproportionality should not be general in nature (eg, general cultural competence training, efforts to get medical professionals to reduce presumed overreporting of minority children), but should be specifically tailored to those forms of bias for which solid empirical evidence can be found. Even more desirable are policies that target the causes of disproportionate negative outcomes, such as risk factors (eg, concentrated poverty) and lack of availability of resources.

In this article we report additional evidence of the important role that risk factors (particularly poverty) play in driving the occurrence of child maltreatment as well as disparities in maltreatment rates among different racial/ethnic groups. The results of this analysis are especially pertinent to pediatricians, who must decide when to report suspected cases of maltreatment in situations in which obvious evidence of CA/N is not present.[1] We fond no evidence that racial bias among reporters is a powerful driver of racial disproportionality. Alternative explanations for variability in pediatricians' reporting practices include physicians' beliefs regarding (*a*) their abilities to identify and manage maltreatment cases and (*b*) the beneficial effects of screening for and reporting maltreatment.[12,14,38] In fact, Lane and Dubowitz noted the low levels of competence reported by pediatricians who were required to render a definite opinion regarding the occurrence of abuse and neglect.[12] The recently established subspe-

cialty of Child Abuse Pediatrics is a possible resource that may assist pediatricians in accurately and more confidently reporting suspected cases of maltreatment.[12,39] This area of pediatrics requires substantial empirical exploration so that evidence-informed training can be provided.

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Overview of the Committee for Public Counsel Services

The Committee for Public Counsel Services (CPCS) is the state agency in Massachusetts responsible for providing legal services to the poor in civil and criminal matters where the laws of the Commonwealth or the state or federal constitution mandate that counsel be provided. See Mass. G.L. c. 211D. The four major substantive practice areas covered by CPCS are (1) criminal defense, (2) juvenile delinquency, (3) mental health, and (4) child welfare. Trial and appellate work are included in each practice area.

In each practice area, CPCS uses a mixed model to provide representation to clients, using both staff attorneys and private attorneys on assigned counsel panels to fulfill its statutory mandate. Staff attorneys employed by CPCS handle a small percentage of the cases. But in the vast majority of cases, private attorneys who are trained and certified by CPCS and who serve on its assigned counsel panels provide representation. There are separate qualification and certification procedures for each panel. Over 2,500 private attorneys state-wide serve on assigned counsel panels.

Children and Family Law Division

CPCS's Children and Family Law (CAFL) Division provides legal representation to children and indigent parents in child welfare matters. CAFL cases include care and protection proceedings, children in need of services cases (CHINS) (status offenses), actions to terminate parental rights, guardianship of a minor cases, and any other proceeding regarding child custody where the Department of Children and Families (DCF) is a party or where the court is considering granting custody to DCF.

In Massachusetts, children and indigent parents have a right to court-appointed counsel in child welfare cases. See G. L. c. 119, § 29 and Dep't of Public Welfare v. J.K.B., 379 Mass. 1 (1979). By statute, children are represented in child welfare cases by attorneys, not guardians ad litem. (Guardians ad litem are occasionally assigned by the courts for specific, limited roles; the courts, not CPCS, select, oversee, and pay guardians ad litem.) CAFL attorneys have a caseload that includes children and parents.

Law Student Internship, Co-op and Independent Study Opportunities

The CAFL Division is looking for fall semester, spring semester, and summer interns/co-op students, as well as independent study students seeking credit for substantial research projects.

Law students work closely with staff at the CAFL Administrative Office in Boston, doing research and writing on a variety of child welfare, trial and appellate issues. Because the field of child welfare relies heavily on medical and social science research, law students may also do research and writing on these subjects. Law students will observe hearings at the Boston Juvenile Court (or other trial courts, depending on where staff members have active cases), and arguments at the Appeals Court and Supreme Judicial Court if arguments in child welfare cases are scheduled during the students' placement. Independent study students may also work on more substantial research projects.

CAFL staff will closely supervise students and provide feedback on their work, to ensure that students have one or more writing samples by the close of the internship/co-op. CAFL staff will also work closely with law school supervisors to ensure that independent study students satisfy all academic requirements for credit.

> ***If you are interested in a summer 2013 position, kindly send a cover letter, resume, and writing sample to Andrew Cohen, Director of Appellate Panel, CPCS/CAFL, 44 Bromfield St., Boston, MA 02108.***

CAFL Private Attorney Panels

Private attorneys certified by CAFL handle the vast majority of the cases. Admission onto the CAFL private counsel trial and appellate panels is by application only. Trainings for the trial panel are offered in the summer (in western Massachusetts) and fall (at MCLE in Boston). Sometimes CAFL hold spring certification trainings (at MCLE in Boston). The training consists of five days of substantive law training and two days of intensive trial skills training. This program has been customized for the practice of child welfare law. To be certified for the CAFL appellate panel, attorneys must complete a one-day appellate training program in the fall, and either (a) have trial panel certification or (b) attend certain portions of the five-day substantive law portion of the trial panel training program.

Upon completion of the training, all newly-certified private CAFL attorneys are assigned to an experienced attorney for mentoring and support. The mentor helps introduce the "mentee" to court personnel, court rules and practice, and substantive law. Participation in the mentor program runs from the assignment of the mentee's first case for at least 18 months until such time as the mentee develops proficiency in handling child welfare matters.

Regional Coordinators throughout the state and attorneys in the CAFL Administrative Office in Boston are also available to provide advice and technical assistance to all CAFL attorneys. In addition, the CAFL Administrative Office has a website:

www.publiccounsel.net/practice_areas/cafl_pages/civil_cafl_index.html

By statute, CPCS is responsible for ensuring quality legal representation. See G.L. c. 211D, §§ 4-10. CPCS has developed "Performance Standards Governing the

Representation of Children and Parents in Child Welfare Cases," which serve as a blueprint for lawyers handling these complicated matters.

Private attorneys are paid at the rate of $50.00/hour for all child welfare trial and appellate work. The legislature sets the compensation rates and appropriates funds for the payment of private counsel. CPCS administers the system for paying attorneys on its panels.

> ***Attorneys interested in applying for the CAFL trial and/or appellate panel training must complete the applications. Further directions are set forth in the applications and on the website.***

Children and Family Law Division Staff Offices

The CAFL Division has about 100 staff attorneys working in ten locations in the Commonwealth – Barnstable, Boston, Brockton, Fall River, Hadley, Lowell, Pittsfield, Salem, Springfield and Worcester. The staff offices are collegial workplaces where skilled litigators effectively advocate for their child and parent clients. A staff social worker assists attorneys in the preparation of their cases by helping the attorneys understand family problems and individual clinical issues, making needs assessments, and providing referrals to services.

The staff offices are small, and hiring needs vary from year to year. Most attorneys hired are recent law school graduates who are hired for entry-level positions. All persons hired as CAFL staff attorneys are employed on a probationary basis for one year. CPCS is committed to hiring and retaining a racially and ethnically diverse staff.

All staff attorneys must complete the CAFL trial panel certification training – described below – at Massachusetts Continuing Legal Education (MCLE) at the beginning of their employment. Each office provides less experienced attorneys with extensive initial supervision and opportunities to observe their more experienced associates in court.