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Adverse Childhood Experiences: Implications and Recommendations for Family Law Practice and the Family Court System

Transforming Childhood Trauma and Toxic Stress into Hope and Potential

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Lifelong injuries persist like shrapnel pushing its way out years after the war is over.[1]

Introduction

This article aims to increase awareness within the family law community of the landmark Kaiser Permanente and Centers for Disease Control and Prevention [hereinafter CDC] research study project on Adverse Childhood Experiences which was published in 1998. The study examines a range of early childhood traumatic stressors and their relationship to public health and social problems throughout the lifespan. We investigate the implications for legal setting intervention and recommend cost-effective, practical ways to implement this knowledge so as to prevent further trauma because of ACEs exposure and child maltreatment. Presently there is a nationwide explosion of interest in adversity in the form of acute trauma or environmental chronic, toxic stress and how that adversity affects a child's developing brain and why some exposed children prove resilient and others do not.[2] "Everyone has the right to a future that is not dictated by the past."[3]

This article will highlight the recommendations derived from family law professionals, insights from the Kaiser Permanente-CDC ACE study as well as studies in Minnesota and elsewhere on Adverse Childhood Experiences [hereinafter ACEs], and ACEs impact on child and adult physical and mental health and social well-being. We hope to expand on this knowledge base and to suggest to practitioners, judicial officers, court staff, GALs, custody evaluators and other family law stakeholders measures which will help these professionals to work more effectively with clients who suffer from the negative impact of ACEs.

States are forming collaborative partnerships, task forces and work groups to develop policies and practices which can mitigate conditions arising from toxic stressors and that increase the health and wellbeing of children and their families.[4] The Kaiser Permanente-CDC ACEs study of over 17,000 American middle-class adults demonstrated that toxic stress and traumatic childhood experiences can lead to significant social, emotional and cognitive impairments, as well as chronic diseases and unhealthy behaviors across the lifespan.[5] Integration into a family law setting of best practices evolving from ACEs research is on a continuum which requires us to continue to ask what we need to do about ACEs.

The ACE Study defines adverse childhood experiences as:

1. emotional, physical or contact sexual abuse;
2. emotional or physical neglect;
3. witnessing domestic violence of mother/stepmother;

4. growing up with alcohol or substance abuse;
5. mental illness of a household member;
6. loss of a parent because of separation or divorce;
7. an incarcerated family member; or
8. criminal behavior in the household

The ACEs study reveals that these experiences can lead to:

1. social, emotional and cognitive impairments;
2. increased risk of unhealthy behaviors;
3. violence, victimization or re-victimization;
4. disease, disability and premature mortality.[6]

An ACE score of six (6) or higher categories of exposure in childhood indicated that household dysfunction reduced life expectancy by an average of twenty (20) years.[7]

Breakthroughs in neurobiology demonstrate that ACEs disrupt neurodevelopment and can have lasting effects on the biologic pathways of brain structure and function. This leaves children who are exposed to ACEs vulnerable to poor health outcomes throughout their lives.[8] Efforts are being made to develop an ACEs questionnaire that will better reflect the inner city, multicultural socio-economic determinants of health that may play a key role in racial and ethnic health disparities and their implications for interventions in pediatric settings[9] Such determinants would logically carry over to the family law justice system. Children and youth who are involved in family law proceedings need interventions and structures that will help them make good choices and to move away from choices that increase the likelihood of suffering and poor social, economic and health outcomes.

Maslow's expanded hierarchy of needs includes basic safety needs such as security, order, stability and freedom from fear.[10] With regard to learning, students need to feel physically and emotionally safe to progress and reach their full potential in the classroom.[11] Contemporary research has tested Maslow's theory by surveying 60,865 participants in 123 countries from 2005 to 2010.[12] The results of the study support the view that these universal human safety needs appear to exist regardless of cultural differences.[13]

Whenever a family interacts with the court system – whether family court, child protection, juvenile delinquency, domestic violence, or paternity court – the system should endeavor to mitigate the harm already done and do no further harm.[14] This might best be accomplished by ensuring that every actor with whom the family comes in contact understands the effects of ACEs and performs his/her responsibilities in accord with the goal of mitigating and preventing harm.[15] The system's intervenors must assess the harm done and construct the future, as best they can, to do no more harm.[16] This requires meaningful information on the past, present and future parenting behavior of those who have influenced and may, in the future, influence the child's environment.[17]

A national task force found that 60% of American children can expect to have their lives touched by violence, crime, psychological abuse and trauma.[18] Our present efforts to understand

the longstanding effects of adverse childhood experiences can only hope to reach the tip of the iceberg. Trauma is a buzzword now in *social services, public health, education, juvenile justice, mental health, pediatrics, criminal justice, medical research and even business*. But not everything is trauma. In most cases spanking and yelling, taking away the child's cell phone or differing rules/expectations for children in separated or divorced parents' homes is not trauma.[19]

Traumatic stress may interfere with a parent's ability to interact with an attorney who represents him/her. Trauma affects what the client needs from an attorney, as well as how an attorney will interact with the client who has experienced ACEs. The client may be reluctant to reveal critical information that could be outcome determinative. Further, a history of traumatic stress may inhibit the client's ability to form trusting relationships with others, such as their own children or court service workers. This inability could negatively impact case outcomes and may promote inappropriate judgments such as overprotective false allegations in custody and parenting time actions or underprotective care of the child(ren) involved which could lead to child in need of protection (CHIPS) proceedings.

Trauma Audits: Juvenile and Family Courts

The early adversity of child abuse and neglect can lead to high-risk health behaviors as a coping mechanism and thus early mortality.[20] The long term, costly consequences of ACEs emphasize the critical need for family and juvenile courts to identify traumatized individuals and undertake trauma-responsive prevention and intervention strategies to promote the health and well-being of children and families over the lifespan.[21] Judges and trauma professionals are beginning to understand that trauma-informed means that environments, practices and policies must be designed to reduce the possibility of triggering stress reactions in those who have been trauma-exposed.[22]

Tools have been developed to evaluate rural and urban court environments, practices, policies and court professionals' attitudes and behaviors through a trauma-responsive lens which incorporates the needs of both clients and court professionals.[23] It is important to note that child-friendly does not equal trauma-responsive.[24] Small changes, such as a designated court waiting room for children and victims, may reduce trauma triggers, promote engagement and support healing for traumatized parties and their children.

Researchers or consultants with expertise in trauma visit a court over a two or three day period to collect quantitative and qualitative data on the court environment and current practices. Trauma audits may include focus groups with court professionals, courtroom observation, court file review and surveys to identify challenges the court faces in becoming trauma-responsive.[25]

Preliminary findings from seven trauma audits show that many courts do not have designated waiting rooms for victims and children, security is intermittent, knowledge and attitudes about trauma vary widely across court professionals, trauma screenings are inconsistent and many court professionals are unaware of available evidence-based practices, and more effort needs to be made during hearings to solicit the perspective of children and parents.[26]

Trauma Informed Care[27]

Trauma-informed care has become a direction underway in many professional settings. Medical models of trauma-informed care are based on the recognition that while not directly injured in an assault or an accident, first responders, observers and peers are often psychologically adversely affected by peripheral, marginal or anecdotal exposure. Often, the institutional response can only be reactive, such as bringing in counselors to a group, which occurred on 9/11 to address the anxiety and vulnerability of a city traumatized by an unthinkable act, or as the "new normal" response to a school shooting, the death of a student by suicide or accident, or staff terrorized by a co-worker "going postal" in the work place. Repeatedly, newscasters warn parents not to allow children to see the planes flying into the Twin Towers, images repeated even to this day. Such warnings occur almost weekly when the graphic scenes of a violent incident are broadcast.

The vicious 2010 attack upon a family lawyer in her office by an angry litigant gave rise to any number of security assessments in law offices, while family lawyers and their staff grappled with the reality that it could just as easily have been them. The same sense of vulnerability was experienced in judicial, legal and community settings following the 2003 shooting outside an area of housing court commonly called "harassment court" in Hennepin County or the 2011 shooting in the Grand Marais courthouse after a verdict.

When a patient was beaten to death by another patient in 2014 at St. Peter Regional Treatment Center, staff who worked to resuscitate the patient were not the only persons psychologically affected by the incident. Other patients and staff, both on the unit and throughout the hospital, who were not necessarily involved in any way or even present at the homicide, responded with stress symptomology arising from a reduced sense of safety and heightened sense of vulnerability. The ripple effect of numerous corridor and break discussions surrounding the event, and the many investigative interviews, served to re-traumatize and continue the psychological stressors. The "circle of observation" spread far beyond those immediately involved or present on the unit at the time as ripple effects not immediately discernible continued well past the immediacy of the event into the future lives of many individuals.

In the medical and social work fields, trauma-informed care tries to pre-empt a reactive response with the recognition that a serious illness, the death of a patient, an assault on a social worker, nurse, behavioral analyst or another patient can and does cause trauma not only to the people directly involved in the incident but with the trauma moving outward in ripples from observers to persons who hear about the incident or recount their hearsay versions of the event.

An ill or injured child creates traumatic stress reactions not only for family members but even in classroom or activity settings, where other children start to worry about their own safety or well-being, which forces their anxiety to be dealt with by parents, teachers and other involved adults. Becoming "trauma-informed" starts with the recognition that people experience different types and levels of trauma in their lives and one precipitating incident can cause different stress reactions across the board. This understanding becomes the starting point for treatment to enable a person to move forward or past the trauma by processing the experience in hopes of reducing the stress reactions by re-building a sense of safety, control and empowerment.

In high stress occupations, processing groups where problems or experiences are shared often evolve through work-required counseling, peer groups or informal gatherings at lunches and social settings. While such discussions can be mere ventilating or processing, the empathy of the audience with similar experiences or background can be key to moving through or past the trauma to start healing. In a school setting, the age and maturity levels of students make reporting of bullying, hazing or taunting sporadic at best. Bringing secrets of ongoing family abuse, alcoholism, or molestation into the open is even more difficult for children. There is also little recognition in the educational system of the long-term psychological detriment to learning as a result of such familial problems. Of even greater concern is the deterioration of functioning with too many children funneling into varying levels of depression, emotional malfunctioning, maladaptive behaviors or mental illness.

Underlying Values and Philosophy

- Clients should not feel afraid, isolated or trapped.
- A trauma-informed model must ground the provision of service.
- Services should be responsive to the needs of an individual client.
- Clients have the right to privacy and self-determination.
- In working with clients who have experienced ACEs, prevention of future trauma, rather than intervention, is critical.

Recommendations for working with clients

When a family law professional responds to a client in a manner that reassures safety, facilitates an open sharing of information, minimizes the chance of triggering a client who has experienced traumatic events and makes the client feel heard, the response is not therapy, it is an intelligent, cost-effective and practical, timesaving manner of legal service provision.

Methodology (working with family law clients)

Client Interview

- It is important to remember that a party may have had a trauma experience which is abnormal but the party's response to that experience is not abnormal.
- Become more trauma-informed, including knowing resources that provide evidence-based, trauma-focused treatment to bolster resiliency.
- It cannot be emphasized enough that a party who has experienced traumatic stressful events needs to feel that a family law professional is respectful of the party's boundaries and privacy.
- Instill hope that it will get better because even if a client is not depressed, the divorce client can lose hope.
- Keep repeating to the client that there is hope and it will get better.
- Try to instill a sense of safety and predictability in the world.

Attorney Knowledge

- Know that the initial personae demonstrated by a client who has experienced traumatic stress may change dramatically if a level of safety-producing trust can be established with the family law professional.
- Note that you will most likely need many encounters with a client who has experienced ACEs before the client fully discloses.

Interview Tips

- Seat the client with a view of the door, possibly with the door open just a little.
- A warm smile may relax the client somewhat.
- Face the client with shoulders squared.
- Share with the client that there is no judgment in the attorney notes that will be taken during the meeting.
- Tell the client what you are writing down about him/her and their case.
- Clarity, transparency and giving more information to a client may help to lessen the level of trauma in a client who has experienced ACEs.
- Try to slow the client down to encourage more cohesive narrative from the client.
- Use enough eye contact so that the client feels s/he is being listened to and yet does not feel intimidated by intense eye contact or staring. This is an important aspect of any client visit when the client has experienced traumatic stress.
- Use a softer tone of voice.
- Do not walk behind the client; this may arouse hypervigilance because of prior trauma.

Client Autonomy and Understanding

- Let the client lead and have a measure of control.
- Give the client a choice over the agenda of a call or meeting and choice over the order of the agenda.
- If a client seems concerned or fearful of service, court or visiting with an attorney or family law professional ask why the client is afraid.
- Ask clients "why…" and know that the tone of voice when asking the question is crucial to avoid sounding accusatory or putting the client on the defensive.
- Rephrase what the client has divulged to arrive at a shared narrative.
- When confirming whether a client understands information given, it can be helpful to ask "how do you understand that?"
- The goal is to ensure as much as possible that clients receive effective trauma-informed provision of legal services.
- Help families understand what may happen in the future as a result of exposure to high levels of traumatic stress due to ACEs.
- Be aware that many of the children involved in family law legal proceedings who have increased levels of traumatic stress because of ACEs have parents or caregivers who have been exposed to multiple categories of ACEs as well.

- Know how positive coping skills can help to mitigate the effects of ACEs on parties and children alike.

Sample Questions for Clients

The following questions and the answers may cue family law professionals about trauma and toxic stresses that can have an enormous impact on the child(rens)'s health and well being:

- What is different for your children since you separated/started the custody/parenting time/divorce process?
- What happens to your children when they misbehave?
- Does the child(ren) have bad dreams or nightmares? If so, related to what?
- Do you think your child(ren) feels safe at home?
- What concerns does your child(ren) express to you?
- What words or actions does your child(ren) speak or act out that show you they are under stress? Is this happening now?

Further Work/Outstanding Issues

- Develop and disseminate trauma-informed ACEs best practices for family law professionals so that they can identify and provide effective legal services to survivors of ACEs and their child(ren) by means of broad-based multidisciplinary workgroups.
- Expand ways to connect statewide institutions, organizations and trauma-informed stakeholders and individuals who are working to advance the ACEs knowledge base, emerging best practices and trauma-informed policies applicable to family law professionals and stakeholders.
- Develop a statewide model protocol for family justice system professionals on identifying and effectively working with clients who have experienced ACEs and mitigating the damage to the child(ren) involved in family court legal proceedings.
- Conduct statewide training for family justice system professionals on how to work more effectively with survivors of ACEs and methods to promote healing for clients and their child(ren) such as parenting plans and custody arrangements that minimize the trauma to children from changes in family structure.
- Formulate strategies to educate and mobilize family justice professionals and decision makers on ACEs trauma-informed research, practice and advocacy.
- Build support for state level policy change across a robust set of domains, including but not limited to domestic violence, law enforcement and family law practice.
- Establish a national ACEs center as a resource for states who are in the process of or interested in determining the nature and scope of ACEs as related to public policy changes to minimize toxic stress and trauma that family law clients and their child(ren) experience and have experienced.

Follow up questions for readers of the article:

- What barriers or issues have you encountered with serving the population of individuals who have experienced Adverse Childhood Experiences or traumatic stressful events?

- What have you seen or heard in the legal profession or community regarding ACEs and trauma-informed family law practice and judicial decision making?

Conclusion

Awareness can make the difference between good and poor physical and mental health and even be the difference between life and premature death.[28] This awareness can close the information gap and thereby positively impact the lives of current and future generations. Our efforts to educate family law professionals and policy makers on the detrimental effects of ACEs and corresponding remedies are based on the premise that children deserve lives free of unnecessary emotional pain and related health problems over their lifespan.

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[1] MARLENE JEZIERSKI, BEYOND THE MIRROR: PEACEFUL HOMES: A BASIC HUMAN RIGHT Introduction (2008) (Anoka, MN, emergency nurse for decades who has taught about family violence).

[2] Pacific Standard Magazine, *What Does it Take for Traumatized Kids to Thrive?* (May/Jun 2013) (citing bestselling book *How Children Succeed* by Paul Tough which inspired columns in the NYT and discussions on national television and radio; citing Department of Education report, *Promoting Grit, Tenacity, and Perserverance* on specific non-cognitive skills which are being discussed by increasing numbers of researchers; citing Washington State brain scientist/molecular biologist John Medina, speaker and author of a best-selling book, *Brain Rules* whose research, among others, has galvanized the Washington Family Policy Council).

[3] A resource for service organizations and providers to deliver services that are trauma informed, *Trauma-informed: The Trauma Toolkit*, Klinic Community Health Centre (2nd ed. 2013) (last visited Apr. 27, 2015) http://trauma-informed.ca/wp-content/uploads/2013/10/Trauma-informed_Toolkit.pdf. (quoting Karen Saakvitne, SAAKVITNE, K. W. & PEARLMAN, L., TRANSFORMING THE PAIN: A WORKBOOK ON VICARIOUS TRAUMATIZATION. The Traumatic Institute/Center for Adult and Adolescent Psychotherapy. (New York: Norton.) (1996).

[4] Institute for Safe Families: Imagining a Better Future, Philadelphia ACE Task Force The Philadelphia ACE Project (Apr. 22, 2015), available at http://www.instituteforsafefamilies.org/philadelphia-ace-task-force.

[5] *Id.*

[6] *Id.*

[7] HOW *do* ACES AFFECT OUR SOCIETY? People with six or more ACEs died nearly 20 years earlier on average than those without ACEs,.(average age of death with 6 or more ACES is age 60, compared with average age of death with no ACES is age 80), available at http://www.ncdsv.org/images/CDC_ACEs-Inforgraphic_2013.pdf

[8] Institute for Safe Families, *supra* at note 4.

[9] Institute for Safe Families, *supra* at note 4

[10] Huitt, W. Maslow's hierarchy of needs. *Educational Psychology Interactive*. Valdosta, GA: Valdosta State University (2007), available at http://www.edpsycinteractive.org/topics/conation/maslow.html.

[11] Simply Psychology (Apr. 23, 2015), available at http://www.simplypsychology.org/maslow.html

[12] *Id.*

[13] *Id.*

[14] Email response follow up to telephone interview with The Honorable Mary Louise Klas, Minn. Second Jud. Dist. (Judge Klas served for fourteen years on the Ramsey County trial court bench and in retirement formed the ISAIAH Domestic Violence Task Force) (Aug.3, 2014).

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] 2014 Minn. Fam. Law Inst. PowerPoint Presentation, Terri Port Wright & Saprina Matheny, *The Staggering Costs of Childhood Trauma: Legal Responses to Improve Outcomes* (Mar. 25, 2014) (citing U.S. Attorney General's National Task Force on Children Exposed to Violence 2012).

[19] Port Wright, *supra* at note 18 (the authors wish to acknowledge Cloquet, Minnesota, attorney Terri Port Wright for her pioneering work incorporating ACEs knowledge into family law practice, education of the bench and bar on ACE's relevance to the domestic violence and family law justice system, and her substantial contributions to this section and the article in general).

[20] Nat'l. Council Juv. Fam. Ct. Judges, *Snapshot: Trauma Audits* (Aug. 2014) (citing the Adverse Childhood Experiences Study at http://acestudy.org), *available at* http://www.ncjfcj.org/sites/default/files/Trauma%20Audit%20-%20Snapshot.pdf.
[21] *Id.*
[22] *Id.*
[23] *Id.* (Trauma audits are important because they provide recommendations to the family or juvenile court that may help reduce the stress and trauma of parties and their children. Follow-up audits could also be conducted to assess change over time to see if changes that are implemented lead to better outcomes for families. NCJFCJ What do we know?
[24] *Id.*
[25] *Id.*
[26] *Id.*(common trends from trauma audit project reports that address the need for empirically-based research on systems change in the domestic violence, juvenile and family court systems).
[27] In-person interview with Mary Catherine Lauhead, Law Offices of Mary Catherine Lauhead, Aug. 14, 2014. Ms. Lauhead has served as the Chair of the St. Peter Hospital Review Board since 1978 and has a teaching background prior to becoming a lawyer. Her experiences in those spheres have helped with synthesizing trauma-informed care in family law, medical and school models.
[28] MARLENE JEZIERSKI, BEYOND THE MIRROR PEACEFUL HOMES: A BASIC HUMAN RIGHT Introduction (2008) (Anoka, MN, emergency nurse for decades who has taught about family violence).

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