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Making The Case for ACEs: How the Legal System Can Further Help Children and Take Meaningful Steps to Address Adverse Childhood Experiences (ACEs)

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> "There can be no keener revelation of a society's soul than the way in which it treats its children."
>
> — Nelson Mandela, Former President of South Africa

Currently, we are in the midst of a crisis which affects our most vulnerable population. To protect them, and indeed to protect us all, it will be necessary to educate those whose actions can have the greatest impact while also testing as many people as possible. This crisis is not only a health crisis, but also a financial crisis, costing taxpayers billions. If we wait to treat only those who have become highly symptomatic, we will be too late, and fail to curb the loss of life and diminished quality of life it causes. However, if we utilize universal testing while collaborating with health providers, we can improve outcomes and provide people with longer, healthier lives. The malady to which I refer is not the coronavirus, it is Adverse Childhood Experiences (ACEs). The vulnerable population is not our elderly generation, it is our children: sons, daughters, nieces, nephews, and grandchildren. Its cure is not dependent on scientists working at Warp Speed, rather it is dependent on the willingness of judges, lawyers, mental health professionals, doctors, mediators, social workers, and legislators to come together in the active, coordinated, prioritization of the best interests of our children.

As a legal practitioner if you are not aware of ACEs, and the study which popularized its name, you are not alone, though that will hopefully soon change. The original ACE Study was conducted at Kaiser Permanente with the Center for Disease Control from 1995 to 1997 with two waves of data collection. Over 17,000 Health Maintenance Organization members from Southern California receiving physical exams completed confidential surveys regarding their childhood experiences and current health status and behaviors. Adverse Childhood Experiences (ACEs) are categorized into three groups: abuse, neglect, and household challenges. ACEs are common across all populations.

They are comprised of the following experiences:

- **Parental separation or divorce**
- **Emotional abuse**
- **Physical abuse**
- **Sexual abuse**
- **Substance abuse in the household**
- **Parent Figure treated violently**
- **Mental illness in the household**
- **Incarcerated household member**
- **Emotional neglect**
- **Physical neglect**

As the number of ACEs increase, so do the risks for negative outcomes, which include:

1. Cancer
2. Diabetes.
3. Mental Health Issues including Depression Anxiety, Post-Traumatic Stress Disorder (PTSD) and related issues.
4. Unintended Pregnancy;
5. Fetal Death Alcohol and/or Drug Abuse;
6. Obesity;
7. Acting out Sexually;
8. Medical Injuries such as Traumatic Brain Injuries (TBI), Fractures, Burns;
9. Sleep Disorders;
10. Cognitive Impairment

These are some of the responses children have to the adverse childhood experiences prior to, during, and after divorce. Significantly, diseases such as cancer, heart disease and diabetes are not strictly co-related to the lifestyles which may accompany responses to the adverse experiences, such as drinking, smoking and drugs. Rather, the toxic stress of these adverse experiences, *independent of a child's subsequent lifestyle,* shortens children's lives. The ACEs of a divorce are experiences which, if unaddressed, can permanently alter the social, economic, psychological and medical condition of a child as well as others affected by the divorce. Not all children and families respond the same way to ACEs such as divorce, though few emerge entirely without effect.

An estimated 62% of adults surveyed across 23 states reported that they had experienced one ACE during childhood and nearly one-quarter reported that they had experienced three or more ACEs.[1] Divorce is one of the primary events identified within the ACE testing system. Of the ACEs, *divorce is the third most frequently reported on the list*, just slightly behind physical abuse and drug addiction, making it one of the most frequent adverse experiences of childhood.

How are Adverse Childhood Experiences (ACEs) addressed by other agencies?

If one were to perform a search for the two adverse childhood experiences which are more prevalent than divorce, "Domestic Violence Los Angeles" and "Drug and Alcohol Addiction in Los Angeles," they would find various programs and shelters. The programs and shelters servicing people who have had these experiences offer several types of services, including: counseling; children services; medical and spiritual services; emergency services; job training; housing services as well as financial and legal services. As a society, we have increasingly begun to recognize that someone who is suffering a trauma should be provided all the resources needed to effectively address their needs, and begin healing. Similarly, the Department of Child and Family Services (DCFS), the agency responsible for managing families when child abuse and/or neglect is reported, utilizes and provides various resources to assist families. Gabriela Shapiro, Esq. who has been a children's advocate within the Dependency Court for 25 years explains the DCFS approach as follows, "the goal, ideally, is to reunite the parents with their children. To properly determine the viability of that goal, as well as the children's best interests, we communicate with several disciplines, gathering data from these resources, including the medical, social work, educational and mental health fields. Resources from each discipline are dedicated to provide support and information to the children and families. Working cooperatively with all disciplines is an essential aspect of effectively determining the best steps for the families we help and informs the legal services being provided."[2]

The Inter-Agency Council on Child Abuse and Neglect (ICAN), which works closely with DCFS and other agencies providing services to families experiencing ACEs, concludes "[a]bused children benefit when professionals coordinate their efforts to investigate cases and protect the children involved. A *multi-disciplinary* approach does not require a formal center. It does require that the professionals make efforts to communicate f*rom the earliest opportunity, coordinate investigations*, …, and continue to *share information* throughout the pendency of the case. All agencies involved … are encouraged to use a *multi-disciplinary approach whenever possible*…. The goal of this approach is to *reduce trauma* to the child, improve coordination of

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1 *Merrick, M. T., Ford, D. C., Ports, K. A., & Guinn, A. S. (2018). Prevalence of adverse childhood experiences from the 2011-2014 Behavioral Risk Factor Surveillance System in 23 States. JAMA Pediatrics, 172(11), 1038-1044*

2 In Person interview with Gabriella Shapiro, Esq. 10/1/2020

service delivery, ensure forensic defensibility of services [i.e., medical and interview components], and *enhance the courts' ability* to protect communities" [3]

Utilizing the correct resources efficiently at the earliest opportunity minimizes trauma and repeatedly accessing emergency services. Studies have shown that introducing services such as a social worker, dietitian, and schedulers to patients who had chronic medical conditions reduced the need for those patients from accessing the Emergency Department. Significantly, that same study determined that, in addition to not going to the emergency department as often, those patients experienced a reduction in the underlying disease, with an increase in the quality of life.[4] Agencies and organizations which frequently handle families and children contending with ACEs commonly utilize inter-disciplinary approaches. Many programs adopt ACE-informed approaches, which are not about a specific intervention or set of interventions, but rather considers effective approaches together with the subjective needs of the individual. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), an ACE-informed approach "realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures, and practices; and seeks to actively resist re-traumatization." [5] First, we must be educated to recognize the signs of ACEs by asking questions at the earliest opportunity, then we need to create policies and procedures to empower the family and its support system.

Are We Equating the Adverse Experience of a Child within a Typical Divorce to the Trauma of an Abused Child? That Depends…on the child.

First, there is no typical divorce. Abuse and divorce are both adverse childhood experiences, and though they do not represent the same physiological experience for the child, they each may have similar qualities in terms of ones' response. According to childhood trauma expert Dr. Carl Shubs, (*Traumatic Experiences of Normal Development* (2020), "adverse childhood experiences (ACEs) are not restricted to those enumerated in the CDC/Kaiser study. They include many more experiences than those identified ACEs. They are subjective, based on the internal experiences of the child, and based on events which occur even in normal development and under the best of circumstances. Although people often assign a hierarchy to the adverse traumatic events, ultimately the severity of the event is dependent upon the manner in which the person responds to it. To best understand how one is responding to an ACE, we must first identify the event and understand the person's internalization of it" [6] Some present quickly, with others it takes place over time. And, all agree that early detection and treatment provides the best opportunity to provide support and resources to effectively increase healthy outcomes.

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[3] Keeping Children Safe… www.ican-ncfr.org
[4] Clin Gastroenterol Hepatol. 2018 November ; 16(11): 1777–1785. doi:10.1016/j.cgh.2018.04.007
[5] (Substance Abuse and Mental Health Services Administration, 2015b). Parenting Matters: Supporting Parents of Children Ages 0-8. Copyright National Academy of Sciences. 332 PARENTING MATTERS
[6] In-person interview with Dr. Carl Shubs, Ph.D. 9/28/2020

Indeed, when we ask questions, we begin to understand how the person is responding to an ACE, and we can address it. As Dr. Shubs expressed, sometimes the ACE is not one of those listed on the test. Rather, it can be a conflict in their daily routine which, if someone were to take that responsibility off the parent's plate, s/he could parent better. "Families contending with an array of adversities often also need services to address such needs as job training, housing, and income support, as well as active support to help them access and utilize those services. Helping parents deal with these stressors may free up personal resources, enabling them to focus better on improving their parenting skills."[7]

Not all events are the same, but more importantly not all responses to adverse experiences are the same. As Dr. Shubs says, "two people standing next to each other during the exact same event will have two distinct experiences of it."[8] Not only are the stressors different, but each person's natural resilience and resources of support play a significant role. To be sure, "the ability to withstand or recover from stressors, results from a combination of intrinsic factors and extrinsic factors (like safe, stable, and nurturing relationships with family members and others) as well as predisposing biological susceptibility."[9] The difference in response is largely a product of the person's resiliency, which is correlated not only to the biology of that person but also his/her support system—their family and friends. A divorce can deliver a devastating blow to a child as it may include several adverse experiences while simultaneously threatening a child's capacity for resiliency as it deconstructs the family, their primary support system. Our challenge is *How do we help children and families overcome the trauma of divorce when the adverse nature of the experience is the breakdown of the very family unit and its support system the child needs to be resilient in the face of a adversity?*

Even where physical and sexual abuse are not present, the event of divorce is not necessarily an isolated ACE. Rather, it often is accompanied by or a result of other stressors such as the primary caretakers' mental health issues, emotional abuse, substance abuse, and/or forms of neglect. Moreover, in addition to the study's enumerated experiences, issues such as financial strain, depression and other events which cause the child to have an adverse experience are also formidable actors affecting the family. Divorce, and its attendant ACEs, is not the act of filing, but the experiences which preceded the event of filing for dissolution, the trauma associated with the legal process, and the strain endured in the aftermath of the divorce process which creates issues for the children and their caregivers. "Although the association between parental divorce and children's psychological problems is well-established, theoretical formulations suggest that it is not divorce per se (i.e the dissolution of marital subsystem) that triggers children's mental health problems but rather pre and post-divorce family processes are considered the major risk mechanisms." [10] Thereby, understanding what led to the divorce, and appreciating the need to create stability after the divorce process are highly correlated to the improved health of our children. Or, as one judge put it, "often by the time they get to us, the proverbial house is on

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[7] The National Academies of Science Engineering Medicine Report Parenting Matters Supporting Parents of Children Ages 0-8 (2016).

[8] In-person interview with Dr. Carl Shubs, Ph.D. 9/28/2020

[9] Kimberg L., Wheeler M. (2019) Trauma and Trauma-Informed Care. In: Gerber M. (eds) Trauma-Informed Healthcare Approaches. Springer, Cham. ttps://doi.org/10.1007/978-3-030-04342-1_ 2.

[10] "Typologies of Post-divorce co-parenting and Parental Well-Being, Parenting Quality and Children's Psychological Adjustment" Child Psychology and Human Development, an International Journal (2015) Volume 46, number 6.

fire." With that in mind, asking ourselves what more we can do as a community and as a profession are relevant and timely questions which deserve our attention, compassion, and best approaches.

What Are We Doing?

Our Family Court Services (FCS) currently has a wide array of services it provides to those who have initially filed to be heard on the issue of custody. Many of those services speak to the need to support our families in a more holistic manner. FCS prompts parties to create their own parenting plan, which is available online. And, if they manage to agree on it then they do not have to go to the conciliation court—the mediation. The professionals at FCS are highly trained professionals which include clinical and family experience. There are mediation services provided prior to the hearing. Resources, such as videos including "Our Children First" and "From Conflict to Agreement" are suggested to parties and function as important educational tools. Additionally, FCS offers parenting plan assessments, which can be ordered any time by the court where warranted. The assessments are more complex than they were previously, and a limited amount are available. Per 5.19 local court rule, assessments can only be challenged by cause. Additionally, online programs are being developed, and brochures are available to families. FCS has taken significant steps towards providing additional services to couples prior to hearing and upon court order.

What More Can We Do?

What measures can we, the legal community, take to improve the health and welfare of the children and families who are placed in our care in times of adversity and pain? What steps can be taken prior to the trauma and stress manifesting in the break-down of the child's health, family and environment? California's Surgeon General, Dr. Nadine Burke-Harris, is at the forefront of creating awareness for ACEs. She is quick to point out that "Adversity is not destiny." "The science is clear: early intervention improves outcomes." In all cases, the sooner the ACE is identified and addressed, the sooner the individual can improve their chance of living a healthier life, and also of not traumatizing others. To effect change, we must first acknowledge the evidence. Looking at different programs, fields of studies, and how other states and countries address the issue is informative. In medicine, the Chorion is a membrane around the embryo. It has two main functions: protect the embryo and nurture the embryo. How can our system better resemble that function when it comes to the families we serve? I would like to believe our goals for families are similar.

1. Communicate, communicate, and communicate some more. The judiciary, the litigation, mediation, and collaborative communities need to cooperate in the creation of an early inter-disciplinary approach. These legal communities should coordinate with the medical, mental health, social services, and academic communities. It is necessary to come together as a single, child-centric community. There is no panacea to the issues with which our children are faced. We need to educate one another as well as the people going through this process. Receiving insight and education about the divorce process, its effects, aftermath and resources available to improve chances of emerging in the healthiest possible way could assist stabilize families and minimize the traumatic effects of ACEs.

2. Screening. CAT scans? How about FLAT scans? In medicine, a CAT scan is used to see inside of specific areas without cutting. A Family Law Adversity Test (FLAT scan) should be administered at the outset of each case, allowing us to see what is going on inside a family- without cutting. Administering a screening survey to provide valuable insight into the families we are assisting can make a difference for generations to come. Whether this is the ACE screening itself, FL-DOORS[11] used and administered in other countries, and/or other screening methods, gaining a better understanding of those who need our help and resources appears to be a fundamental step in addressing and minimizing the severe effects of ACEs on families entering the legal system. We need to meet and understand our families where and when they are.

3. Triage. Upon receiving the information from the screening, match the best services to the family's needs. One family may need a single mediator to assist them in creating a meaningful resolution. Others may require a mental health professional or a social worker directing them to support services. Others may need the specially trained coordinator who can address a high conflict personality with the best tools. Providing a system which matches the support of experts to the needs to the family will free up judicial resources.

4. Share. We need to share with professions outside of our system. Family doctors and school therapists should be informed about the divorce, so that they may then be alerted of the potential ACES resulting from the divorce at the earliest opportunity. Having additional eyes on the children from professionals who are uniquely trained to look for changes and provide support and resources will help build resilience and address issues sooner. Doctors and School Psychologists are aware of the questions to ask and steps to take, when informed. Therefore, they must be treated as allies in this process, and alerted early.

5. Intervening early and safely. All of the tools identified become less effective if they are not used early. How can we create space within the divorce process at an early stage for social and mental health professions to provide their services? What can we learn from other legal processes which provide mental health and social services to populations experiencing trauma? How can we provide space for professionals to work with families, while not under the constant threat of being sued? Mediation has confidentiality protections, and Parent Plan Coordinators receive qualified immunity, what protections can we afford our mental health professionals, mediators, attorneys, and healthcare workers who want to support and provide needed services to families?

6. Collaboration and Mediation as Standard Policies. There are several mediation and settlement programs currently in use by the courts. There are others outside the courthouse which provide mediation and collaborative services of other professionals.[12] Using a multi-disciplinary approach, develop a program wherein mediators and multi-disciplines are utilized earlier in the process. Our current system has begun various, positive "in-house" programs which provide separate services as needed. As a policy, what if "[t]he court prefers the mediation process as opposed to contested hearings wherever possible, reserving contested hearings exclusively for unresolved questions of fact and law?" Recognizing

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11 www.familylawdoors.com.au

12 See Loyola Law School's Center for Conflict Resolution; Los Angeles Center for Law and Justice; Alliance for Childrens Rights

contested hearings exclusively for unresolved questions of fact and law?â€ Recognizing ACEs are intricately tied to all family law matters, not only the ones which end up in the hands of DCFS, should this be the position of all family law processes? The multi-disciplinary program should have similarly stated goals, including "reduce trauma and promote communication among the parties. . . Bring the parties and professionals together, (understand) individual perspectives of the participants in the case … and (educate and (encourage) parents, children, social workers, and other parties to...*Reach agreements designed to protect the safety of all participants and to protect children ...."*[13]

7. Educate. We need to educate families regarding ACEs, as well as resources available to them. In addition to educating professionals regarding best practices for addressing the needs of families who are in our legal system, we should train staff and professionals on the best practices and approaches to high conflict personalities. Perhaps the biggest drain on judicial resources is handling high-conflict cases, which are brought on by high-conflict personalities. Systems to acutely address high-conflict people have been created. "Depressed parents, for example, may benefit particularly from training in dealing with conflict and difficult child behaviors, whereas those with borderline personality disorder may gain the most from education in providing a consistent routine and nurturing." [14] Assessing those cases early, triaging them to those who are highly trained to address them, and minimizing the effect of those with high-conflict behavior patterns, would materially benefit the legal system as a whole.

8. Check ups. Check in with families post-judgment to assure the family unit is not in need of additional services. We need to ask more Questions. If we ask questions, we will know what families need. We need to think about the answers we know and the ends we want to achieve (i.e. healthy outcomes). How can we reverse-engineer the process to assure less repeat filings?

Our laws protect children from the trauma of being interviewed at tender ages regarding their parent's divorce. Twenty-two years ago, someone thought to ask the children when they were grown up. And, though the individual child's experiences may differ, their collective voices could not be more uniform. The effects of divorce are both dire and profound. As we consider how we can better treat clients who are showing up with the ACE of divorce, the ACEs which precede divorce, and the trauma which is a by-product of divorce, we ought to look at how other operations and agencies address ACEs and traumatic events to inform how we may improve the delivery of our services, and the services provided. As family law professionals, we are charged with finding outcomes which supports the best interests of the children and the families that support them. Our system is one which requires evidence upon which our judicial officers can base a decision. The ACE study provides the evidence to conclude that our children's experience of divorce, and other adverse experiences which often accompany it, leads to their lives being

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13 Local Rules of Court Juvenile Division Section 7.23

14 The National Academies of Science Engineering Medicine Report Parenting Matters Supporting Parents of Children Ages 0-8 (2016). Beeber et al., 2014; Stepp et al., 2012

compromised medically, financially, socially and psychologically. “Now we have a consensus of evidence that early detection and early intervention improve outcomes.” In 2019 further research determined “at least five of the 10 leading causes of death are associated with ACEs."[15] In fact, that has been updated recently and “ACEs are implicated in 8 out of 10 of the leading causes of death and in numerous social and achievement gaps."[16] Colleagues, we are on notice. It has now been over twenty years since the ACE test results. And, although we are not the ones who have caused the proverbial house to catch fire, we are often the family’s first entry point in its call for help, and the time has come for us to have a comprehensive, evidence-based, response to our children’s needs. We should consider implementing ACE-based policies and programs as if our children’s lives depend on it because, as we now know, they do.

15 Merrick MT, Ford DC, Ports KA, et al. Vital Signs: Estimated Proportion of Adult Health Problems Attributable to Adverse Childhood Experiences and Implications for Prevention - 25 States, 2015-2017. MMWR Morb Mortal Wkly Rep 2019;68:999-1005. DOI:

16 Dr. Nadine Burke Harris, Opening Remarks ACES Aware program