



# Race and Child Welfare: Disproportionality, Disparity, Discrimination: Re-assessing the Facts, Re-Thinking the Policy Options

## Citation

Elizabeth Bartholet, Race and Child Welfare: Disproportionality, Disparity, Discrimination: Re-assessing the Facts, Re-Thinking the Policy Option

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**RACE & CHILD WELFARE:  
DISPROPORTIONALITY, DISPARITY, DISCRIMINATION:  
RE-ASSESSING THE FACTS, RE-THINKING THE POLICY OPTIONS**

By

Elizabeth Bartholet

July 2011

INTRODUCTION

Harvard Law School's Child Advocacy Program and Chapin Hall at the University of Chicago co-sponsored an invitational conference with the above title in January, 2011, addressing what has been generally characterized as "racial disproportionality"<sup>1</sup> in child welfare, a term used to refer to the high representation<sup>2</sup> of black children<sup>3</sup> in the child welfare system as compared to their percentage in the general population. The National Council of Juvenile and Family Court Judges and the National Court Appointed Special Advocates (CASA) served as Participating Organizations.

Many in the child welfare field have argued that the level of black representation in foster care reflects racial bias in the child welfare system. They base this argument primarily on the claim that *actual* as opposed to *official* black and white maltreatment rates are the same, relying for this claim almost entirely on the National Incidence Studies published in the mid-1980's and mid-1990's (NIS-2 and NIS-3). They have promoted policies designed to reduce the number of black children in foster care to achieve what they describe as "racial equity," so that racial percentages in foster care match racial percentages in the general population.<sup>4</sup>

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<sup>1</sup> The Conference, *Race & Child Welfare: Disproportionality, Disparity, Discrimination: Re-Assessing the Facts, Re-Thinking the Policy Options*, took place January 28-29, 2011, at Harvard Law School, Cambridge, MA.

<sup>2</sup> High representation is used in this paper as a neutral term, to avoid terms that imply that current levels of representation necessarily reflect bias or related problems.

<sup>3</sup> Native Americans are also represented in the child welfare system at high rates compared to their portion of the population, while whites and Hispanics are represented at low rates, and Asians at the lowest rates of all. The debate surrounding racial representation in child welfare has focused primarily on the black/white comparison, and we focused this conference similarly, without in any way meaning to minimize the significance of the issues as they relate to other racial groups.

<sup>4</sup> See Bartholet, "[The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions](#)," 51 Ariz. L. Rev. 871 (2009), also available at [SSRN](#) and at <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/bartholetfinalrd.pdf>.

Others have argued that black children are removed to foster care in numbers that are proportionate to the maltreatment risk they face, and that efforts to simply reduce their numbers in foster care would put them at serious risk.<sup>5</sup>

We organized this conference with the goal of advancing the debate on race and involvement in the child welfare system by: (1) presenting some of the best available evidence comparing actual to official maltreatment rates for black and white children, and assessing the degree to which removal to foster care reflects actual maltreatment rates, in order to better understand the high representation of black children in foster care; and (2) exploring the kinds of policy options that seem appropriate given what the evidence suggests.

Speakers and panelists testified to the importance of designing policy in this area based on the evidence, both in their oral and written statements.<sup>6</sup> Elizabeth Bartholet opened the conference describing the overall goal as “tak[ing] seriously the idea that empirical understanding should guide policy.”

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/bartholetfriintro.pdf>. See also <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/bartholetsatintro.pdf>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/bartholetsynopsisrd.pdf>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/bartholetfinalrd.pdf>. Judge Cindy Lederman stated:

If only child welfare policy and practice could be informed by science! Those of us who work in the child welfare system are too often subjected to changes in policy that require changes in practice that are well meaning, but based on ideology, not on research. The goal of reducing disproportionality in the child welfare system is a goal we all share. To be successful, we must carefully study what causes the problem, develop policy and design interventions that reflect that knowledge. Actions based on what we think or believe, not science, can be harmful to the children we are supposed to protect. <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/ledermanstatement.pdf>. See also <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/ledermansciencerd.pdf>.

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<sup>5</sup> *Id.*

<sup>6</sup> The Conference proceedings are available online, with videos of all speaker presentations, related powerpoints and papers, synopses of oral presentations, as well as papers and articles by speakers and panelists on related topics, at <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-index.html>. This paper relies, in describing the Conference proceedings, primarily on the oral presentations, supplemented by these related written submissions.

Leading scholars on child welfare and race presented to and engaged in discussion with an audience of over 100 child welfare leaders including child welfare administrators, judges, legislators, non-profit advocacy organization directors, and academics from both the law and child welfare worlds.

This paper summarizes what I believe can be learned from the Conference proceedings.<sup>7</sup>

## HISTORICAL AND SOCIAL CONTEXT

The conference opened with a session focused on the historical and social context that might help explain the role of race and other factors in shaping today's child welfare system. Dorothy Roberts, Duncan Kennedy, and Randall Kennedy spoke about historic and ongoing patterns of racial discrimination and economic injustice that produce significant challenges for black families. See <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/robertsynopsisrd.pdf>. They spoke about racially segregated, impoverished enclaves characterized by crime, substance abuse, unemployment, and limited community services.

This context is helpful in understanding why child welfare system involvement is so much more common among black families. As Randall Kennedy noted, given the history of race and racism, given the fact that black people lag in all indicia of social wellbeing, given the deplorable conditions disproportionately characterizing their lives, conditions that produce high rates of substance abuse and other self-destructive behavior, it would be surprising if black children were *not* removed to foster care at higher rates than white.

The broad picture painted in this session demonstrates both the urgency and the complexity of doing something to better support children and families. Historically, as Dorothy Roberts pointed out, the child welfare system ignored black children, and was labeled racist as a result. Randall Kennedy

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<sup>7</sup> A shorter "Issue Brief," co-authored by Elizabeth Bartholet, Fred Wulczyn, Richard Barth, and Cindy Lederman, entitled *Race and Child Welfare*, was published online by the Chapin Hall at the University of Chicago, in June 2011. See <http://www.chapinhall.org/research/brief/race-and-child-welfare> (last checked 6/29/11) or <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/rd-conference---issue-brief---final.pdf>. This paper incorporates verbatim most of that Issue Brief, but goes beyond it to include a more complete description of the Conference proceedings, summarizing major points made by the various speakers and panelists, and providing links enabling readers to easily access the presentation videos and related powerpoints and papers on the Conference website. I want to both acknowledge my debt to my co-authors on the Issue Brief for their work on that Brief that is incorporated here, and to assume full responsibility for all statements in this paper that go beyond that Brief.

described how both action and inaction by the child welfare system could be described as fitting a racism narrative, both accounts are plausible based on history.

The narrative of a rich-poor, black-white divide that undermines the fabric of society is familiar and deeply distressing. The high rate of black child representation in the child welfare system both reflects and perpetuates that historical narrative. Even when removal offers important protection against maltreatment, children subjected to both maltreatment and the disruption caused by removal to foster care confront real short and long-term risks to their well-being, including risks for future unemployment, crime, imprisonment, homelessness, substance abuse, and maltreatment of the next generation.

As speakers in this first session noted, it is highly improbable that in any near future radical action will be taken to address in a fundamental way the social and racial injustice described. We are left with the issue of what kinds of more modest policies, more likely capable of near-term implementation, we should promote that might help children and families who live in circumstances that help produce high child maltreatment and foster care rates.

To the degree that the evidence indicates that what Randall Kennedy called “fresh” bias -- bias embedded in the present -- is significantly responsible for the high rates of black child removal, we should address that bias. To the degree that the evidence indicates that there are real differences in the underlying incidence of maltreatment, and that black children are actually at significantly higher risk than white for serious maltreatment, we should promote policy and practice options that serve to prevent maltreatment from occurring in the first instance, and that provide better protection in response to such maltreatment. All children, regardless of race and ethnicity, should have access to the services that afford the best possible protection.

The next session explored what the evidence shows about the role of race as compared to actual maltreatment rates in explaining black rates of representation in the child welfare system.

## THE EMPIRICAL EVIDENCE

A central debate in the field regarding high black representation in foster care has revolved around the connection between *actual* rates of maltreatment, and *official* rates of maltreatment and removal. The NIS-2 and NIS-3 statements that they found no difference between maltreatment rates for black and white children led many child welfare leaders to conclude that current child welfare system bias, not underlying rates of maltreatment, was the primary explanation for why contact with child welfare services, including placement in foster care, was so much higher among blacks.<sup>8</sup> To address this fundamental issue, scholars presented some of the best and most recent social science work designed

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<sup>8</sup> See Bartholet, "[The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions,](#)" *supra* note 4.

to assess whether there are racial differences in the underlying rates and seriousness of maltreatment, and related issues as to how best to explain high black foster care rates.

The empirical sessions focused separately first on entry into, and second on exit from foster care. They started with presentations by John Fluke and Brenda Jones Harden on the literature review they conducted on Racial Disproportionality issues for the Annie E. Casey Foundation and the Center for the Study of Social Policy. See <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppfluke.ppt>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/flukesynopsisrd.pdf>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppjonesharden.ppt>. This work was designed to update the previous literature review on this topic by Robert Hill. Fluke and Harden both described the subsequent research as somewhat equivocal on the race bias issue, and complex to interpret, with Fluke cautioning against strong policy responses based on less than definitive research:

What we've experienced with the NIS-3 is that strong policy responses to research findings that may have some different bases for evidence can get us into trouble. So I think we just have to be careful.

The panel on issues involving *entry into foster care* began with Brett Drake's presentation. See <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppdrake.ppt>. See also <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/drakerd.pdf>. Drake presented the findings of NIS-4, published in 2010, a larger and more rigorous study than those described in prior NIS reports. *The NIS-4 concludes that black maltreatment rates are 73% higher than white.* Drake also demonstrated that the underlying data for NIS-2 and NIS-3 showed differences between the black and white maltreatment rates very consistent with those shown in the NIS-4, and that the amount and precision of the data at those earlier NIS stages was simply insufficient to demonstrate statistical significance. The black/white differences in rates of maltreatment shown in the NIS-4 were also markedly similar to the racial differences in the official child maltreatment reports documented by NCANDS. In addition, Drake presented evidence on Missouri comparing measures of child risk not subject to the potential biases in child welfare data, to official child welfare reports. This showed:

Black/White racial disproportionality among child abuse reports in Missouri is somewhat lower than a range of other (unbiased) measures, including infant mortality, low birth weight and prematurity. Given these findings, it appears that in Missouri, Black children are, if anything, somewhat underreported compared to Whites.

Taken together [with the NIS data], these data speak strongly against the presence of large scale overreporting of Blacks in the public child reporting system.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/drakesynopsisrd.pdf>

The Missouri results were subsequently confirmed by nationwide data published in a paper in *Pediatrics* authored by Drake and two other Conference speakers, along with others.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/drakepediatrics.pdf>.

Drake's presentation provides strong evidence that black children are significantly more likely to be maltreated than white, and that this has probably been the case for at least the last three decades. It indicates that our child abuse reporting system may well reflect fairly accurately the underlying rate of maltreatment—arguably negating the need for another NIS and preserving the significant resources that go toward the NIS for other forms of research to improve child welfare services.

Drake concluded in his presentation: “*Need, not bias, appears to be the main driver of racial disproportionality.* The NCANDS data are where we would expect them to be given the risks associated with being Black in the United States.” <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppdrake.ppt> at p. 21.

He ended with a comment on the policy implications:

The only real solution is to create a United States which is structurally just with regard to race and class. Absent this, the next best thing is to try to buffer that injustice.

Assuming CPS budgets will not increase soon, better linkage to community resources..., a particular emphasis on community resources useful to the poor, ... might help buffer the effects of poverty and therefore reduce racial disproportionality....

Many states are hoping to reduce disproportionality by reducing presumed CPS bias. Our findings suggest that won't work. If bias isn't the problem, then reducing it won't help.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppdrake.ppt> at p. 23 (emphasis omitted).

Emily Putnam-Hornstein presented her recent work on preventable injury deaths, using injury fatalities as a way to get as close as possible to “culture-free” definitions of neglect and abuse.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html> She compared excess injury deaths to maltreatment substantiations, for different racial groups. She described her findings as “align[ing] with other recent research suggesting that racial disparities in rates of substantiated maltreatment arise from *real* group-level differences in risk. Per excess death, Black and Native American children had rates of substantiated maltreatment that were *equivalent to or lower than* White children” indicating arguable *underintervention* for Black and Native American children. <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppputnamhornstein.ppt> at p. 14. She concluded that given the absence of evidence of bias, “efforts to reduce racial disparities will continue to fall short if intervention strategies ignore the social and economic factors that place some children at far greater risk of abuse and neglect than others.”

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppputnamhornstein.ppt> at p. 16 (emphasis omitted).

Richard Barth's presentation reinforced the conclusion that actual black maltreatment rates were significantly higher than white, citing empirical evidence that various predictors or markers of maltreatment are higher for black children, including maternal arrest rates, traumatic brain injury rates, intentional injury death rates, and child homicide rates (see

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; see also summary in Drake et al., 2011

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/drakepediatrics.pdf>). He also summarized evidence indicating that black children suffer more severe maltreatment than white children, and more severe consequences from maltreatment, including evidence that black parents self-report higher rates of severe maltreatment as compared to white parents, that black children suffer higher rates of death following child abuse, higher rates of death following traumatic brain injury, and higher rates of mortality after leaving foster care. Barth summarized: "African American children are at least as likely to be underserved as overserved" by current child welfare services. <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppbarth.ppt> at p. 2 (emphasis omitted).

Barbara Needell presented recent work based on linkages between birth records and child welfare records in California. <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppneedell.ppt>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/needellputmahornsteinsynopsis.pdf>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/putnamneedellrd.pdf>. This work showed that when variables identified as sociodemographic risk factors were controlled for, including Medi-Cal eligibility as a measure of socioeconomic status, black/white disparities in child welfare reports disappeared, and in fact reversed, with black children less likely to be reported than similarly situated white children.

The panel on issues involving *exit from foster care* began with Brenda Harden's discussion of the implications of the above-noted literature review conducted with John Fluke.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppjonesharden.ppt>. She emphasized

the complexity of the picture, and noted that the high black kinship care rates help explain lengthy foster care retention rates. She also noted that adoption rates for black children were increasing, and in many locations this appears to be reducing racial disparities in exit rates. Fred Wulczyn presented recent evidence demonstrating that the black/white permanency gap – differences in the amount of time spent in foster care – looks very different from what many have assumed.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppwulczyn.ppt>. The evidence shows



that while in many counties black children stay in foster care longer than white children, in a substantial number of counties black children move out of foster care at the same or higher rates. The data show that social structural characteristics of the county population -- poverty rates, single parenthood, and the racial composition -- explain the differences in rates of exit from foster care. Overall Wulczyn's work supports comments made in the first session about the link between impoverished, segregated neighborhoods, and a wide range of dysfunctional behavior. Poverty, and related forms of social deprivation characteristic of such neighborhoods, increase the likelihood of family dysfunction and child maltreatment, and hence the use of foster care as a protective measure.

The evidence presented at this conference signals that it is time for reconsideration of certain past assumptions and conclusions regarding what has been termed racial disproportionality. The evidence indicates that generally and overall there is a significant black/white maltreatment gap, one that roughly parallels the gap in official maltreatment reports. It indicates that actual black maltreatment rates closely track official rates. This evidence contradicts the belief that black children are included at high rates in the child welfare system because of racial bias. This is not to say that the evidence presented removes the possibility of bias. Bias may well exist in pockets of the system, operating in ways that lead black children to be either over- or underserved, and bias is present more generally within the larger society. But there is no reason to believe that reducing the high representation of black children will provide a path to more equitable treatment of children. The evidence instead provides powerful reason for policymakers to focus on very real and challenging problems: the devastating nature of life circumstances for too many black families, the high rates of serious maltreatment victimizing black children, and the harmful impact of such maltreatment.

#### PROMISING POLICY AND PROGRAMMATIC OPTIONS

While it is hard in the current political climate to expect the sweeping social change needed in the long term to truly solve the root causes of high rates of black maltreatment and related child welfare contact, we can in the short term develop targeted programs designed to reduce maltreatment, and protect victimized children against further harm.

Conference speakers presented a variety of promising policy options. The first session focused on early intervention programs, designed both to prevent maltreatment from occurring in the first instance, and to provide services to help protect victimized children before too much damage is done. Barbara Needell spoke to the importance of early intervention, noting that it is the youngest, most vulnerable children who are disproportionately victimized by parental maltreatment, and that outcomes for these children are often worse than for children maltreated at older ages.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppneedell.ppt>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/needellputnmahornsteinsynopsis.pdf>. See also

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/putnamneedellrd.pdf>. Her work with Emily Putnam-Hornstein demonstrates that data available in infant birth records is extremely useful in predicting which children are at greatest risk of maltreatment, enabling creation of a risk assessment tool that could be used at the time of a child's birth to help design preventive and intervention services for a targeted group of at-risk families.

Deborah Daro followed, advocating for the creation of a universal assessment system at birth for all newborn infants and their families, so as to design individually targeted early intervention services. <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppdaro.ppt>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/darosynopsisrd.pdf>. See also <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/rdconference.daro.pdf>. She spoke of the promising development in recent decades of a broad range of early intervention programs, including intensive early home visitation (starting in early pregnancy), Early Head Start, and Head Start. She indicated that the evidence on such programs is promising in terms of helping children and saving costs, but that to maximize success we need to build a network of comprehensive services for families and children in the early years. She argued that we should offer such services to all children from age 0 on up, rather than only to poor or at-risk children, analogizing to the public education model. She cautioned against demanding that all programs be justified by randomized trials, noting that this could unduly limit the kinds of programs offered. But she made clear that all programs should still be evidence-based: "Better, more robust, implementation studies are needed to document the most efficient ways to replicate programs and take them to scale." She also noted that black families made disproportionate use of early intervention services, and that such services produce the most powerful impact on the most disadvantaged, indicating that expansion of such services might serve ultimately to reduce the number of black children in foster care.

Claire Houston advocated early intervention in connection with infants born showing the effects of their mothers using drugs or alcohol during pregnancy (often referred to as SEI or substance exposed infants). <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferencepphouston.ppt>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/houstonsynopsisrd.pdf>. She described the very limited number of programs in the country that combine testing of infants for alcohol and illegal drugs with a family drug court regimen designed to encourage compliance with treatment protocols and abstinence from ongoing alcohol or drug abuse. Such programs hope to prevent maltreatment by improving the likelihood that parents will engage in treatment and reduce or eliminate substance abuse, and increasing the likelihood that if parents continue to engage in serious substance abuse, the affected infants will be placed in foster care until or unless their parents make substantial progress toward rehabilitation, or moved on to adoption or other permanent nurturing families. By contrast, the research indicates that many substance exposed infants

now go home from the hospital with substance-abusing parents, where they are at high risk for child maltreatment; many will eventually be removed to foster care based on maltreatment, after they have suffered related damage to their future life prospects.

Houston argued that we should develop early intervention programs for substance exposed infants throughout the nation modeled on some of the programs she described. She called specifically for: (1) universal testing of all infants; (2) testing for both illegal drugs and alcohol; (3) defining abuse of alcohol or illegal drugs during pregnancy as a form of child maltreatment, facilitating coercive child protective service intervention at birth; and (4) linking testing at birth with a family drug court regimen. Any such program would likely have an impact on the number of black as compared to white children removed to foster care, since today testing is done disproportionately in the poor public hospitals that black birth mothers are disproportionately likely to frequent. Universal testing would increase significantly the number of white infants identified as at risk because of prenatal substance exposure, and thus presumably increase the numbers removed to foster care at birth. To the degree any such program succeeded in its goals, it would also reduce the level of maltreatment suffered by both black and white children, since parental substance abuse is an issue in the cases of a large majority of all children in foster care, and in many of these cases that substance abuse existed at the time of the child's birth and could have been identified by testing.

The second policy options session focused on programs designed to enable children removed to foster care to move more rapidly into healthy forms of permanency, including both reunification and adoption. Joe Ryan talked about the Illinois Recovery Coaches program, designed to work with parents whose children have been removed to foster care for maltreatment related to parental substance abuse. <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppryan.ppt>. Recovery coaches help parents access drug treatment programs, and encourage their compliance with treatment protocols, with the goals of increasing reunification and adoption rates, and expediting permanency. While this program has had some success in increasing both reunification and adoption rates, it has had only limited success in moving children out of foster care in a reasonable period of time. Slightly over one-third of the children in the program remained in foster care after five years.

Jill Berrick spoke about concurrent planning programs.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppduerrberrick.ppt>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/berrickstatement.pdf>. These are designed to target children unlikely to be reunified with their parents, placing them in pre-adoptive homes, and working simultaneously toward both reunification and adoption. The idea is to enable more children to enjoy early de facto if not legal permanency, since those children who will in the end be adopted, are placed at the time of removal in the home in which they will stay. Some think that concurrent planning should also expedite permanency since both birth families and child welfare workers are likely to feel more time pressure, given that adoption exists as a

real alternative for the child. There is some evidence on the success of such concurrent planning programs as exist, but unfortunately, few have actually been implemented in a serious way.

Finally, Ann Marie Lancour spoke about the Permanency Barriers Projects that she directs for the American Bar Association's Center on Children & the Law.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceplancour.ppt>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/lancourinfosheet.pdf>. These projects are designed to help jurisdictions implement permanency plans, moving children more expeditiously out of foster care. The program's research demonstrates some success in expediting permanency and saving the state related foster care costs.

In sum, the presentations demonstrated promising evidence that many of the programs discussed can work to reduce child maltreatment, and provide victimized children greater protection, as well as evidence that at least some, such as the Nurse-Family Partnership model of early home visitation, are cost-effective even in the relatively near term.

#### FINAL POLICY PANEL REFLECTIONS

The final panel featured speakers with significant experience in the child welfare system, reflecting on the conference proceedings in light of their varied backgrounds and perspectives.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/dormancolbysynopsisrd.pdf>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/rdconference---mattinglyoutline.pdf>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/ledermanstatement.pdf>.

Lily Dorman Colby, a foster care alumna and former foster parent for her youngest brother, spoke of how her family would have benefited from some of the programs directed at parents with substance abuse problems. She and her siblings grew up with a substance-abusing mother. Her younger brother, born drug-affected, was sent home as an infant to that mother, and then subjected with all the children to a childhood of ongoing maltreatment and repeated removals and reunifications. Colby talked about how a mandatory drug rehabilitation program either would have given her mother a chance to recover and keep her children or, in the more likely event that she failed in rehabilitation, would have given the children an opportunity to move on to adoption. By contrast her youngest brother, now 17, is still in foster care, where he has spent most of his life. Colby spoke critically of the practice of placing children in foster care in high-risk neighborhoods and with foster parents of questionable quality, arguing for instead recruiting "some of the best and kindest people from around the country" to create a pool of foster-adopt parents. Judge Patricia M. Martin, Vice President of the Board of Trustees of the National Council of Juvenile & Family Court Judges, spoke from her experience as Presiding Judge of the Child

Protection Division in Cook County, Illinois. She argued for placing the emphasis on keeping more children out of foster care, and for addressing “implicit bias.” She argued that children can “learn when Mom’s drugging and not stay around Mom when she’s drugging, but go to Grandma’s house so they can still go to school.” Cassie Statuto Bevan, a key Congressional staffer for over 20 years specializing in child welfare issues, argued for putting children first, and taking seriously the abuse and neglect they face. She argued for putting the emphasis on making sure that black as well as white children are safe.

John Mattingly, Commissioner of New York City’s Administration for Children’s Services, described it as a “national scandal” that children in certain neighborhoods grew up with so many disadvantages, including the higher likelihood of being born drug-affected and low birth weight, and growing up with a single parent, with limited educational opportunity, and high neighborhood crime and incarceration rates. He said it was also a national scandal that so many children in this situation end up in the child welfare system, but not one that is the sole responsibility of that system. He described the child welfare field as regularly looking for silver bullets, as previously with intensive family preservation, more recently with differential response systems, and now with the call to reduce the rate of removal of black children to foster care. “I don’t believe that foster care is bad. I think it is the exact right thing to do in certain circumstances and the exact wrong thing to do in others.... So there is no quick fix. And I think focusing simply on having fewer kids of color in the system as a whole is another sort of silver bullet that won’t work.”

David Sanders, Executive Vice President of Systems Improvement at Casey Family Programs, stated that a vast number of children were under-served, noting how many child maltreatment reports existed compared to the number of children removed to foster care. He contrasted this to the unknown but clearly much smaller number that were over-served. He spoke of the importance of focusing on today’s problems and not yesterday’s, and paying attention to good empirical research. He supported the kinds of prevention strategies designed to reduce maltreatment that earlier speakers like Daro had addressed, and supported programs improving access to services like the drug rehabilitation programs described by earlier speakers. He urged that we move on from debating the issues to helping the children whose “lives are in our hands every day.”

Judge Lederman ended this panel with her hope that we could indeed move on from the debate about race bias. “I think that today’s been a very productive day and it’s transformed some of our thinking.... And I hope that we can turn a corner. Get past the debate to action with some agreement.” She moved on to argue that we should next focus on how we can work to reduce maltreatment, stating that unless we can do that, foster care and the child welfare system will be absolutely necessary to protect children at high risk. She stated that current child welfare cases are not frivolous, “dirty houses” cases, but “horrible, horrible cases.” She argued for moving forward on prevention efforts with an emphasis on evidence-based practice, and quality research, concluding with a suggestion that the same group gathered at Harvard Law School for this conference, might at some future conference focus on prevention and protection.

THE FUTURE

I hope that this conference will mark an important turning point away from the focus on alleged child welfare system bias, with its emphasis on anti-racism training and on immediate reduction in the number of black children removed to foster care based on general population percentages. This focus not only diverts attention from the most significant problems facing black families and their children, but poses dangers to black children victimized by maltreatment. Given the considerable evidence of a black/white maltreatment gap, the field needs to focus more attention on the problems facing black families and their children, and the related risks to black children victimized by maltreatment. It needs to pay more attention to the high rates of maltreatment among children of all races and ethnicities growing up in poverty. It needs to pay more attention to the harmful developmental impact of maltreatment, and the importance of developing more and better programs designed to prevent maltreatment and provide protective services.

The evidence presented powerfully undermined the assumption that child welfare system bias plays a significant role in producing the high level of black foster care representation. Conference speakers explored this issue in two primary ways. First they looked to the evidence relied on by those promoting the racial bias theory. This evidence consists primarily of the claim made in the NIS-2 and NIS-3 that actual black and white maltreatment rates were the same. Brett Drake's presentation (see above) demonstrated that none of the NIS studies provided any basis for that claim. The most recent NIS-4, based on more extensive sampling methods than the prior studies, states that black maltreatment rates are 73% higher than white. This rate is roughly comparable to official maltreatment rates. Drake's presentation demonstrated that the actual data underlying the NIS-2 and NIS-3 showed comparably higher black maltreatment rates, although lacking statistical significance. So the NIS-4 cannot be written off as an anomaly. There was never any basis in the earlier NIS data to conclude that black and white maltreatment rates were the same. Absence of evidence of bias does not of course prove absence of bias. But without evidence of bias, policy makers have no grounds for making their goal immediate reduction in the number of blacks in the child welfare system to achieve population percentages.

The second major way in which conference speakers explored the issue of bias was by examining more directly whether bias likely exists as a significant explanatory factor for black foster care representation levels. Several speakers looked at this issue by examining the degree to which apparently unbiased measures of or predictors for child maltreatment correlated with official maltreatment and removal rates. Both Brett Drake and Emily Putnam-Hornstein presented their own recent research, each finding that black children are at risk for actual maltreatment at rates at least as high as, and sometimes higher than, the official maltreatment and removal rates.<sup>9</sup> Other speakers, like Richard Barth, summarized the

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<sup>9</sup> Both characterized their research as designed to assess whether child welfare system bias exists. Brett Drake's powerpoint states the question he will address as whether current black child reporting and substantiation rates are "due to a racially biased child welfare system." <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppdrake.ppt> at p. 2. See also title of Pediatrics paper submitted by Drake et al, *Racial Bias in Child Protection? A Comparison of Competing Explanations Using National Data*, <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/drakepediatrics.pdf>. Emily Putnam-Hornstein's powerpoint similarly describes her study as "a means of assessing bias" and "quantifying bias" in the child welfare system.

range of studies that have made similar findings, and also studies demonstrating that black children are at greater risk for more severe forms of maltreatment. All three concluded that their evidence conflicted with the bias claim, and that black children were as or more likely to be *underserved* by current removal rates, by comparison to white children, rather than penalized by inappropriate removal. See above.

In addition, various speakers presented evidence that when poverty and neighborhood characteristics were included in the analysis of foster care rates, race disappeared as an explanatory factor. See Needell above (blacks actually less likely to be referred to child welfare after poverty measure factored in); Wulczyn (after factoring in county characteristics – poverty rate, number of blacks, and number of single parents – analysis shows no impact of race on reunification, and shows black children adopted faster than whites <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-video/rd-conference-index.html>; <http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppwulczyn.ppt>).

Several speakers noted that if bias is not the problem, it is foolish and/or dangerous to black children to focus on reducing bias or reducing their numbers in the child welfare system (e.g., Barth, Bartholet, Drake, Putnam-Hornstein). See above for discussion and links to their presentations and related papers.

To truly solve the race and child welfare problems of the day, we need in the long term radical social reform, creating a society that gives all members true opportunities for self-realization. Many speakers spoke to this point. But many also indicated that such reform could not be hoped for in any near term.

In the meantime, there is much we can and should do to help support fragile families, and to help protect children, both by preventing maltreatment and by providing protective services. We should think about targeting these kinds of programs in ways designed to best reach families living in the disadvantaged neighborhoods where maltreatment rates are especially high. We need to expand programs that show promise. We need to build a network of early intervention programs, including programs that will reach substance exposed infants. We need to expand programs designed to move children more expeditiously out of foster care into healthy forms of permanency, including reunification and adoption.

We also need to encourage further research designed to assess which programs are working best to support families and protect children, since we can't afford to waste resources on programs that are not working. And we need to encourage the kind of cost-effectiveness research that is so important to persuade policy makers in these financial times that programs are worth funding.

I hope this conference has enabled the child welfare field to move forward armed with clear evidence to direct attention and resources where they are most needed. Reducing the number of children in care

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<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/compatiblefinalrdconferenceppputnamhornstein.ppt> at p. 4.

without reducing the prevalence of child maltreatment itself will endanger our children. The work that needs to be done to facilitate real reform is much more challenging.

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**Recommended Citation:** Bartholet, "Race & Child Welfare: Disproportionality, Disparity, Discrimination: Re-Assessing the Facts, Re-thinking the Policy Options," July 2011.

<http://www.law.harvard.edu/programs/about/cap/cap-conferences/rd-conference/rd-conference-papers/rdconceptpaper---final.pdf>