

Title: Supporting Families of Color: How Racial and Complex Trauma Affect Parents of Color Navigating Family Court During the Time of COVID and Beyond

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This report is intended to provide family court officers and child welfare professionals who engage with child welfare involved (CWI) parents, introductory knowledge on the trauma-informed approach. Readers will be introduced to the importance of using the trauma-informed approach in their work with CWI parents, with a focus on the impact that language has on the way in which CWI parents are depicted and responded to in the courtroom. Definitions of key terms are provided first, followed by an overview of the trauma-informed approach and its application to working with CWI parents. Since the onset of the COVID-19 pandemic, this report has been updated to include recommendations for trauma-informed practices that best support families during a period of collective/shared trauma. Then the section titled, “What parents want you to know”, provides direct input from parents on their experiences, needs and perspectives. Finally, a composite vignette which compares traditional language to trauma-informed language is presented.

Acknowledgments: This report would not have been possible without the contributions and insights provided by child welfare affected parents and their allies. Special thanks to Jeanette Vega, Nancy Fortunato, Caitlin Becker and Lauren Shapiro.

Definitions

Potentially Traumatic Event (PTE)

The American Psychiatric Association defines a traumatic event as an extreme event where there is a perceived or real threat of severe injury (or death) to one’s physical, emotional or psychic integrity. This event is often experienced as being outside of the person’s control, and is frequently accompanied by an overwhelming sense of fear, helplessness or horror¹. PTEs can be directly experienced, witnessed or secondarily exposed (hearing about it happening to someone else). People who work in close proximity (e.g. social workers, caseworkers, first responders) to those who have experienced exposure to PTEs, may themselves develop a unique sequelae of exposure known as vicarious traumatization.

Complex Trauma

The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) uses the diagnosis of posttraumatic stress disorder (PTSD) for the grouping of symptoms including hyperarousal, avoidance and numbing that occur in those who have a chronic stress response following exposure to a singular PTE¹. Dr. Judith Herman distinguished complex trauma from simple PTSD because of the prolonged nature of exposure and the inability of the person to escape from the circumstances under which the PTE is taking place. Complex trauma often occurs within the context of interpersonal, intimate and sexual relationships. These unique features of complex trauma exposure result in adaptation to the coercive control inherent in those settings in order for the person to survive. These adaptations include pervasive mistrust of others, difficulty making and maintaining relationships, and an increased likelihood of being revictimized among others².

Racial Trauma

Racial trauma refers to the experience of physical, emotional or psychological violence based on someone's racial background. This violence ranges from overt violence to the constant weathering effect of microaggressions and other, subtler, forms of racial violence. Dr. Lillian Comas-Diaz and colleagues³ succinctly summarized Robert Carter's work in this area:

“Racial trauma, or race-based stress, refers to the events of danger related to real or perceived experience of racial discrimination. These include threats of harm and injury, humiliating and shaming events, and witnessing harm to other people of color due to real or perceived racism (Comas-Diaz et al., 2019, pg. 1)”.

Shared Trauma

A relatively new term, introduced after the September 11th terrorist attack, shared trauma refers to a collective traumatic reality shared universally. In the context of a pandemic this shared trauma is a global experience⁴.

Background

The landmark Adverse Childhood Events (ACEs) study conducted by the CDC and Kaiser Permanente uncovered what is referred to as an *inverse and graded relationship* between trauma exposure and long-term functioning, where increased exposure to PTEs

in childhood was found to be significantly correlated with adverse outcomes in adult functioning⁵. While some may see this as a cause for despair, thinking that a person's life is pre-determined early on by these circumstances, this work fueled a paradigm shift in thinking about how to work with people who had experienced exposure to PTEs. The trauma-informed approach which calls for the presence and effects of trauma to be “realized, recognized, responded to and efforts made to avoid retraumatization”³ in systems that serve people most deeply affected was born out of this paradigm shift. <https://store.samhsa.gov/product/TIP-57-Trauma-Informed-Care-in-Behavioral-Health-Services/SMA14-4816>

Families of Color and the Family Court

Exposure to PTEs is ubiquitous and not everyone who is exposed will have an adverse response. Responses range anywhere from no effect or even posttraumatic growth, to acute distress with full near-term recovery, all the way through to full disintegration of functioning. Parents with family court (FC) involvement have often had chronic exposure to PTEs in their lives resulting in what is described as complex trauma^{7,8}. People who are living with complex trauma often experience significant challenges with social emotional functioning. Yet though these are relational difficulties, the systems currently in place to respond to these challenges are often punitive and not therapeutic – with law enforcement frequently becoming involved first. The result is that people with high levels of trauma end up in situations where their participation is often mandatory and where they have no or very little choice or opportunity to have a voice⁹. Systems that are not trauma-informed operate without an awareness that these types of settings are ripe for the creation of tense, confrontational and adversarial encounters which run a high likelihood of retraumatizing those they are intended to help.

Most parents who interface with family courts in urban centers like New York City, are people of color from the lower socioeconomic strata of American society⁹. Judges who want to practice in a trauma-informed manner, should recognize the compound impact on CWI parents of personal trauma, community-level violence, societal racism, segregation and exclusion from economic and social opportunity. While parents may enter the courtroom with high rates of exposure to trauma from the micro- to the macro- levels, they may be reluctant to share their histories for fear that this information will be used against them in court. See the accounts of two social workers who share the potential risks and benefits of discussing traumas in family court: RISE Magazine <http://www.risemagazine.org/2015/09/to-speak-or-not-to-speak/>

Racially-based trauma has been acknowledged for its corrosive impact on the health and well-being of people of color³, above and beyond the impact of interpersonal traumas. Many parents have extensive histories with systems that are ostensibly in their lives to help them, yet which they have experienced as retraumatizing¹⁰. For most parents, the loss of their children to foster care placement is ranked as the most traumatizing event of their lives⁷. This is true for parents who have endured complex trauma beginning early in life.

The distrust many parents demonstrate when they enter family court proceedings is often rooted in negative experiences with law enforcement and the courts. This has left many parents with the perception that systems like the court are working against them and people who look like them¹⁰. Parent Advocate Jeffrey Mays shared his experience of feeling completely overlooked as a black father. Here's what Jeffrey said about his view of race in child welfare during his RISE interview:

“When I went on visits and I saw more Black families than Whites or Hispanics, I would feel very paranoid. I would look at all the Black kids and wonder if the system got more money for Black kids. I would want my kids to be quiet and for nothing to go wrong. It seemed like the system was expecting me to fail.” (Provided by Parent and Parent Advocate Jeanette Vega).

This perception of being targeted by multiple systems based on race is often reinforced when parents enter a courtroom where they are the only person who does not have access to the privileges and protections provided through race, class or social capital⁹. Lack of access to these privileges make the courtroom an uneven playing field for parents and one that oftentimes feels hostile¹⁰. Additionally, during one of the most emotionally charged and distressing moments of their lives, parents are told that they must be silent and not show emotion as anything they say may be used against them. As one parent recently stated in a recent workshop “yeah, you say anything and here come the drama on top of the trauma”.

This reality begs the question, “What would it take to transform

courtrooms from spaces that feel hostile to parents who are dealing with the compound effects of complex and racially-based traumas to places that are sensitive and responsive to their needs as they pursue reunification with their child(ren)?”

What is the Trauma-Informed Approach?

The trauma-informed approach requires a philosophical and cultural shift away from asking people “What is wrong with you” to inquiring “What happened to you”. This shift is necessary in order to respond effectively to the challenges in multiple domains, (mental health, criminal justice involvement and chronic health issues), that people who have experienced chronic and compound exposure to trauma often experience⁴. **In order to be considered trauma-informed, an organization seeking to make this cultural shift must incorporate the core principles of safety, collaborative practice, voice and choice, and empowerment as routine to every aspect of the organization’s practice**⁷. In short, those working within a trauma-informed setting are encouraged to utilize the “universal exposure” assumption it is understood that everyone who enters that setting may have experienced adversity in some way¹¹. By its very nature and design, family courts are place where families experiencing significant distress seek resolution to deep-seated issues. Drabble et al., (2013) conducted a qualitative study to examine the process of implementing the trauma-informed approach in Family Drug Treatment Court and identified some important core principles that are worth mentioning here:

- Identification of triggers (overcrowded waiting rooms, intimidating police presence within the court) and action steps to address those triggers
- Court officer self-examination of the ways in which their actions may be contributing to re-traumatization of “clients”
- Working collaboratively with other systems involved with that family to reduce the burden of duplicate requirements often placed on families.⁹

What Parents Want You to Know

“So many children and adolescent have been exposed to violence and traumatic events through interactions with their family members, teachers, neighbors, friends, community and other institutions and system. These experiences can lead them to believe that they are not good enough, smart enough, pretty, educated, or strong. This is

a contaminated, unhealthy belief system that many people of color, young or old, have received over the course of their lives and can start to feel like their reality. This vicious cycle of fear and unworthiness has the power to devalue them, resulting in them feeling less than human. People of color need to feel safe, respected, valued and recognized for their full worth and their potential without blaming or shaming for their past mistakes or bad judgment. Even if that means that they did hurt someone in the past. **We need to understand that people hurt people, and that people can also heal.** Once we understand this then I believe we can all become trauma-informed.”

Ms. Nancy Fortunato – Parent, Parent Advocate

Best Practices in the Time of COVID-19 and Black Lives Matter

- **Race and class define the child welfare system** – they must be considered for their impact on families in society and in the courtroom. All actors involved with CW-involved families must engage in self-reflection at the personal, interpersonal, institutional and policy levels to acknowledge and take immediate steps to address the ways in which the systems within which they work have been formed and maintained by racism and classism. COVID-19 and the murders of Black people at the hands of law enforcement only magnified the ongoing oppression that Black people live with in America on a daily basis. The time is now to transform the courtroom into a place where each parent who walks in truly feels like everyone in the courtroom is working to help their family reunify.
- **Implement rigorous supports that reduce removals to those events that are truly detrimental to a child’s safety.** Prioritize in-home supports and interventions that allow families to remain together during the pandemic where visitation is severely limited. Self-reflective practice is essential here to separate personal opinions about a parent’s behavior (e.g. smoking marijuana) from the impact that behavior has on their ability to take care of their children.
- **There are global guidelines that can help with more supportive practices.** Should no alternative but out-of-home placement be deemed possible, the United Nations Commission on the Rights of the Child directives on least restrictive interventions provide guidelines on having the least amount of disruption to families:
 - <https://ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
 - Children should be placed within close proximity (same borough) to their parents so that the attachment between children and their families can be

maintained and they have the least amount of disruption to their environment.

- Virtual visits are a minimum and should occur regularly (since travel times are eliminated, there are few restrictions on frequency). Technology can serve as a vehicle to strengthen the parent-child bond with morning calls to wake up children or to tell them good night. Communities of color in NYC, from which many of the CWI parents come, have been hardest impacted by COVID-19 through illness, death and loss of income. As a result, many parents who were already holding on by an economic thread have lost all income and cannot sustain their bills. Thus, parents should be provided with working devices (including a paid data plan) to ensure that they can be reached for visits and that they can be contacted for all necessary reunification related information.
- Though virtual visits seem like a reasonable option they are not sufficient, especially for younger children and children with developmental disabilities who rely heavily on the cues provided through interpersonal interactions. Please see the CDC guidelines for specifics regarding how to limit risk of COVID-19 transmission, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>. It appears that socially distanced, proper PPE wearing in open air settings such as a local park may be worth considering as an option for visitation.
- While the constraints of finding safe foster place settings is understandable, children's ability to visit with their parents should not be contingent on the health of that foster parent. Should the foster parent's health be a barrier to maintaining the parent-child relationship a move to placement that supports the parent-child relationship should take primacy.
- **Prioritize reunifications and robust supports to help families stay together.** The actions of the court and all actors involved with parents will impact the strength and sustainability of reunification later. Delayed reunification hearings will lengthen the time to bringing families back together and puts a strain on their bond.
- **Your relationship with parents matters – parents believe that they will get to have their day in court and look up to judges.** Many parents have shared with me that they waited for their first hearing before the judge with great anticipation. They believed that they would be able to tell “their side of the story” to an unbiased arbiter. They viewed judges with high regard. Unfortunately, many parents leave their court hearings feeling silenced, vilified and ashamed - discouraged and feeling that they were and would not be heard.

- In a recent study that my colleagues and I conducted with CW-involved parents and their advocates the following were identified as characteristics of a “good” judge:
 - A judge who stayed with the family from the start to finish of their cases. These judges were perceived as getting to know the parent’s circumstances and understanding them as people.
 - Judges who spoke directly to parents and allowed them to speak. Parents felt like they made a genuine connection with the judge and that they cared what happened to them and their families.
- Ensure that children are able to participate in funeral and last rites rituals for family members who have died both directly due to COVID-19 and the thousands of NYC residents who died in their homes, too afraid to seek care.

How Can Implementing the Trauma-Informed Approach Improve Family Court?¹



Making the shift to more trauma-informed practices has been shown to both reduce the stress associated with system contact and improve outcomes as was shown through the Women Co-Occurring Disorders Violence Study¹³. Through its emphasis on safety and collaborative practice, adopting a trauma-informed approach communicates respect for everyone in the courtroom (including parents), and has the potential to increase buy-in

¹ Photo credit: Children’s Trust Fund Alliance. Retrieved from <https://ctfalliance.org/wp-content/uploads/2020/02/BFPP-group-1000x200-1.jpg>

This case vignette is a composite of parent stories I gathered over the years through research, trainings and conversations.

and reduce contentious interactions within courtroom settings¹². There are oftentimes structural and institutional barriers that must be addressed when trying to implement these changes, however, the potential gains make this a worthwhile endeavor. One change that can more easily be adopted is the use of trauma-informed language in the courtroom, or during COVID-19 in the virtual courtroom spaces. Below is a vignette which contains practical suggestions for changes to language meant to assist you in transforming your courtroom into a more trauma-informed space.

Case Vignette

Ms. Richards and Mr. Thorne, both foster alums, lost custody of their two children Dante (17 months) and Kimone (4 and 1/2 years) nine months ago following allegations of neglect and excessive corporal punishment. Adrift after aging out of foster care, Ms. Richards had taken odd jobs and gotten into several scrapes with the law until she got pregnant with Kimone. She loved Kimone fiercely, the first time she held her in her arms she felt for the first time like her life had a purpose. She had a reason to keep moving forward. She and her partner, Mr. Thorne moved in together during their first pregnancy and were getting by “okay” at first, but found it harder and harder to make ends meet after Dante was born. Mr. Thorne was having trouble finding full-time work and child care was eating up almost everything Ms. Richards made working part-time. They were both stressed and the stress in the house only got worse as their financial situation worsened. Ms. Richards was often tired and frustrated, having to make hard choices about how to spend what little money they had. Occasionally, they would smoke marijuana together to relieve the stress.

When Kimone entered kindergarten (NYC - 3K) they were relieved to finally have a safe place for her to go to each day that was free. They were stunned when they received a call stating that a report had been made to ACS regarding concerns that Kimone was not being well cared for. They did not always have enough money to get her new clothing and were embarrassed to take donations from anyone. After a visit to their home by an ACS investigator, where there was very little in the way of food and meager furnishings and belongings in the home, both of their children were removed from their care. With no family to fall back on the children were placed in two separate foster homes. The couple was devastated as they watched their children enter the same system they had entered as young children and remained in until they were young adults. They smoked marijuana the night the children were removed. By their accounts they needed something to help numb the pain.

Ms. Richards and Mr. Thorne were mandated to and successfully completed parenting and anger management classes within 6 months of being separated from their children, but Ms. Richards was told at her last hearing that the courts wanted to wait another 3 months before allowing them to have unsupervised overnight visits with the children. The couple had not smoked since they were drug tested right after removal and were told that another “positive” marijuana toxicology would reflect poorly on them and their ability to get the children back. After the delay Ms. Richards began to question whether they would ever get the children back. She had missed Dante’s first steps and during the last few supervised visits he did not call her Mommy and cried when she went to pick him up. She is starting to fear that he does not remember her anymore. Despondent without their children and feeling that their efforts over the past nine months have not mattered to anyone with the power to return the children, Ms. Richards begins to smoke marijuana two or three times a week in secret to help with her feelings of despair and debilitating anxiety that started after the last delay. Both parents were asked to take a random drug test before the next hearing.

Traditional Language

Birth mother had a dirty urine from the last toxicology testing. She is non-compliant with the requirements put forward by the court.

- This statement does not refer to Ms. Richards by her name
- Ms. Richards is not addressed directly but is being spoken about while being present in the courtroom
- The statement focuses only on the negative result from the screening using
- The language used in the statement is judgmental
- The sole focus on the toxicology result is disconnected from Ms. Richard’s actually parenting and presents another hurdle to reunification.

The result is that Ms. Richards’ identity is erased while the negative aspects of her behavior are magnified.

Trauma-Informed Language

Ms. Richards, the results of your urine screen for substance use showed that you have used marijuana within the past month. We discussed the requirements for you and your partner to receive overnight visits with your children the last time you were here. This is a change from how well you both were doing up until the last time we were here. We

also notice that Mr. Thorne test showed no use of substances which is a very good thing. Could you tell me what happened?

- Using Ms. Richards’ name along with acknowledging her efforts in the reunification process gives her a presence in the courtroom where she is seen as a person and not only as an offending figure.
- The judge acknowledged Ms. Richards as a real person in courtroom, allowing a space for her to have a voice, using language that is inclusive and neutral “ Could you tell me what happened”?
- This exchange sets the stage for a more empathetic and collaborative stance with Ms. Richards who may be more encouraged to keep going if she feels understood and supported by the court. Additionally, Mr. Thorne’s consistency is recognized as seen as an asset even with this change.
- This approach aligns with best practices of therapeutic jurisprudence where respectful and empathetic communication in the courtroom are acknowledged as central to collaborative and more productive relationships in family court¹⁴.

Conclusion

In summary, small changes, such as using a parent’s name and eliminating stigmatizing language when discussing an issue that requires attention in the open courtroom/virtual space, can set the foundation for better communication and improved relationships with parents. If the court believes that a parent is able to reunify with their child(ren), this stance sets the stage for a collaborative process from the first hearing throughout. Ask yourself whether or not your courtroom sends the message to each parent entering that, everyone in that room is working towards reunification and that parents have to work their way out of being reunified with their child(ren). I will end with words from Nancy Fortunato:

“This is what justice means to parents. To know that you've done everything within your power to provide real justice, equality, and dignity with the expectation of a better future for all black and brown families”.

This is the goal all who are involved with CWI families should aspire to and see as achievable.

The opinions stated here are the privately held beliefs of the author and do not reflect the values and positions of any affiliated institutions.

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