Shaken baby syndrome (SBS) was first propounded as a child abuse theory in 1971. It quickly took hold and, until recently, has gone virtually unchallenged in the medical and prosecutorial community. Now, other experts are questioning some of the assumptions of SBS. For the parent’s attorney and the child’s attorney, as well, these are extremely challenging cases.

The National Center on Shaken Baby Syndrome estimates that treatment was sought for approximately 1,200 - 1,400 children who were shaken in America last year. Of these, 25 -30% died as a result of their injuries. The rest will have lifelong complications. [See: www.dontshake.com]

Briefly, the SBS theory holds that a constellation of signs and symptoms result from violent shaking or the shaking and impacting of the head of an infant or small child. The degree of brain damage depends on the amount and duration of the shaking and the forces involved in impact of the head. Signs and symptoms range on a spectrum of minor to major neurological alterations — from irritability, lethargy, tremors and vomiting, to seizures, coma, stupor and death.

These neurological changes are due to the destruction of brain cells secondary to trauma, lack of oxygen to the brain cells and swelling of the brain. Extensive retinal hemorrhages in one or both eyes are found in the vast majority of these cases.

The classic triad of subdural hematoma, brain swelling and retinal hemorrhages are accompanied in some, but not all, cases by bruising of the part of the body used as a "handle" for shaking. Fractures of the long bones and/or of the ribs may also be seen in some cases. In many cases, however, there is no external evidence of trauma either to the head or the body. (Robert Reece, M.D. Professor of Pediatrics at the Tufts University School of Medicine.)

Most pediatricians continue to support the validity of SBS, citing 30 years of clinical observations, scientific studies and thousands of confessions by perpetrators. But other experts have begun to challenge the rationale behind SBS. One such expert, Dr. Jan Leestma, a neuropa-thologist at Children’s Memorial Hospital in Chicago, characterized SBS as "an unproven theory that draws power from the emotionality surrounding the universally condemned crime of child abuse, and whose advocates have embraced the diagnosis with a fervor that makes it difficult to question the status quo". ("Shaken Baby Syndrome: a Search for Truth", Chicago Tribune 6/12/2005)

One of the more prominent SBS cases was the 1997 case of Louise Woodward, the British nanny accused of fatally shaking 9-month-old Matthew Eappen in Newton, Mass. Although she was found guilty by the jury of second-degree murder, the judge, in a rare public repudiation of the shaken baby syndrome concept, reduced the verdict to involuntary manslaughter and sentenced her to time served.

Since the Woodward case, pathologists and experts in injury biomechanics have raised a number of central questions about SBS. Dr. John Plunkett, a Minnesota pathologist wrote a 1998 letter to the American Journal of Forensic Medicine and Pathology challenging readers to differentiate between what we scientifically know to be true, and what we think or hope to be true by scientifically answering questions such as: Can shaking a baby, no matter how roughly produce brain and retinal injuries in the absence of some kind of impact? If there is impact, can it be determined whether the impact was the result of child abuse or simply an accidental fall? Can injuries occur and be masked for some days by a

Continued on page 6
Foster Parent Retention Research

A new study released by the U.S. Department of Health and Human Services, Office of Assistant Secretary for Planning and Evaluation (ASPE), examines foster parent retention. “Understanding Foster Parenting: Using Administrative Data to Explore Retention” uses data from child welfare agencies in New Mexico, Oklahoma and Oregon to explore this issue.

Some interesting findings from the report were: length of the service in foster parenting is shorter than many would expect, and a relatively small group of foster parents (one-fifth) provides most (60%-80%) of the foster care.

The study conducted three types of analyses: (1) characteristics of foster parents over multiple years (2) utilization of licensed homes and (3) longitudinal analysis modeling the length of service in foster parenting. From this, researchers found consistent patterns of foster parent activity which included: at least one in five foster homes exited the system each year and there was no significant association between length of service and “burnout.”

A full print copy of this report can be ordered at: http://nccanch.acf.hhs.gov.

The National Council of Juvenile and Family Court Judges has published “Juvenile Delinquency Guidelines: Improving Court Practice In Juvenile Delinquency Cases.” The benchbook utilized best practices developed by a committee of judges, prosecutors, defense attorneys, and juvenile justice practitioners. The publication sets forth the essential elements of effective practice in juvenile delinquency cases, identifying 16 key principles to guide delinquency courts - from determining whether a case should in fact enter the system, to whether the youth should remain under juvenile court jurisdiction or be transferred to criminal court, and to post-disposition review of the reentry process when the youth returns to the community. The guidelines will be of assistance to the nation’s juvenile justice systems to plan for improvement and change. The Juvenile Delinquency Guidelines can be downloaded at www.ncjfcj.org or a print copy can be ordered for $20 at (775) 784-6012.
The Oregon Department of Education has been collecting data from each school district on suspensions and expulsions. Data is provided regarding the rates of suspensions of minority students as a percentage of all suspensions and expulsions.

Disproportionality is assessed by comparing the percentage of disciplinary actions involving minority students to their percentage in the student population as a whole. Dividing the percentage suspended or expelled by the percentage enrolled yields a disproportionality factor. **A factor greater than 1.10 denotes disproportionately high minority discipline rates.**

The Oregon school districts with the most disproportionate rates of minority suspensions and their rates of disproportionality in 2003-04 were:

<table>
<thead>
<tr>
<th>District</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canby SD</td>
<td>1.62</td>
</tr>
<tr>
<td>Lakeview SD</td>
<td>1.7</td>
</tr>
<tr>
<td>Portland Public SD</td>
<td>1.53</td>
</tr>
<tr>
<td>Rogue River SD</td>
<td>2.72</td>
</tr>
<tr>
<td>Silver Falls SD</td>
<td>1.5</td>
</tr>
<tr>
<td>Vale SD</td>
<td>1.68</td>
</tr>
</tbody>
</table>

The school districts who had the lowest rates of suspension of minority students, relative to their enrollment in 2003-04 were:

<table>
<thead>
<tr>
<th>District</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colton SD</td>
<td>0.58</td>
</tr>
</tbody>
</table>

The school districts with the most disproportionate rates of minority suspensions and their rates of disproportionality in 2003-04 were:

<table>
<thead>
<tr>
<th>District</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Douglas SD</td>
<td>0.62</td>
</tr>
<tr>
<td>Glide SD</td>
<td>0.62</td>
</tr>
<tr>
<td>Hood River SD</td>
<td>0.55</td>
</tr>
<tr>
<td>Neah-Kah-Nie SD</td>
<td>0.63</td>
</tr>
<tr>
<td>Sweet Home</td>
<td>0.37</td>
</tr>
<tr>
<td>Three Rivers SD</td>
<td>0.39</td>
</tr>
</tbody>
</table>

These districts had the most disproportionate rates of minority student expulsions:

<table>
<thead>
<tr>
<th>District</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clatskanie SD</td>
<td>3.52</td>
</tr>
<tr>
<td>Gladstone SD</td>
<td>3.22</td>
</tr>
<tr>
<td>Neah-Kah-Nie SD</td>
<td>4.0</td>
</tr>
<tr>
<td>Newberg SD</td>
<td>2.55</td>
</tr>
<tr>
<td>Oakland SD</td>
<td>4.08</td>
</tr>
<tr>
<td>Silver Falls</td>
<td>2.7</td>
</tr>
<tr>
<td>Springfield SD</td>
<td>2.67</td>
</tr>
<tr>
<td>Sweet Home</td>
<td>2.12</td>
</tr>
<tr>
<td>Winston-Dillard SD</td>
<td>2.15</td>
</tr>
</tbody>
</table>

Many other school districts had rates of disproportionate minority expulsion factors between 1.1 and 2.0. The following districts had the lowest minority expulsion rates in proportion to minority student enrollment:

<table>
<thead>
<tr>
<th>District</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corvallis SD</td>
<td>0.50</td>
</tr>
<tr>
<td>Eagle Point SD</td>
<td>0.31</td>
</tr>
<tr>
<td>Hermiston SD</td>
<td>0.53</td>
</tr>
<tr>
<td>Klamath Falls Cty SD</td>
<td>0.45</td>
</tr>
<tr>
<td>Lebanon Community SD</td>
<td>0.50</td>
</tr>
</tbody>
</table>

Data on suspensions and expulsions were not available from every district.

While it is helpful to know the districts where minority overrepresentation in student discipline is highest, the data collected by the state does little to address the problem. Experts who have studied this problem recommend that data be broken down by race and that districts examine data on a school by school basis.

On July 22, 2005, a Multnomah County jury convicted Michael Lee Boyles, a former juvenile probation officer with the Oregon Youth Authority, of 45 counts of sexually abusing four boys in his care, providing them with marijuana and engaging in official misconduct. Charges about a fifth boy were dropped because he couldn’t testify. The 21-year-old alleged victim committed suicide earlier this year. Also convicted in the consolidated trial was Jim G. Lyman, a former foster parent, of one count of third degree sexual abuse.

The case raised numerous questions about how such abuse could go on for so long. One juror commented: “I’d like to know why his bosses weren’t up there with him... Seems like they let things go for a long time, and he was kind of hung out to dry.” (The Oregonian, 7/23/05)
Racial Disproportionality in Foster Care

The Race Matters Consortium at the Children and Family Research Center, School of Social Work, University of Illinois at Urbana-Champaign, has published “A Model for Examining Disproportionality.” The three-page document outlines key decision-making points in the process of reporting, screening and investigating child abuse reports.

The brief also describes two alternate pathways into the child welfare system for African-American children, in particular. Some groups of minority children experience higher rates of risk factors correlated with child abuse and neglect. When child welfare systems look at risk factors without also considering mitigating factors that reduce the impact of those risk factors on ethnic minority children, the result is that disproportionately higher rates of minority children are under the jurisdiction of child welfare systems and are placed in foster care.

Alternatively, when mitigating factors decrease the risk of child abuse and neglect among minority populations, and communities and child welfare agencies respond appropriately to the mitigated risk, then there is no disproportionate representation of ethnic minority children in child welfare systems. The Consortium cites findings in a community of 10,000 youth under the age of 18 in its report, “Addressing Disproportionality in the Child Welfare System: Defining the Issue,” that African-American children were three times more likely to be in foster care than were Caucasian children. Native American children were five times more likely, Asian-American children were twice as likely and Hispanic children were 1.6 times more likely than Caucasian children to be in foster care.

The authors discuss the success of systematic decision making in juvenile justice systems where objective criteria are used at key decision points in the system in order to reduce bias in decision making and, thus, disproportionality. These documents and others on racial disproportionality and disparity are available at: http://www.racemattersconsortium.org/dispro.htm.

Youth who Run from Foster Care

The Chapin Hall Center for Children at the University of Chicago has released its 2005 report, “Youth Who Run Away from Substitute Care.” The report discusses some of the common characteristics of youth who are more likely to run away from foster care, including: age, gender, race, access to biological families, substance abuse and mental health issues and other factors.

The report clearly asserts, however, that the reasons for running are complex and cannot be easily generalized. It discusses four areas which may influence running behaviors to varying degrees in different individual youth, including: Running to Family of Origin; Rotating to Friends and the Streets; Touching Base and Maintaining Relationships; and Running at Random.

The report was based upon an analysis of the records of 14,000 youth in care in Illinois between 1993 and 2003. Researchers conducted interviews with 42 youth who had recently run away and returned to care. They also interviewed foster parents and child welfare professionals.

The full report and an issue brief can be found at: http://www.chapinhall.org/article_abstract.aspx?ar=1382&L2=61&L3=130.

A groundbreaking decision from the Wisconsin Supreme Court requiring taping of juvenile interrogations is being praised by attorneys, judges and advocates as a means of protecting both children and police from false accusations. “The number one thing kids say about why they falsely confess is that ‘I just thought I’d get to go home,’” according to Eileen Hirsch, assistant state public defender, quoted in the Milwaukee Journal Sentinel (7/7/05).

Children’s Court Judges commented that the new requirement will help them get a clearer picture of the circumstances of juvenile confessions and could save court time. As the Court stated: “It is time for Wisconsin to tackle the false confession issue and take appropriate action so that the youth of our state are protected from confessing to crimes they did not commit.” The appellant was 14 and was questioned for 5-1/2 hours. The Court noted his age made him “uncommonly susceptible to police pressure.”
By Maite Uranga, Law Clerk

Christopher Simmons was a seventeen year-old high school junior when he committed murder. Nine months after he turned eighteen he was tried and sentenced to death. The Missouri Supreme Court overturned the sentence as a violation of the cruel and unusual punishment clause of the 8th Amendment. State ex rel. Simmons v. Roper, 112 S.W.3d 397 (2003). The U.S. Supreme Court upheld the Missouri Supreme Court opinion in Roper v. Simmons citing the evolving standards of decency in both a domestic and international context. 125 U.S. 1183 (2005).

The ABA Center for Continuing Legal Education recently held a teleconference to examine the significance of the decision and outlined ways in which lawyers can use Roper in daily practice. The teleconference focused on the Supreme Court’s scientific and international legal analysis of the issue.

With the help of several amicus parties including the American Medical Association, the American Psychiatric Association, the American Society of Adolescent Psychiatry and the Missouri Psychological Association, the court established that a juvenile should not be held to the same standards as an adult. The court wrote, “it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” Id. at 1195-1196.

During the teleconference, Dr. Mark Wellek expanded on the court’s analysis and talked about the adolescent brain. The amygdala, the portion of the brain that filters right from wrong, is not fully developed in adolescents, which raises the question of a juvenile’s culpability for a crime. The male brain is not fully developed until twenty-five to twenty-eight years of age. Juvenile lawyers can use forensic science to challenge juveniles being tried as adults and for extensive sentences.

The second area which the court relied on was international law. The court cites several international conventions, including American Convention on Human Rights, African Charter on the Rights and Welfare of a Child, International Convention on Civil and Political Rights and a great emphasis on the U.N. Convention on the Rights of the Child (“CRC”). The Convention on the Rights of the Child explicitly forbids the execution of juveniles, with every country in the world signing the document except for the United States and Somalia. The court concludes from this situation it is “fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty.” Id. at 1199.

The court concludes international law is not binding on the court but international law does inform the court and provides further validation to the decision to abolish the juvenile death penalty. The use of the CRC and other international conventions may be used as persuasive precedent in a wide variety of juvenile proceedings limited only by lawyer’s creativity. Juveniles being tried as adults, excessive sentences and immigration matters are common areas in which lawyers may use the CRC.

NOTE: If practitioners wish to use either the scientific argument or the international law argument in juvenile proceedings, the following website provides a link to examples of both arguments which have been submitted to courts. (http://www.abanet.org/cle/programs/nosearch/trvsmo.html)

$10 Million Settlement Offer in Starvation Lawsuit

The New York Times ran an article April 8, 2005, on what is said to be one of the largest settlement offers in history of the NJ Department of Youth and Family Services. The case involves three minor children who were found weighing no more than 45 pounds. They were removed from their adoptive home when a neighbor found the 19-year-old sibling of the three minor children rummaging through the garbage for food. The state fought the lawsuit but a federal judge ruled that the three children had the right to sue the state for damages under a 1991 New Jersey law entitling foster children to appropriate food, clothing, housing, medical care and education. The State’s settlement offer followed the Judge’s ruling.

Oregon Adoption Overturned

On June 2, 2005, The Oregonian, carried the story of an overturned adoption. The birth mother, had given her baby up for adoption and claimed that she had tried repeatedly to contact the birth father. The adoptive parents were present at the baby’s December 7th birth, took her home and started their new family. Later, however, the biological father asserted his parental rights and claimed that he was not informed of the impending adoption and not given a chance to object. On March 7, 2005, Judge Paula Kurshner ordered the baby returned to the father. As a result of this case, Catholic Charities is re-examining its procedures for notifying birth fathers of adoptions.
Shaken Baby Syndrome, continued from page 1

"lucid interval" before they ultimately produce symptoms?

SBS critics hypothesize that a strong impact is much more likely to cause the injuries seen in these cases than shaking. One of the most influential studies was conducted by Dr. Ann-Christine Duhaime at the University of Pennsylvania. Her research used three models of a month-old infant. Each was subjected to violent repetitive shaking and then shaking followed by impact. The accelerations of the model's head were measured by an implanted accelerometer. The average acceleration for shaking alone was a little over 9 Gs, or nine times the force of gravity. Shaking and impact together was 428 Gs.

Duhaime concluded that the 9 g accelerations from pure shaking didn't come close to the threshold for brain injury, concluding that shaking alone does not produce shaken baby syndrome. Impact can, of course, come from abusive or negligent banging of the child's head, but it can also come from a fall.

SBS proponents assert that the types of injuries found in these cases could only come from the equivalent of a two-story fall or the impact of an auto crash at 30 m.p.h. But SBS critics say short falls from a height of only three feet can produce the same result.

Dr. Michael Prange, an expert in injury biomechanics at Penn, reported results of an experiment that measured the acceleration of the head in free falls from 1, 3 and 5 feet onto various surfaces. Using a more sophisticated model than Duhaime's, he compared these accelerations with those sustained during shaking as well as inflicted impact. His data, published in the Journal of Neurosurgery, showed that peak accelerations for a 3-foot fall onto concrete were 40 times greater than for shaking.

A conflicting study cited by SBS proponents looked at 690 cases of 3 to 4 foot falls in hospitals. No serious injuries were found in this group.

"Innocence Projects" in at least two states are beginning to take on SBS cases. Like DNA cases, it is believed that there is new science that can show whether a person convicted in a SBS case is guilty or innocent. The Innocence Projects assert that physicians are making scientific conclusions that are outside their areas of expertise.

Dr. Thomas Bohan, a forensic physicist and attorney and vice president of the American Academy of Forensic Sciences, believes it is time for and independent panel to resolve the debate.

Extensive materials about SBS are available at: www.dontshake.com
By Mark S. McKechnie, MSW

A new set of Oregon Administrative Rules was filed by the Department of Human Services on June 24, 2005. The rules, covering 309-032-1240 through 1305, outline the "Standards for Children's Intensive Community-Based Treatment and Support Services," under which mental health providers can apply for certification.

The rules outline standards for clinical staffing, supervision and other areas. The rule covers intensive services that are delivered in clinic, facility, home, school and other locations, including: 24 hour, seven day a week capacity for crisis prevention and intervention services; psychiatric and psychological services; psychotherapies; family support services and respite care.

These services are intended for many of the children who have traditionally been served in Oregon's day treatment, residential treatment and hospital programs. For children who qualify for this array of intensive services, a child and family team meeting must be convened by the provider's care coordination staff no later than 14 calendar days from the authorized referral for services.

The team's first job is to develop a plan of care. Such plans include: strengths and needs assessment; short and long-term goals across life domains; existing, new or modified formal services, as well as informal services and natural supports; and a proactive safety/crisis plan, including 24/7 support.

The rule also outlines child and family rights, including the rights to informed consent, to refuse services, to confidentiality, to consent to records disclosure, to inspect clinical records, to participate in treatment planning and to due process.

The rule refers to the grievance, complaint and appeal processes outlined in existing OARs. These processes were discussed in the Juvenile Law Reader, vol. I, issue 3, page 6, which can be accessed at: http://www.jrplaw.org/documents/JRPReaderV1Is3.pdf.

HAS YOUR COUNTY REACHED IT'S TRAINING SCHOOL CAP?

When facing a recommendation for training school commitment, it can be useful to know whether your county is close to, at or over their bed allocation to help the judge focus on whether this particular youth should be committed. Bed Allocation reports are issued by OYA on a weekly basis and can be accessed by Judy Satrum (Judy.Satrum@state.or.us) or on the OYA website.

Educating the Child with Bipolar Disorder

This six-page guide from the Child and Adolescent Bipolar Foundation is useful for educators, parents, clinicians and advocates in better understanding the various issues children with bipolar disorder can face in the school environment.

The guide includes basic information about the disorder and how it can manifest in children. In addition, it provides practical information on such topics as: Commonly Seen Behaviors; How Bipolar affects Cognition and Learning; Strategies for Teaching and Suggested Accommodations.

The section on "Managing Challenging Behavior" states: "Bipolar disorder affects the areas of the brain that regulate memory, speech, thought, emotions, personality, planning, anxiety, frustration, aggression and impulse control." It suggests that: "Children with bipolar disorder need adults around them who are positive, calm, firm, patient, consistent, loving, and who encourage them to behave appropriately."

Children diagnosed with bipolar disorder can qualify for special education services under the "Other Health Impaired" category. The guide recommends that many students would need a behavior intervention plan developed by their IEP teams to build children's skills in terms of anger management, social rules, non-verbal communication and other areas.

Upcoming Conferences, CLE’s and Trainings

The 28th National Law Conference of the National Association of Counsel for Children presents:

“State of the Art Advocacy for Children, Youth, and Families”

This event will be held August 25-28, 2005, at the historic Renaissance Hollywood Hotel in Los Angeles, CA.

This high quality annual conference features a variety of different speakers on four separate tracks that you can choose from, including: (1) Abuse and Neglect (2) Juvenile Justice/ Delinquency (3) Family Law and (4) Policy Advocacy.

It is designed for professionals in a range of fields including law, medicine, mental health, social work and education. Highlights of the event include: “Ethical Issues in the Practice of Juvenile Law”, "Representing Lesbian, Gay, Bisexual, Transsexual and Questioning Youth in Both Dependency and Delinquency Cases”, a tour of the Edelman Children’s Courthouse and the Children’s Law Center and much more!

ESSENTIALS OF JUVENILE COURT PRACTICE FOR OREGON ATTORNEYS IN OCT. 2005

Don’t forget to save the date for this important training, co-sponsored by the Juvenile Court Improvement Project, Juvenile Rights Project, Inc., the Oregon Criminal Defense Lawyers Association, Oregon State Bar Association (Juvenile Law Section), the Public Defense Services Commission and the University of Oregon Law School.

Focus: The essential things lawyers need to know to practice in juvenile court representing parents and children. This two-day training is intended to be a brief but thorough overview of the information lawyers need to provide quality representation to clients in juvenile court proceedings. Comprehensive materials will be provided, including references to statutes, case law, and administrative rules; materials on child and adolescent development, mental health, drug and alcohol issues; education law; child abuse reporting requirements; the Indian Child Welfare Act; criminal law and procedure for delinquency practitioners; the law of evidence; and much, much more!

Dates: October 17-18, 2005

- Location: Lane County Juvenile Justice Center on the John Serbu Youth Campus in Eugene, Oregon.
- Registration: Early Bird Registration: $50, before October 1st; after October 1st: $75. Lunch is extra at $10 each day, or bring your own. To register, contact OCDLA at 541-686-8716 or register online at: www.ocdla.org.

We’re on the web at: www.jrplaw.org

Juvenile Rights Project, Inc. (JRP) is a public interest law firm and advocacy organization promoting the rights and interests of our community’s most vulnerable children – those involved in the child welfare and juvenile justice systems. JRP has a 30-year history of representing children individually in the Multnomah County Juvenile Court and through class action litigation. JRP also advocates for Oregon’s children in the legislature and with public agencies, and offers training and technical assistance to families, social service and legal professionals around the state who care for and work on behalf of some of Oregon’s most disadvantaged children.