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The True Detriment of Sibling Separation Lies in the Law

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I. INTRODUCTION

Mary, a thirty-four-year-old single mother, spends all day and half the night working her two minimum wage jobs to provide for her fourteen-year-old son, Stephen, and her three-year-old daughter, Danielle. Ever since their father was killed a year ago, Mary has had to pick up the slack. She comes home and gets four hours of sleep per night in their Section 8 housing that she got with the voucher the government gave her. She cannot do it all herself; she needs Stephen to step up and help take care of little Dani. Stephen has for the last year. Although Stephen has taken responsibility for the last year, Mary knows that she cannot force Stephen to be a parent at fourteen; Stephen has to be able to still do fourteen-year-old things too.

It is winter break during Stephen's freshman year of high school. Dani is still in preschool/daycare during the break some days. Stephen has taken to wanting to stay the night at his friends' houses recently and did so last night. This morning Stephen was still at his friend's' house, so Mary had to get up a little earlier to get Dani ready. After sleeping through two of her alarms and only getting three and a half hours of sleep, Mary barely has enough time to get Dani prepared for daycare. With her tired, bloodshot eyes, Mary drops off a messy, sick, Dani without her lunch, her hair brushed, or a jacket. The teacher hears Dani mention to another student that "her mommy forgot to take her to her doctor's appointment yesterday."

As a mandatory reporter, the teacher of the preschool called Child Protective Services ("CPS"). The social worker assigned to the case begins to investigate. The social worker comes while Stephen is at his friend's home for a couple of days and notices that the mother is never home, lives in a rough area with her two children, and the house is an absolute mess. The social worker files a dependency petition with the superior court and takes Dani into protective custody. Twenty-four hours later, at the initial hearing, the mother tells her story, but the problem is that she has admitted that she cannot care for the child on her own and that she has no immediate family. The court decides to detain Dani, meaning she is removed from Mary's custody and placed in a temporary home.

Fifteen days later, the court holds the mandatory jurisdictional hearing and finds under subdivision (b) of the California Welfare and Institution Code section 300 that Dani is a dependent within the jurisdiction of the court. The court can obtain jurisdiction over Dani under subdivision (b) due to Mary's negligent failure to provide Dani with adequate clothing, shelter, and medical treatment. Because the court detained Dani, the disposition hearing must occur within ten days, but

ten days is not enough time for Mary to have changed the situation whatsoever.

Six months comes and goes, and Mary is treading water paying for the housing, paying for meals, giving Stephen his allowance, trying to get the house clean, and taking a few shifts off per month to get to her visitation times with Dani. At the Six-Month Review Hearing, Dani continues to be detained because the court is not convinced by a preponderance standard that enough has changed to dispel the concern that Dani is at risk.

Six more months pass by. Mary has managed to trade her day-job for another job with growth potential. The judge likes the improvement, but nothing has really changed in regard to her ability to care for Dani. At the twelve-month review hearing, Dani remains in custody, but the court decides to continue the permanency hearing until the eighteen-month point because there is a chance Mary could regain custody.

Six months later—eighteen months after the disposition hearing where the judge ruled Dani must be taken into custody as a dependent—parental rights are at issue. Mary got promoted at her new job, but it has not been long enough for her to afford to quit her late-shift, minimum-wage job. This is Mary's last chance to show the court that her parental rights should not be terminated. Stephen attends the hearing and tells the judge how much he stepped up in the past to help take care of Dani. Mary's attorney argues that this is the exact case where the sibling exception to the termination of parental rights under California's Welfare and Institution Code section 366.26(c)(1)(B)(v) applies. If the attorney can show this exception applies to Dani, she will be returned to Mary rather than Mary's parental rights being terminated. To show how this exception applies, the attorney must prove several things to the judge. First, there must be a significant sibling bond between Dani and Stephen. Second, the termination of parental rights must substantially interfere with that sibling relationship. Third, that substantial interference with the sibling relationship must cause detriment to the dependent child. Finally, if the judge decides that the detriment due to the separation from the sibling outweighs the benefits that the dependent child would receive from the permanency of adoption, then the exception applies.

Mary's attorney puts Dani up on the stand who tells the judge how much she loves Stephen, that she will be sad if she doesn't go home with Stephen, how Stephen is the one who taught her to tie her shoes, how Stephen is the one who taught her how to make cereal, how Stephen is the one who walks her to daycare and watches Saturday morning cartoons with her. But to no avail, because although the judge says the separation will not be good for Dani, it also will not cause detriment

either. Even if the separation did cause detriment, it just does not outweigh the benefits of adoption.

II. BACKGROUND

A child is a dependent under the court's jurisdiction if the child falls within any of the exceptions enumerated within the California Welfare and Institutions Code. Once jurisdiction has been established, a hearing is held where the judge decides in a disposition hearing whether the child will remain in the custody of the parents or enter the foster care system. Unless "the court finds by clear and convincing evidence" that the dependency situation falls within one of the seventeen exceptions to the rule, parents must be provided with services to help them reunite with the dependent child.[1]

After the disposition hearing, if the child remains in the custody of the parents, the dependency status is dismissed. However, if the child is removed, two hearings are held: the six-month hearing and the twelve-month hearing.[2] Reunification can occur at these hearings depending on the judge's subjective determination of the parent's progress with services and whether any goals the judge has required are met, such as completion of rehab or domestic violence classes.[3]

The six-month hearing requires the child to be returned to the parent's custody unless the court finds by a preponderance of the evidence that the child is still at substantial risk.[4] However, the twelve-month hearing is a permanency hearing meant to determine the permanent plan for the dependent child.[5] "If the child is not returned to a parent . . . the court shall order that a hearing be held pursuant to section 366.26 in order to determine whether adoption, or . . . another planned permanent living arrangement is the most appropriate plan for the child."[6] This hearing is referred to colloquially as the "Two-Six" hearing, due to the statute section requiring the hearing.[7]

At these hearings, including the "Two-Six," the court must return the child to the custody of the parents unless "the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of

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[1] Cal. Welf. & Inst. Code § 361.5(b)(1-17) (Deering 2020).
[2] *See* Cal. Welf. & Inst. Code § 366.21(e)(1); 366.21(f)(1) (Deering 2020).
[3] Cal. Welf. & Inst. Code § 366.25(a)(1) (Deering 2020).
[4] Cal. Welf. & Inst. Code § 366.21(e)(1) (Deering 2020).
[5] Cal. Welf. & Inst. Code § 3616.21(f)(1) (Deering 2020).
[6] Cal. Welf. & Inst. Code § 366.25(a)(3) (Deering 2020).
[7] *See* Cal. Welf. & Inst. Code § 366.26 (Deering 2020).

the child."[8] "The social worker shall have the burden of establishing that detriment."[9] If after the Two-Six hearing the court is still unable to reunite the parent with the child, parental rights will be terminated, and a permanent plan will be determined.[10]

"Adoption . . . is the permanent plan preferred by the legislature."[11] However, the Agency must show "by a clear and convincing standard, that it is likely the child will be adopted."[12] "If the court finds a minor cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the minor under one of five specified exceptions;"[13] one of which is the sibling exception.[14]

The sibling exception provides that if "[t]here would be substantial interference with a child's sibling relationship," the court shall not terminate parental rights.[15] "To show a substantial interference with a sibling relationship, the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child."[16] To determine whether interference would be substantial, the court should consider:

> [T]he nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.[17]

If, *and only if*, a judge is convinced there is a significant sibling bond and a substantial interference could occur to that bond due to the removal which causes a detriment to the dependent, does the judge

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[8] Cal. Welf. & Inst. Code § 366.22(a)(1); 366.25(a)(1) (Deering 2020).
[9] Cal. Welf. & Inst. Code § 366.22(a)(1); 366.25(a)(1) (Deering 2020).
[10] Cal. Welf. & Inst. Code § 366.26 (Deering 2020).
[11] In re Autumn H., 27 Cal. App. 4th 567, 573 (1994); In re Heather B., 9 Cal. App. 4th 535, 546 (1992).
[12] Cal. Welf. & Inst. Code § 366.26(c)(1) (Deering 2020); *see also* In re Autumn H., 27 Cal. App. 4th 567 (1994); In re L.Y.L., 101 Cal. App. 4th 942, 947 (2002).
[13] In re L.Y.L., 101 Cal. App. 4th at 947 (citing § 366.26 (c)(1)); In re Jamie R., 90 Cal. App. 4th 766, 773, (2001)).
[14] Cal. Welf. & Inst. Code § 366.26(c)(1) (Deering 2020).
[15] Cal. Welf. & Inst. Code § 366.26(c)(1)(B)(v) (Deering 2020).
[16] In re L.Y.L., 101 Cal. App. 4th at 952.
[17] Cal. Welf. & Inst. Code § 366.26(c)(1)(B)(v) (Deering 2020).

"weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive from the permanency of adoption."[18]

Logically, the sibling exception would only be relevant to a child found to be a dependent under subsection (b) of California Welfare and Institutions Code section 300, like Dani, because the protection from any physical or mental abuse that rises to the level of the other subsections will almost certainly outweigh the detriment from interference with the sibling bond. Subsection (b) states the child can be found to be a dependent if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of" neglect by the parent.[19] Additionally, if one child is found to be a dependent under this subsection, but their sibling is not, it is likely due to an age gap large enough that the children require different amounts of care and attention, similar to the situation between Dani and Stephen.[20]

The purpose of the Welfare and Institutions Code for dependent children "is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm."[21] When children are treated poorly or inadequately cared for to the point that the court considers the child a dependent within the court's jurisdiction, it is hard to justify any exception to removing the child from their parents' custody. It is hard to justify leaving the child to be abused or neglected because no child deserves to be treated in that manner. If an exception to the termination of parental rights, such as the sibling exception, were to unequivocally undermine the purpose of the chapter, it would be counterproductive.

The sibling exception does not undermine the purpose of the chapter. Although separation has several benefits, "the most obvious being the immediate safety of the child,"[22] separation can have "profound [detrimental] effect[s] on [children]," as well.[23] Currently, the

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[18] In re L.Y.L., 101 Cal. App. 4th at 952 (citing § 366.26(c)(1)(B)(v)).

[19] Cal. Welf. & Inst. Code § 300(b)(1) (Deering 2020).

[20] These distinctions do not affect the analysis or recommendations contained herein.

[21] Cal. Welf. & Inst. Code § 300.2 (Deering 2020).

[22] *Practice Notes for North Carolina's Child Welfare Workers*, Child. Serv., http://www.practicenotes.org/vol2_no4/cspnv2_4.pdf , (last visited July 3, 2018)

[23] Sarah Farnsworth, *Children Separated from Siblings in Foster Care Feel 'Powerless, Anxious', CREATE Foundation Study Find*s, ABCNEWS, (June 14, 2015), http://www.abc.net.au/news/2015-06-15/children-separated-from-siblings-in-foster-care-feel-powerless/6546110.

judge must decide whether the benefits of separation outweigh the detriment. Since the judge is the sole finder of fact in these cases, judicial bias can affect the decision.

Proponents of the current system will argue that, in many cases, eliminating this judicial bias from the determination of detriment may not change the outcome of removal due to the overwhelming need to separate the child from their parents. Neglectful parenting, for example, can cause an internal struggle of "self-worth and value."[24] Further, both "abuse and neglect have an adverse effect on children's brain development."[25] Traumatic "experiences alter the functioning of an adult brain . . . [but] abuse and neglect can impact a child's emotional development" and alter their brain's framework.[26] Abuse can have mental and emotional effects, but the "[p]hysical consequences range from minor injuries to severe brain damage and even death."[27] Although abuse is "the most damaging . . . [i]gnoring or neglecting a child's needs can create . . . mental health problems," as well.[28]

However, this Article does not argue that all, or even that a significant amount of dependency proceedings involving the sibling exception, are incorrect. Nor does this Article argue the sibling exception should be given more weight than adoption. It argues that the sibling relationship should be given a just amount of weight to further the true purpose of dependency: to find the best option for the child and "not disrupt the family unnecessarily or intrude inappropriately into family life."[29]

III. THE PROBLEM WITH THE CURRENT SYSTEM

The current system for determining if and how the sibling exception applies is problematic in multiple ways. The system is riddled with the potential for (A) bias from judges, expert witnesses, and others involved in the proceedings; (B) improper weighing of facts and arguments; and (C) improper use of facts, making the current process inadequate to

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[24] Karyl McBride, Ph.D., *The Long-Term Impact of Neglectful Parents: The Lifelong Effects of Childhood Neglect*, Psych. Today (Aug. 21, 2017), https://www.psychologytoday.com/us/blog/the-legacy-distorted-love/201708/the-long-term-impact-neglectful-parents.

[25] McBride, *supra* note 24.

[26] McBride, *supra* note 24.

[27] National Research Council, Understanding Child Abuse and Neglect, 208 (Nat'l Academies Press eds., 1993), https://www.nap.edu/read/2117/chapter/6.

[28] McBride, *supra* note 24.

[29] Cal. Welf. & Inst. Code § 300 (Deering 2020).

further the purpose of dependency law when evaluating the sibling exception.

A. Bias

Everything is affected by some bias, even if it is only unconscious experiential bias. It is because of bias that nearly all trials provide the option of having a jury. During dependency trials, however, this bias is not mitigated in any way, which needs to change.

Bias does not necessarily carry the colloquial negative connotation involving 'prejudice,' it just requires preference. "Bias is a tendency to prefer one person or thing to another, and to favor that person or thing."[30] There are multiple kinds of bias,[31] "[b]ut experiential bias is inescapable, affecting everyone who's ever had an experience."[32] "'[E]xperiential bias is largely self-evident; people make decisions based on what they have learned from their experiences."[33] There are three types of bias that occur in adversarial settings: "(1) conscious bias, (2) unconscious bias, and (3) selection bias."[34] Experiential bias is typically an unconscious bias. Unconscious bias includes confirmation bias—which causes "people to pay more attention to information that confirms their existing belief system and disregard that which is contradictory."[35] Experts believe that the mind's subconscious is responsible for eighty percent or more of the thought processes,[36] thereby making it difficult to escape unconscious bias.

1. Judicial Bias

The courts are split as to whether the ending of the sibling relationship would cause detriment. The lack of consistent outcomes in cases with similar facts (and even inconsistent opinions about the same facts such as the *In re L.Y.L.* case discussed below) shows the system's need for change. The courts in the following two cases examine the same

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[30] *Bias*, Collins English Dictionary (10th ed. 2010).

[31] *See* David E. Bernstein, *Expert Witnesses, Adversarial Bias, and the (Partial) Failure of the Daubert Revolution*, 93 Iowa L. Rev. 451, 454 (2007) (discussing the types of bias); *see also* Sharon E. Rush, *Federalism, Diversity, Equality, and Article III Judges: Geography, Identity, and Bias*, 79 Mo. L. Rev. 119 (2014); Kathleen Nalty, *Strategies for Confronting Unconscious Bias*, 45 Colo. Law. 45 (2016).

[32] Rush, *supra* note 31.

[33] Rush, *supra* note 31.

[34] Bernstein, *supra* note 31.

[35] Nalty, *supra* note 31.

[36] Nalty, *supra* note 31.

child and relationship but have different ideas as to how the sibling exception applied.

The trial court in *In re L.Y.L.* (hereinafter "*L.Y.L."*) found that the sibling exception did not apply, and the appellate court affirmed.[37] The court ruled L.Y., a four-year-old, and J.R., the younger brother, were dependents under section 300(b) and removed them from L., the mother.[38] In the trial court, the social worker said, "L.Y. loved J.R. and they were very close. L.Y. said she would be sad if J.R. lived with L. and would miss him and worry about his safety. L.Y. and J.R had a relationship and had lived together most of their lives."[39] Aside from "being sad", the court found "no evidence that L.Y. . . .would suffer detriment if the relationship ended."[40] Due to the inability of this child to express her feelings any more accurately than "sad," the court concluded that the mother had "not sustained her burden of proof that termination of her parental rights to L.Y. would substantially interfere with L.Y.'s sibling relationship with J.R."[41] However, the court continued with the analysis and went on to find that "[v]aluing L.Y.'s continuing relationship with J.R. over adoption would deprive her of the ability to belong to a family, which is not in her best interests."[42] More specifically, it concluded that "[i]f parental rights are terminated here, L.Y. gains a permanent home through adoption …" so "the benefits of adoption outweighed the benefits of the [*sic*] continuing L.Y.'s relationship with J.R., even if it be assumed [*sic*] that termination of parental rights would result in a substantial interference with the sibling relationship."[43]

The court in *In re Jacob S.* (hereinafter "*Jacob S.*") disagreed with the conclusion the court came to in *L.Y.L.*[44] The *Jacob S.* court "[found] *In re L.Y.L.*, instructive to a point."[45] However, it concluded *L.Y.L.* was wrong in "that a child's 'sadness' can never satisfy the substantial detriment test."[46] The *Jacob S.* court reasoned that "'[s]adness' is often all a young child can express."[47] An adult would say "'[t]his will make

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[37] *In re* L.Y.L., 101 Cal. App. 4th 942, 947 (2002).
[38] *Id.* at 946.
[39] *Id.* at 952.
[40] *Id.*
[41] *Id.*
[42] *Id.* at 953.
[43] *In re* L.Y.L., 101 Cal. App. 4th 942, 953 (2002).
[44] *In re* Jacob S., 104 Cal. App. 4th 1011, 1017 (2002).
[45] *Id.*
[46] *Id.*
[47] *Id.*

me sad, but I can deal with it,' or, they can say '[t]his will devastate me; I can't imagine life without my sibling and I don't think I want to live without him or her,' [whereas] a child is likely to describe both as making him, 'sad.'"[48] The court concluded that sadness can "satisfy the substantial detriment test."[49]

Both courts looked at L.Y.'s situation, and one found that 'sadness' was not enough. In contrast, the other court determined that just because a child cannot articulate feelings in any other way than "sadness," a finding of detriment is not precluded.

These differences in analysis and conclusions seem to come from either a misunderstanding of child psychology or judicial bias. Even if the argument is made that the differences are simply explained by differing interpretations of laws or facts, the interpretation is affected by unconscious experiential bias at a minimum. It is obvious why a judge with bias deciding anything, let alone a child's future, is a problem, but even if the differences are due to a misunderstanding rather than bias, it is still a problem because a judge who does not understand child psychology should not decide whether one option would be more detrimental or beneficial to a child.

Specifically, the bias here is likely the type of unconscious experiential bias known as "confirmation bias," which causes a judge to conclude quickly and then search for facts and evidence to support that conclusion. But experiential bias can also be conscious when a judge interposes personal thoughts or preferences about growing up. These differing decisions could be the result of opinions regarding the importance of siblings or a true sibling relationship.

The criteria for determining a "substantial interference" is subjective and allows a fact finder to mold the determination to its own beliefs with little restraint. The purpose of *voir dire* is to flush out bias from the jury. It is common knowledge that a jury of multiple people is selected for factual determinations to mitigate the experiential and unconscious bias from individual jurors such as "reasonable," "substantial," "detrimental," or other similar terms. But here, a single judge determines whether the interference is "substantial" or if the dependent child suffered "detriment." Then, the judge, who has not seen or has hardly seen the children interact and knows nothing else but the words that have been spoken to them from the parties about the situation, decides whether that detriment outweighs the benefits of the permanency

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[48] *Id.*
[49] *Id.*

of adoption for that child. There are no mechanisms in the current sibling exception determinations to flush out bias from a judge.

In some situations, "court-ordered sibling bond studies may be appropriate."[50] Proponents of the current system would likely argue this mechanism mitigates the judicial bias by providing neutral expert analysis. But this is not an adequate solution for a few reasons. For example, "the juvenile court [does] not have a *sua sponte* duty to consider the sibling relationship exception."[51] Second, if the sibling exception is not raised in the trial court, not only will it not be considered *sua sponte*, but "failure to raise the exception at the section 366.26 hearing forfeits the issue for purposes of appeal."[52]

Additionally, court-ordered sibling bond studies do not solve the issue if the studies are not done in every applicable case, mainly because "in dependency matters . . . 'considerations such as permanency and stability are of paramount importance.'"[53] Placement for adoption or preventing the termination of parental rights to continue a sibling relationship is a question of permanency and stability. If court-ordered sibling bond studies were a valid counter-argument, the bias of the judge in determining which cases deserve a study would need to be flushed out by providing a study for each case in which a study is applicable regardless of whether the judge thinks it should be provided. Otherwise, the sibling bond studies are still used at the whim of the judge, subject directly to the judge's bias. If a study was completed for each applicable case, then the sibling bond study would be mandatory, not court-ordered, and would solve the issue.

The following two hypotheticals show how profoundly experiential bias may affect dependency proceedings. Each judge's experiences could vary widely and unfairly prejudice the determination of what is best for the child. Situation A: The judge is an only child who never knew what it meant to have a sibling. The closest thing this judge had were friends, which the judge would only have what amounts to 'visitation.' To the judge in situation A, not living with your sibling and only visiting does not appear to affect the sibling bond because that's all the judge had ever known, and he found was still close with his friends regardless. But what he doesn't understand is the difference in the closeness of those friendships and a sibling relationship. How could he or she know? The relationship between siblings is unique and is difficult to explain or

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[50] *In re* Jacob S., 104 Cal. App. 4th 1011, 1018 (2002).
[51] *In re* Daisy D., 144 Cal. App. 4th 287, 292 (2006).
[52] *Id.*
[53] *Id.* (citing *In re* S.B. 32 Cal. 4th 1287, 1293 (2004)).

articulate. In all likelihood, this judge cannot even imagine what it's like to have a sibling, let alone compare the detriment of losing that sibling to what benefit the child *may* gain in adoption, depending on if the family the child ends up with is even a good one.

Situation B: a second judge is a twin. This judge would be very close to the sibling and could not imagine separation. The two were confused by other people while growing up, liked all the same things, and finished each other's sentences. The twins were on all the same sports teams, had the same group of friends, and shared clothes. To this judge, living, growing, and teaching each other is everything to the sibling bond, which would be impossible to foster with only visitation. These two judges could look at the same case and arrive at the complete opposite determination—and neither one may be correct. Ultimately, judges are left with vast discretion in dependency cases by acting as the presiding judge and the fact finder. This allows the experiences of the judge to taint their view of the situation whether by conscious or unconscious avenues.

2. Social Worker Bias

Social workers in dependency cases are not independent. Social workers are employed by the Department of Children and Family Services ("DCFS"). DCFS workers detain the children, file petitions to remove, develop their allegations, provide services, and investigate the parents.[54] These social workers essentially work against the parents. They are the people who initiate the proceedings and recommend removal from the parents. There may be no one more biased towards the termination of parental rights in a dependency proceeding than the social workers.

In a dependency proceeding, social workers are acting as both an arresting officer and district attorney ("DA") would in a criminal matter—two instances in which no one would argue that the DA or arresting officer is not biased. Arresting officers initially bring the matter into the system and recommend the initiation of proceedings just like the social worker petitions for the court to take jurisdiction and DA's have the burden of proving guilt just like the social worker has the burden of proving the child will be at risk if returned.

Social workers are the prosecutors and arresting officers of dependency proceedings. The inherent bias of a social worker's opinion makes their report regarding the sibling exception not entirely credible.

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[54] *See In re* Naomi P., 132 Cal. App. 4th 808, 812 (2005).

The potential likelihood for an education and experience gap and bias makes the social workers' reports an inadequate evaluation of the sibling exception for the court.

3. Expert Bias

Sometimes attorneys hire experts to testify regarding the sibling relationship, the detriment to the child of being separated from their sibling, or other things regarding the exception, but experts are paid to appear on a client's behalf just like an attorney. No reasonable person would ever disagree that an attorney is biased towards the side they are paid by; in fact, attorneys are essentially required to be biased.[55] Even if they were not, attorneys are biased toward the party paying them because that is how they make their living. Just the same, that is how experts make their living. Therefore, experts are generally inherently biased.

There are three main types of expert bias that occur in adversarial settings: "(1) conscious bias, (2) unconscious bias, and (3) selection bias."[56] "[C]onscious bias arises when 'hired guns' adapt their opinions to the needs of the attorney who hires them."[57] However, the most prevalent bias in this situation is likely unconscious bias. "As Sir George Jessel pointed out in an English judicial opinion over a century ago, '[u]ndoubtedly there is a natural bias to do something serviceable for those who employ you and adequately remunerate you.'"[58]

Hired experts are biased towards the hiring party. For example, forensic experts often have a desire to "reach conclusions that assist the prosecution," because "prosecutors are often responsible for evaluating forensic scientists' performances."[59] Similarly, attorneys who hire experts evaluate them and decide whether to hire the expert or refer other attorneys to the expert in the future. These hired experts would risk future employment if their testimony did not assist the party who hired them. The experts depend on having future work; it is how they pay the bills.

Often there is another expert with equivalent qualifications on the other side of an issue supporting the opposite conclusion due to this same "hired-gun" bias. Therefore, as most judges and attorneys know, a judge cannot take what an expert testifies to as the truth due to these types of loyalty biases. Additionally, the view that there is one expert on each

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[55] *See, e.g.,* Cal. Rules Prof'l Conduct 1.7 (2018).
[56] Bernstein, *supra* note 31, at 454.
[57] Bernstein, *supra* note 31, at 454-55.
[58] Bernstein, *supra* note 31, at 455-56.
[59] Bernstein, *supra* note 31, at 455-56.

side of the issue is the third type of bias: selection bias. [60] This type of bias misleads the judge (or in other cases jury) into thinking there is a split in expert opinion about a subject. A case could be about whether gravity is in fact real with an expert on each side; one saying it is real, and the other disagreeing. The truth is there could be one million experts in the world that agree gravity is real and only one that does not. The attorney opposing gravity searched and found the only expert to support them. Therefore, hired experts bring too much bias with them to resolve the issue of bias and educational inadequacy in the child psychology of judges.

B. Improper Weighing of Facts and Arguments

1. Comments and Testimony by Dependents

It is common knowledge that, generally, children do not have the necessary experiences to express emotions completely and accurately because they have not matured to the point where they understand their feelings or how the consequences of their choices will affect them in the future.[61] Emotional competence requires many skills[62] which children have not had the necessary experience or lifespan to develop. "Children have to learn these expressive strategies."[63] As a result, what children desire and what is best for them do not always line us[64]—in fact, they usually do not. These are major reasons that minors' attorneys are charged with advocating not only what the child desires but also what is best for the child, even if it diverges from the aforementioned desires.

A child's ignorance of the consequences of their choices is the primary reason the legislature places age requirements on voting and the purchasing of controlled substances like alcohol, tobacco, and marijuana.[65] Furthermore, children are unable to compare the long-term

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[60] Bernstein, *supra* note 31, at 454.

[61] *See* Carolyn Saarni, The Development of Emotional Competence, 2 (Guilford Press, 1st. ed., 1999).

[62] *See Id.*at 5 (1999).

[63] *See Id.* at 6.

[64] Jim Taylor, PhD, *Parenting: Decision Making: Help Your Children Become Good Decision Makers*, Psych. Today, (Oct 19, 2009), https://www.psychologytoday.com/us/blog/the-power-prime/200910/parenting-decision-making; *Making decisions*, Kids Matter, https://www.kidsmatter.edu.au/mental-health-matters/social-and-emotional-learning/making-decisions, (last visited Nov. 22, 2018).

[65] *See, e.g.* S. Rep. No. 26, 92nd Cong., 1st Sess., at 8 (1971) (stating that eighteen-year-olds were mature enough to vote implying that generally children younger are not mature enough).

consequences of their present choices to the short-term benefits, or in some cases, even foresee those consequences.[66] It is not an uncommon story for children to try to run away from home because they are upset at their parents for something such as taking away a video game. If children could understand the long-term effects of their choices, no child would run away. The child would realize without the parents, the child would not have the video game, and even if the child did, the game is worthless without electricity or the family television.

Given children's lack of emotional intelligence and understanding of consequences, minors are appointed counsel by the court in dependency proceedings[67] whereas adults are allowed to proceed *pro se* in court. The court may only refuse to appoint counsel in dependency proceedings if the child "would not benefit from the appointment of counsel,"[68] but "the court has a nondiscretionary duty to at least consider the appointment."[69] Generally, children are not mature or intelligent enough to properly conduct or advocate for themselves. Hence the lower standard of care for children in tort law[70] and their right to revoke in contract law.[71]

All of these laws and regulations evidence that judges must know children cannot accurately express how meaningful a relationship is to them whether it be because they may be incapable of expressing emotions intelligently or do not understand their own emotions enough to know how important a relationship is or will be in the future. Yet, in addition to the judicial bias evidenced in *L.Y.L.* and *Jacob S* above*,* these cases also show improper use of these types of rash statements made by emotional children.

The court in *Jacob S.* took jurisdiction over the mother's "five children—Jessica, age [fourteen;] Autumn, age [eleven;] Noah, age [nine;] Jacob, age [six;] and Matthew, age [three]"—under § 300(b)[72] when the mother "checked herself into a hospital for mental health treatment without first assuring adequate supervision for Noah, who is a quadriplegic and requires around-the-clock care, . . . because [the mother was] not adequately trained to care for [Noah]" which "created a

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[66] Taylor, *supra* note 64.
[67] Cal. Welf. & Inst. Code § 317(c)(1) (Deering 2020).
[68] *Id.*
[69] Neumann v. Melgar, 121 Cal. App. 4th 152, 171 (2004).
[70] *See* R.R. Co. v. Gladmon, 82 U.S. 401, 408 (1872); *see also* Brown v. Connolly, 62 Cal. 2d 391, 395 (1965).
[71] *See, e.g,.* Early v. Richardson, 280 U.S. 496, 499 (1930).
[72] *In re* Jacob S., 104 Cal. App. 4th 1011, 1014 (2002).

dangerous situation."[73] Jacob showed a clear desire to live with his siblings and Autumn said that Jessica was "bossy and grumpy," and she "was angry with Jessica and did not want to see her," even though Autumn "clearly wanted to maintain relationships with [her] siblings."[74] Autumn and Jessica were close in age and "used to work together to take care of their brothers, performing such tasks as cooking for them and changing their diapers."[75] The court concluded that Autumn would suffer a detriment if her sibling relationship with Jessica ended, but that the sibling exception did not apply to Jacob.

The court in *Jacob S.* hardly mentioned Jacob's apparent desire to live with his siblings in determining the balance between the detriment of separation and "the benefits of adoption,"[76] and did not allow Autumn's rash comments to affect its opinion about the effects of the interference with her sibling relationship would have upon her. In *L.Y.L.,* on the other hand, the court relied on the fact that L.Y. "wanted to be adopted even if that ended her relationship with [her sibling]."[77] The judge in *L.Y.L.* accepted L.Y.'s portrayal of her feelings as true and accurate, and even relied on it in the disposition of the case. These differences in theory of how to handle the children's comments about what they want can be explained by either a lack of understanding of how children act and express themselves or by confirmation bias: judges looking for the evidence that supports the outcome the judge subconsciously desires.[78]

C. Continued Visitation Does Not Eliminate Interference with the Relationship

Courts, social workers, and minors' counsel sometimes argue that post-adoption visitation is sufficient to remove interference with the sibling bond because the children are still given the opportunity to interact and stay in touch with their siblings.[79] These agencies argue the brief visits with which separated siblings are provided allow the children adequate time to maintain the sibling relationship. They claim that once a week for a few hours after school does not interfere with a relationship—a relationship that used to mean seeing each other every morning and evening, and sharing multiple meals per day with each other, such as

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[73] *Id.*
[74] *Id.* at 1016.
[75] *In re* L.Y.L., 101 Cal. App. 4th at 1015.
[76] *In re* Jacob S., 104 Cal. App. 4th at 1018.
[77] *In re* L.Y.L., 101 Cal. App. 4th at 953.
[78] Nalty, *supra* note 31.
[79] *See, e.g.*, *In re* Jacob S., 104 Cal. App. 4th at 1019.

breakfast and dinner. This amount of time established by the court is inadequate at best.

"Sibling relationships help children achieve developmental milestones as well as provide emotional support, companionship, and comfort."[80] In a sibling relationship, one sibling's problems are the other sibling's problems as well. The siblings work together to solve their issues, and they grow together. It is being able to count on the person based on the bond created through hard times and good times. Children "use their [sibling] relationships to understand who they are;"[81] and those siblings "remain important figures throughout [the children's] lives."[82] Furthermore, "research indicates that biological relatedness is not associated with young children's perceptions of closeness to siblings; being a full, half, or step-sibling did not influence their perception of closeness."[83] Therefore, post-adoption visitation transforms the sibling relationship into a friendship because children do not recognize biological relatedness; rather, they see the relationship at face value.

If a child visits their sibling, as one would visit a friend, the child is viewed as a friend regardless of DNA. The strength of the sibling bond does not come from simply knowing a biological sibling but living with the person and sharing experiences with that person. It lies with growing up day by day with that person—not just the limited experiences that come with friendship. The sibling bond cannot be maintained and protected if it is not a sibling relationship. Therefore, post-adoption visitation with a biological sibling is inadequate to maintain the sibling relationship and minimizes interference with the sibling bond.

Currently, "[t]here are no statutes providing the juvenile court with authority to grant dependents the right to visit with nondependent siblings."[84] In *In re Luke H.,* for example, the court obtained jurisdiction over Luke under section 300(c).[85] The "[m]other refused to allow visitation between Luke and [his sister]," so Luke filed a petition to modify the orders to allow visitation.[86] However, "[t]he juvenile court's jurisdiction over mother (the sister's custodial parent) does not provide

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[80] Emily Kernan, *Keeping Siblings Together: Past, Present, and Future*, Nat'l Ctr. Youth L., https://youthlaw.org/publication/keeping-siblings-together-past-present-and-future/, (last visited July 3, 2018).

[81] *Id.*

[82] *Id.*

[83] *Sibling Issues in Foster Care and Adoption*, Child Welfare Info. Gateway (June 2019), https://www.childwelfare.gov/pubPDFs/siblingissues.pdf.

[84] *In re* Luke H., 221 Cal. App. 4th 1082, 1091 (2013).

[85] *Id.* at 1085.

[86] *Id.* at 1085.

the court the adequate power to grant that request. What matters is that the juvenile court had no statutory authority to enter a visitation order regarding [the sister,] a nondependent sibling."[87] "[W]hile the subdivision authorized Luke, a dependent child, to file a petition to change a court order, it did not authorize the juvenile court to issue an order affecting a child outside the court's jurisdiction."[88] This is the typical sibling situation when the sibling exception would have any applicable value: one or more dependent children and at least one non-dependent.[89] Thus, the court cannot mitigate the effects of separation and foster the development of the sibling relationship because it cannot grant visitation.[90]

D. Unenforceable Promises of a Commitment to Visitation Cannot Show a Lack of Interference

The trial court in *In re D.O.* (hereinafter "*D.O.*"), "explained that the sibling relationship exception 'really only comes into the light . . . if there is a demonstrated interference' with such a relationship."[91] The trial court found, and the appellate court agreed, that the paternal grandmother "would [not] in any way interfere" with the sibling relationship due to the "paternal grandmother's proven track record of facilitating visits with D.O. and the Siblings."[92] The trial court essentially found that the sibling exception did not apply to D.O. because "there [was] absolutely no evidence that the bond would be interfered with" based (at least partially if not relying completely) on[93] the promises of the currently-monitored caregivers. The appellate court held that the determination cannot *exclusively* rely on the commitment of caregivers to visitation,[94] yet many courts find that promises preclude interference with the bond because the siblings will have continued visitation,[95] or at least use it as support of the finding as the court did here. [96]

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[87] *Id.* at 1089.
[88] *Id.* at 1089.
[89] Although it is unlikely the sibling exception would prevail in this case because jurisdiction was due to abuse. *See id.* at 1085.
[90] *In re Luke H*., 221 Cal. App. 4th at 1089.
[91] *In re* D.O., 247 Cal App. 4th at 172 (2016).
[92] *Id.*
[93] Although the trial court claimed later that it did not rely on the promises. *See id.*
[94] *In re* D.O., 247 Cal App. 4th at 175-76
[95] *See e.g., In re* Isaiah S., 5 Cal. App. 5th 428, 438 (2016); *In re* Jacob S., 104 Cal. App. 4th at 1019.
[96] *In re* D.O., 247 Cal App. 4th at 172.

Courts often accept caregivers' promises of a commitment to visitation between siblings due to their lack of authority to force visitation. However, these promises are unenforceable and speculative at best. Courts recognize that they "would not be able to compel the prospective adoptive parents to maintain contact with the remaining sibling."[97] These courts cannot order the visitation regardless of whether a party has promised the visitation on its own or not. Furthermore, even if the court had the power to force visitation while it had jurisdiction over the case, these caregivers will not be subject to the power of the court once the adoption process has been completed. Once they have adopted the child, it is their discretion that controls what is best for the child, including visitation with a sibling.

The adoptive caregiver's "track record" will show a commitment to the facilitation of visits, however, the "track record" is not an honest intimation of future commitment. The caregiver needs the backing of the agency to be able to adopt the child. The child is currently a dependent and under the jurisdiction of the court, so the caregivers are being scrutinized as much as the parents. The caregivers will act exemplary when there are consequences for their malperformance, but this does not say much for how they will act once the adoption is complete. If it was an adequate indicator, would former dependents ever be molested by adoptive parents?

E. Testimony and Reports by Social Workers

When a sibling relationship is at issue in a case, social workers typically provide their opinion on the strength of the relationship and whether that bond could "qualify as a sibling exception to adoption under section 366.26, subdivision (c)(1)(E)."[98] In order to obtain the job, these social workers must at minimum obtain a bachelor's in social work,[99] and once they do receive it, they exclusively deal with dependent or troubled youth. However, these social workers are nowhere near experts on sibling relationships or detriment; specifically, they are not therapists. The education requirements to be employed as a therapist are much more

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[97] *See, e.g., In re* D.B., No. C043732, 2003 WL 22683387, at 6 (Cal. App. 3 Dist., Nov. 14, 2003).

[98] *In re* A.M., No. E035137, 2004 WL 1776581, at 2 (Aug. 10, 2004)

[99] *California Social Work Licensing Requirements*, Social Work Guide (2018), https://www.socialworkguide.org/licensure/california/.

robust.[100] A therapist must have a bachelor's degree and master's degree at a minimum, plus thousands of hours of supervised experience.[101] Additionally, a therapist must pass both the California Law and Ethics Exam ("LMLE") and the Licensed Marriage and Family Therapist clinical exam ("LMCE").[102] A social worker's knowledge and education in this area are not adequate compared to a licensed therapist's; therefore, their evaluations of the sibling bond, the interference caused by separation, and the detriment caused by termination cannot be substituted for a licensed therapist's.

F. Attorney Reliance

Proponents of the current system may argue that attorneys must properly advocate for their clients, so judges can rely on attorneys litigation skills to ensure they have the necessary information to rule on a case. The idea is that each attorney will seek out and provide the best argument for their client, leading the judge to the fairest solution. But, for the most part, no attorney has specialized knowledge or education in the psychological development of children in general, let alone the effects of sibling relationships or bonds, which means they are inept in the psychological effects of separation. An attorney has a law degree and is not required to have a Bachelor of Arts in psychology or child development, or a master's in the like. There are cases where attorneys fail to either object to a "decision [an expert knows] would exacerbate, if not cause, child abuse and additional trauma" to the child or to "advocate in court for an expert witness to provide information" regarding the separation.[103] Ultimately, attorneys' ideas and opinions are not sufficient to provide the most adequate arguments when it comes to sibling relationships.

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[100] *Licensed Marriage and Family Therapist: Information for Associate Marriage and Family Therapist (AMFT) and Licensed Marriage and Family Therapist (LMFT) Applicants,* Bd. Behav. Sci. (2018), https://www.bbs.ca.gov/applicants/lmft.html.

[101] *Id.*

[102] *Id.*

[103] Peter Ernest Haiman, Ph.D., *Effects on Separation on Young Children: Implication for Family Court Decision Making*, Second Judicial Circuit, Guardian ad Litem Program For Florida's Children (2019), https://www.peterhaiman.com/files/134204104.pdf, (last visited July 3, 2018).

G. Improper Use of Facts

1. Age is not a Meaningful Factor

Many courts conclude that the sibling exception does not apply due to the age of the dependent child. When the dependent child is younger, the "experiences the children shared with [the older sibling] would not be as meaningful to them . . . as the experiences were to [the older sibling]."[104] This is not an unusual mistake, in fact, "many people assume that very young children are not affected at all, erroneously believing that they are too young to know or remember what has happened. However, even in the earliest phases of infant and toddler development, clear associations have been found between exposure to violence and post-traumatic symptoms and disorders."[105]

"Behavioral problems of childhood . . . typically emerge in the early years and are associated with deficits in social skills, emotional regulation, frustration tolerance, and social problem solving."[106] "The preschool years are a key developmental period in which skills essential for later academic and social success are acquired and honed."[107] "Because of the very rapid and complex changes during the first three years of life, developmental factors will influence the young child's perception and experience of the trauma associated with violence."[108] "In a recent study . . . clear evidence emerged of PTSD symptoms in children under the age of four years."[109]

The use of a child's young age as a factor lessening the detriment caused by separation is either an excuse to give the sibling relationship less weight due to bias or an uninformed analysis. Age does not affect nor decrease a child's response to the trauma experienced due to violence; it actually increases the detriment, so it is unwise to assume a child's age affects the response to any other traumatic experiences in any other way. The children may not remember those experiences through memories and words, but those experiences give children of all ages subconscious knowledge of trust and attachment. To have those

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[104] *In re* Valerie A., 152 Cal App. 4th 987, 1013 (2013).

[105] Joy D. Osofsky, *The Effects of Exposure To Violence on Young Children*, Am, Psych., 725, 783 (1995).

[106] Paul C. McCabe & Michelle Altamura, *Empirically Valid Strategies to Improve Social and Emotional Competence of Preschool Children*, 45:5 Psych. Schools, 513 (2011).

[107] *Id.*

[108] Osofsky, *supra* note 105.

[109] *Id*.

relationships ripped out from under them may result in long-term effects the child does not—and may never—understand, thus, the lack of understanding does not equate with a lack of detriment.

IV. RECOMMENDATIONS

A. *Neutral, Third-Party Expert*

Dependents deserve to have an objective, independent expert determine what constitutes substantial interference.[110] Children are our future, and their cognitive and mental capacities should be given the utmost care. The policy behind dependency and adoption is to do what is best for the child. If what is best for the child varies from judge to judge, which court's conclusion, if any, is actually best for the child?

Dependent children deserve to have the best choice for their future made whether or not the attorneys put the sibling exception at issue. One of the main benefits of adoption is the ability for the child to become part of a family, but a child who has everything ripped away from them may never have stability in relationships. Thus, these children may never feel a like or want to be part of the family, thereby nullifying this benefit. Tearing away everything children care about will cause the children to prevent themselves from becoming attached in the future to protect themselves from the same scenario, causing the main benefit of adoption to be void. A neutral, third-party therapeutic or psychological expert must evaluate each situation in order to provide the child with the best solution to the issues at hand, leading to the dependency finding.

An objective analysis will allow for more consistent rulings which will provide data as to whether the choices are the best ones for the children. Child psychologists or therapists that are familiar with foster youth should evaluate the strength of the sibling bonds and the detriment that would result from the termination of parental rights and advise the court.

B. Fair Balancing

As discussed previously, the current balancing equation used fails to include an essential aspect of the sibling relationship in addition to the detriment of losing their parents. The current system balances the benefits of adoption with the detriment caused by the removal, but it does not address the loss of benefits that the siblings would gain as they

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[110] The issues of how these experts would be paid and by whom are beyond the scope of this article.

grow and live together; nor does it include the detriment caused by separation from the parents.

Separation of a child from a parent who is the primary caregiver can cause an "intense, fear-based rage felt inside the [child]."[111] Based on what is known "about child development, the brain, and trauma," it is clear children "grow up with the shrapnel of this traumatic experience embedded in their minds."[112] In fact, children "separated from their parents at a young age had much less white matter . . . as well as much less grey matter" in their brain, which is required to transmit and process information.[113] This often results in "delinquency, attention-deficits, shyness, and depression" in the adolescents[114] and "interfere[s] with their ability to maintain stable and enduring love and work relationships" as adults.[115] The CREATE Foundation performed a study and found that children who are separated from their siblings largely suffer the same effects.

Children often take siblings for granted when they are together, but immediately upon separation, they care "more about staying in touch with their brothers and sisters than their parent."[116]; this is because when children lose a sibling, they "feel 'they have lost a part of themselves.'"[117] Therefore, when a child is separated from both their parents and siblings, it "compounds the anxiety and pain they feel over separation."[118] When a dependent child who had siblings has parental rights terminated, the internal damage to the child when they are placed with adoptive parents can be more than twice as much as a child that was only removed from their parents.

Adoption, as the permanent plan choice, is preferred by the legislature when the parents are not performing adequately as parents, so the benefits of adoption outweigh the detriment of separation. But, when non-dependent siblings are involved, the detriment of losing parents is taken out of the equation, and the detriment caused by sibling separation

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[111] Haiman, *supra* note 103.

[112] William Wan, *What Separation from Parents Does to Children: 'The Effect is Catastrophic'*, WASH. POST, (June 18, 2018), https://www.washingtonpost.com/national/health-science/what-separation-from-parents-does-to-children-the-effect-is-catastrophic/2018/06/18/c00c30ec-732c-11e8-805c-4b67019fcfe4_story.html?noredirect=on&utm_term=.401aac5fde20.

[113] *Id*.

[114] *Id. see* also Practice Notes for North Carolina's Child Welfare Workers, *supra* note 22.

[115] Haiman, *supra* note 103.

[116] Farnsworth, *supra* note 23.

[117] Kernan, *supra* note 80.

[118] Kernan, *supra* note 80.

is isolated in the weighing of detriment against adoptive benefits. The sibling exception implies that the court should ignore any other detriment in the equation.[119]

Courts disregard the detriment of losing parents as well as the opportunity costs of not allowing the sibling bond/relationship to grow and develop; yet, it is weighed against the benefits of adoption which is inherently all-inclusive of the inverses of those detriments discussed above. The main benefit of adoption would be to remove the child from the neglectful or abusive household and provide the child with adoptive parents that are both supportive and nurturing. The effects on the child are compounded when the child loses both its parents and siblings, and that total detriment must be weighed against the benefits of adoption.

On top of ignoring any additional detriment to the dependent child, the sibling exception "contains strong language creating a heavy burden for the party opposing adoption."[120] The statute requires that the court find "a 'compelling reason' for concluding that the termination of parental rights would be 'detrimental' to the child due to 'substantial interference' with a sibling relationship."[121] It requires a number of fact-based determinations that all have a high standard of evidence. There must be a *significant* sibling bond. The termination of parental rights must cause a *substantial* interference. The interference must be *detrimental* to the dependent child. The detriment must be so harmful that it must outweigh the benefits of the permanency of adoption and create a *compelling* reason to halt the termination of parental rights. Between the isolation of the detriment and the high standard of evidence, the sibling bond is not given a fair chance in the evaluation.

Sibling relationships can be an important avenue of maturity and growth for children. "The relationships people share with siblings are often the longest-lasting relationships they will have. Siblings are there from the beginning, and they are often still around after parents, and even spouses and children, are gone."[122] The loss of that relationship will not only cost the child more than the present detriment but what they could have gained in the future from it. So, if a court can speculate how much harm a child would suffer by remaining with the parent(s), it can and should speculate what benefits would be lost by terminating the sibling

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[119] *See* Cal. Welf. & Inst. Code § 366.26(c)(1)(B)(v) (Deering 2020) ("whether ongoing contact is in the child's best interest … as compared to the benefit of legal permanence through adoption.").

[120] *In re* Daniel H., 99 Cal App. 4th 804, 813 (2002).

[121] *Id*.; *see also* Cal. Welf. & Inst. Code § § 366.26(c)(1)(B)(v) (Deering 2020).

[122] Kernan, *supra* note 80.

relationship. Thus, these independent experts should not only consider the loss a child would suffer from separation from the sibling, but also the opportunity costs of not building upon that relationship in the future and the losses caused by separation from the parents.

V. CONCLUSION

The system as it currently exists is not properly formulated to provide a fair and accurate evaluation of the sibling exception. The purpose of dependency proceedings is to provide the child with permanent placement that will be the best choice for the child's future. Currently, the system does not place that purpose at the forefront of its workings. The evaluation of the exception is inundated with bias. Further, through the determination of multiple elements, the final decision of whether the sibling exception applies is made by a single judge who, more than likely, has no hint of education regarding the psychological effects of separation or adoption on children. Recommendations are made to the court regarding the applicability of the sibling exception by the social worker who is the same party that filed the petition to remove the children from the parents' care in the first place.

Attorneys are left to make arguments that affect the future of this child and our country but, similar to judges, they do not have the adequate education to recognize and evaluate the most beneficial arguments. Furthermore, the use of experts to aid the attorneys in this task is unhelpful because the reports are not credible. Experts are known to have conscious and unconscious bias affecting their position on the issue; therefore, the court cannot accept the reports at face value. The sibling exception should be considered in every case in which it is applicable to ensure that the most beneficial choice for the child's future is made. That choice cannot ignore the opportunity costs involved in the termination of parental rights due to the deterioration of the sibling relationship.

There is much to gain for children by having a true sibling bond. Sibling relationships are important to a child's development, so the prospective benefits they would gain by continuing that relationship in full force must be considered in the determination of relative weights of detriment and benefits of reunification or termination. By combining the separation from a sibling and separation from parents, a child's development is so greatly impacted that an independent, third-party expert must aid the court in every applicable determination to ensure the best choice is made for the child's future. Therefore, the system needs to use the balancing equation to consider both the detriment and the loss of

beneficial experiences that result from the ending of the sibling relationship through termination of parental rights; thus, the court could better ensure the best choice for the child's future.