

From Lab Bench to Court Bench:
Using Science to Inform Decisions in Juvenile Court

By Judge Cindy S. Lederman



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Editor's note: Juvenile court judges are asked to determine what is in the best interest of the child in every case they hear. As Judge Cindy S. Lederman writes, making these decisions without an awareness of the science of child development can be detrimental to the mental and physical well-being of the child. Yet until about a decade ago, court decisions were routinely made without taking into consideration the needs of toddlers and infants. The Miami Child Well-Being Court™ (MCWBC) program, a partnership of clinicians and judges, has brought science into the courtroom, making it integral to the decision-making process and working to ensure that the needs of the child are met.

Article available online at <http://dana.org/news/cerebrum/detail.aspx?id=34198>.

A complementary article, "Effects of Stress on the Developing Brain," is available online at <http://dana.org/news/cerebrum/detail.aspx?id=34202>.

Dependency judges across the United States have the most important, yet painful, jobs in the American justice system. We preside over hundreds of cases each week, making crucial, sometimes life-altering, decisions in a matter of moments. We try to maintain dignity and humanity in the proceedings while working with the most impoverished families in every community. As students of human behavior and experts in human suffering, we try to develop some expertise in promoting healing. We realize that the children and families we see in court have come to us as a last resort when everyone and everything else has already failed them. The children enter our doors precisely because they have been deprived of the most important keystone of child development. They do not have empathetic, nurturing, and responsive caregivers; they have been harmed by those who are supposed to love and protect them. The parents we see have to be taught to smile at and play with their babies. They have to learn to regulate their child's behavior without "whupping" the child. They need to be taught to praise their children. They have not asked for help and have not entered our courtrooms voluntarily. We have a tremendous responsibility because we cannot fail them or their children.

Our legal mandate in dependency proceedings is to ensure the safety of the child, to achieve permanency, ideally to reunify and rehabilitate, and to promote the child's well-being. Yet if we as judges seek to fulfill this mandate without being informed by the science of child development, we risk tipping the balance from impartiality to indifference. If we do not take into account the fundamental needs of the child while seeking to meaningfully change the parents' capacity to care for that child, we are indeed cruelly inadequate. If we can't distinguish a healthy attachment from an unhealthy attachment, we could make a well-meaning but harmful decision. In short, our legal mandate is meaningless unless we actively use child-development knowledge in our courtrooms. If we don't, we risk failing our mandate and worse, we risk additional harm to the children and families whose lives are in our hands. Our blindness to science is a disability.

What I have come to understand in my years on the bench is that juvenile court is, de facto, a place where the clinical and the legal come together. Every legal decision has a clinical component that can affect the mental and emotional health of the child. Basing decisions only on legal rights, without regard for the developmental needs of children, is not acting in accordance with the legal standard of "best interest of the child." Judges, like most people, have only a loosely organized model of human development in their minds, which results in a limited

understanding of what happens inside a child. We blindly make decisions in the face of what Jack Shonkoff, professor of child health and development at Harvard University, has called a “developmental black box.”¹ In this paradigm, our legal mandate can be meaningless.

Our decisions relating to custody and visitation for an infant should have different developmental considerations than visitation and custody decisions for an adolescent. The level of functioning of the child, the child’s special needs, and the specific family relationship characteristics must be considered. A case-by-case, child-by-child determination informed by the age, needs, and functioning of each child must be part of every decision. If we do not take those factors into account, our well-meaning decisions can actually be harmful to the children.

University of Cambridge professor Michael Lamb has often written about how slowly the insights gleaned from scientific research affect first the letter of the law and then, much later, practice in the field.² Dr. Lamb laments that researchers and decision makers in family and juvenile law never connect. Although judges have limited time off the bench, they need to be made aware of relevant child-development research as often as they stay abreast of relevant appellate decisions involving procedure, evidence, and substantive law. Judges need input from scientists so that they can better understand the characteristics of the people they are trying to help, including their risk factors, protective factors, and level of functioning. It is easy to make assumptions about abilities and level of functioning regarding the people we see every day, but what happens when a judge’s decision is based on ignorance of science? Children and families can be permanently and unnecessarily harmed.

The Miami Child Well-Being Court Model

A striking example of our failure in policy and practice as a result of our inability to use science in the courtroom is our abject neglect of maltreated infants and toddlers. Until a little over a decade ago, infants and toddlers were absent from courtrooms and ignored by the child welfare system in the United States. Judges assumed that babies were resilient and probably were not harmed by their mistreatment. We thought that there was no way to know if they were affected, as they could not speak. We did not perform mental health evaluations on children until they were five years old and verbal. We did not understand the necessity of stability, stimulation, and nurturing from birth as the foundation for future development. Thus we acted as if

maltreated babies and toddlers existed only as objects to be placed and eventually reunified with their parents without any concern for the child's individual needs. The well-being of infants and toddlers was not part of the decision-making equation. Disproportionate developmental delays were ignored and early-intervention services like Part B (for children age 3 and above) and Part C (for children up to age 2) to address developmental delays pursuant to the Individuals with Disabilities Education Act (IDEA)³ were typically accessed only by parents who could advocate for their children. We placed the children in child-care centers without regard for the quality of those centers. We did not investigate the level of enrichment, stimulation, and nurturing that could be provided when we conducted home studies of potential custodians. All of this happened—or more precisely, did not happen—while we were following the law. The law, without science, can be impotent.

In juvenile court we urgently need more research on what works for whom in our very challenging population. I am currently partnering with university and clinical researchers on an exciting new translational research project funded by the National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention. This project focuses on operationalizing the core components of the Miami court model. The model—which we refer to as the Miami Child Well-Being Court™—involves deep systems change along with sound implementation of evidence-based interventions. It requires a marriage of law and science in the courtroom and among all partners in the handling of each case.

The Miami Child Well-Being Court™ (MCWBC) model is a transformative judicially led approach to child welfare system change built on sound implementation and translational science, led by the judiciary and Dr. Lynne Katz of the University of Miami Linda Ray Intervention Center. In this model, the judge forms a multidisciplinary partnership with clinical experts in infant mental health, referring adjudicated dependents under the age of three and their mothers for intensive evaluation and treatment at the University of Miami's Linda Ray Intervention Center. The child-parent psychotherapy clinicians come to court and report with specificity on the progress of the parent. The report is often instructive not only to the court, which must evaluate the parent's ability to safely parent, but to anyone listening to what is often a primer on infant mental health.

Our research partners, Dr. Jenifer Goldman Fraser and Dr. Cecilia Casanueva from the research institute RTI International, characterized what they observed in the courtroom as the judge acting as a conductor overseeing an orchestra of distinct parties with different responsibilities and differing interpretations. Yet everyone is working from the same sheet of music and toward the same goal, which is to protect children and heal families. Unlike in a more traditional court setting, in this model the judge is intensely involved and takes a personal interest in each case.

The MCWBC™ is transforming the culture of the dependency court to increase the reach and effectiveness of evidence-based practices (EBPs) with vulnerable children and their caregivers, engendering deep systems change via long-term, cross-systems partnerships that support transformative practice in the courtroom and outside it. The clinical services foster a positive attachment between mother and child by helping the mother adjust her perception of her child and learn skills for nurturing and caring for her child.

The model emanates from our pioneering experiences in the Miami court over the last decade and reflects the immense possibility of using the dependency court as a critical platform for ameliorating risk and promoting child well-being. Through the use of implementation research we are developing fidelity tools for clinicians, attorneys, and even for the judge. Our model is an argument for how the court—at its best—can turn tragedy into opportunity for the children and families who appear there.

The Science of Child Development

The Center on the Developing Child at Harvard University has taken a leadership role in educating the general population about the basics of the science of early childhood, brain development, and the relationship of early adversity to physical health. Core concepts, which the professionals in the child welfare system and in our juvenile courts must thoroughly understand, include:

- Brains are built over time.
- The interactive influences of genes and experience literally shape the architecture of the developing brain, and the active ingredient is the “serve and return” nature of children’s

engagement in relationships with their parents and other caregivers in their family or community.

- Both brain architecture and developing abilities are built “from the bottom up,” with simple circuits and skills providing the scaffolding for more-advanced circuits and skills over time.
- Toxic stress in early childhood is associated with persistent effects on the nervous system and stress hormone systems that can damage developing brain architecture and lead to lifelong problems in learning, behavior, and both physical and mental health.
- Creating the right conditions for early-childhood development is likely to be more effective and less costly than addressing problems at a later age.⁴

An understanding and embrace of this science necessitates a new priority in the courtroom and child welfare system. Maltreated babies and toddlers must come out of the institutional shadows and become the main focus of the child welfare system and its partners. The court must take a leadership role in changing policy to highlight the needs of these children and must demand that court practice, informed by science, reflect those needs. The incorrect belief that a baby is not really harmed by abuse and neglect must be erased and replaced with a belief in the unfortunate truth that it is rarely the case that a maltreated baby or toddler shows no symptoms. The symptoms can be detected and treated in a well-functioning court system where the law and science coexist.

Next Steps

Negligence in ignoring the unique needs of maltreated infants and toddlers can result in lifelong deleterious effects. The children come from impoverished environments devoid of stimulation and nurturance, are not in early child-care programs, and rarely receive decent, if any, pediatric care. Developmental delays are common and undetected. These children are missing every factor that is necessary to ensure a healthy foundation for growth and development. The loss is chronic and the results can be devastating. The court must be prepared to anticipate the documented sequelae of the cumulative risk, create cross-system collaboration to detect and treat the child, and monitor the expected progress while the child is under the jurisdiction of the court. This regular review of the child’s well-being is as important as any court mandate to determine the compliance of parents with their reunification tasks.

Juvenile courts must form partnerships with early-intervention specialists, Part C providers, Early Head Start, accredited child-care providers, and pediatric practitioners. The entry of an infant or toddler into the court system must trigger this cross-system, collaborative teamwork on behalf of the maltreated child. Interventions must be evidence-based, and targeted emotional and social supports must be provided. There must be an understanding that this work is imperative and that all evaluations and service referrals must be expedited because these children have already lost too much time and are already too far behind. The consequences of squandering a lost opportunity for those who have nowhere else to go are tragic.

In our court, we now understand the urgency of addressing and recognizing the disproportionate developmental delays in the children we see. We know it is our responsibility to do what we can to help these young children get to the appropriate supportive services that they need. We know from the first nationally representative sample of children in the child welfare system, the National Survey of Child and Adolescent Well-Being (NSCAW), that only 13 percent of the children who need early intervention services are getting them.⁵ We turn to the research arena to help us make better decisions about custody and the type and frequency of visitation, to recognize that one size does not fit all. It is science in our court that has stopped the former universal practice of disrupting a nurturing placement with foster parents or non-relatives and awarding custody to a relative whenever that relative appeared, however late in the case, even when the relative was a stranger to the child.

The introduction of science into the courtroom also changed the traditional, often sole, focus on parents' rights and the jargon of the legal argument in the courtroom as well. Judges and attorneys typically give little thought to how visitation can be harmful to a baby or fail to recognize that the baby's needs are as important as the parents' rights. Now the words *attachment*, *bonding*, *trauma*, *reciprocity*, and *developmental delay* are part of the legal lexicon and heard commonly in court.

Building Partnerships, Changing Relationships

Judicial leadership is essential, requiring knowledge as well as an informed commitment to promoting child emotional well-being in each dependency case. For the caseworker, the therapist, the attorneys, the guardians *ad litem*, and child welfare providers working in the court

system, obtaining the knowledge and skill to be able to understand and communicate the needs of the infant or young child to the court is a critical component. The attorneys must learn to take a child-parent-centered approach to advocacy and step back from their traditional adversarial stance—this is particularly challenging but critical for parents’ attorneys. As I described earlier, the therapist’s perspective has to be integrated into the decision-making process—which requires an emphasis on the use of experts as part of the team, pulling the therapist into the courtroom and making sure his or her testimony is valued by the attorneys in the room. The Miami Well-Being Court Model requires a team approach with a shared vision and shared commitment to the kind of long-term, cross-systems partnerships that the model demands. The team understands implementation research and accepts that lasting systems change requires years of careful planning, commitment, and collaboration. The use of evidence-based interventions that work, such as child-parent psychotherapy and evidence-based parenting programs, are an integral part of the model, which included monitoring the program provider’s performance to assure fidelity to the evidence-based model.

In reality, the model is about systems change in terms of the culture of the court, a true transformation of the way we all do our business in the court—and we know this must happen at the level of behavioral change. The court can be viewed as a unique public-health setting with great potential for changing human behavior.

Some families can be reunified and some families cannot. But informing our decisions and practice with science and through the use of evidence-based services, we can almost always enhance the relationship to some degree. Dr. Joy Osofsky, at Louisiana State University, has explained that children were harmed in their relationship with their parent and we must try to heal them in that relationship as well.⁶

One of this country’s finest jurists, Supreme Court Justice Benjamin Cardozo, believed that the work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures.⁷ There are days when I believe that using evidence-based interventions, like child-parent psychotherapy, in a court where well-being is critical and the child is the focus, will actually allow the intergenerational transmission of child maltreatment to be broken. What could be more enduring?

Elected to the bench in 1988, **Judge Cindy S. Lederman** has served in the Miami-Dade Juvenile Court since 1994, including a decade as the court's presiding judge. Judge Lederman's interest in bringing science and research into the courtroom results from her 10-year involvement with the National Research Council and Institute of Medicine at the National Academy of Sciences. She was a member of the National Research Council's Committee on Family Violence Interventions and Panel on Juvenile Crime, Treatment and Control. She served on the Board of Children, Youth and Families of the National Research Council and Institute of Medicine from 1996 to 2004. Judge Lederman has served as president of the National Association of Women Judges, faculty member of the National Judicial College, member of the ABA House of Delegates, and member of the Board of Trustees of the National Council of Juvenile and Family Court Judges. Judge Lederman's recent book, *Child-Centered Practices for the Courtroom and Community: A Guide to Working Effectively with Young Children in the Child Welfare System*, was co-written with Lynne Katz, Ed.D., and Joy Osofsky, Ph.D. Judge Lederman graduated with high honors from the University of Florida in 1976 with departmental honors in political science and received a juris doctor degree from the University of Miami Law School in 1979. She is licensed to practice law in Florida and New York.

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