

8. JUVENILE COURT

Sections 8.1 - 8.4

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8.1 THE USE OF SCIENCE IN JUVENILE¹ COURT

8.1.1 Introduction

The Family Court judge's legal mandate is to promote the safety and well-being of children which can best be achieved by healing relationships and families. It is a not a traditional judicial role, and it requires a non-traditional approach. Science must be the center of our judicial repertoire. Without the use of scientific evidence and techniques, a Juvenile Court Judge cannot begin the healing process or, provide effective services or even begin to understand the needs of children and their families.

Unfortunately, many decision-makers in family and juvenile law remain largely unaware of decades of research regarding child development and effective psychosocial interventions applicable to various populations.² Judges and child development researchers rarely intersect, and therefore the opportunity to learn from the other is almost nonexistent.³ That chasm between our practice and our knowledge of research is particularly unfortunate, and sometimes, harmful because we don't understand how our decisions effect the child. The law in this area is old but much of the scientific research is new. We now know that child maltreatment literally changes the brain of a young child.

Judges are holding the integrity of a child's brain in their hands.

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What the family court really does is clinical work in a legal setting working with the most disadvantaged population of families who often appeared in a courtroom in circumstances too late for effective intervention. Judges whose legal education did not include how to teach a mother to smile, talk, and read to her baby; to pick her baby up when she cries; to praise, sit on the floor and play with her; and, not shake her, must learn how to do these things in order to be effective in Juvenile Court. Although these acts seem straightforward for any parent, they are new and novel to many of the parents we see.

Although judges have limited time, in Juvenile Court they need to be students of child development research as much as they are students of relevant appellate decisions



involving procedure, evidence, and substantive law. Judges need to understand the characteristics of the people they are trying to help, including their risk factors, protective factors and level of functioning. Judges need to understand the history of the families they see in order to understand how to help them. Judges need to know about their behavior, the traumas they have suffered, and especially their resilience.

Removing children from their home because a court has determined that it is not safe for them to be there, exposes them to another type of harm—the emotional and developmental trauma that come from custodial separation.⁴ This is particularly true for infants.⁵ Children have difficulty coping with separation from their primary caregivers. Depending upon their ages and emotional maturity the damage can be devastating.⁶ For an infant or toddler the longer the separation, the greater the risk of harm.⁷ Therefore, it is important for juvenile court judges to be aware of child development and attachment theory.

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Judges should understand and appreciate the fundamental need for healthy attachments between parent and child. Research in early childhood development has revealed that babies can be depressed, that they have long-term memory of trauma, and that they are significantly affected by just the mood and affect of their caretaker, who may often be depressed or emotionally unavailable when the child is in the child welfare system.⁸ As a result, once a parent has been diagnosed with depression, the court may need to order services to address that depression so that it does not continue to adversely impact the child and the opportunity for reunification.

8.1.2 The Science of Nonverbal Cues in Infants

The use of the science of child development to better understand the reactions of maltreated infants and toddlers can be an important tool for judges. Fifteen percent of the children ordered into foster care are less than a year old.⁹ Those placed within three months of their birth stay in care nearly twice as long as older children.¹⁰ Learning how these infants communicate with nonverbal cues is something a juvenile court judge can understand and learn.

Judges fail to order infant mental health evaluations because they incorrectly assume they cannot be done until a child is verbal.

The truth is that young children are very communicative even before they can talk. They have different cries for different needs; their eyes light up when they are happy; their play can communicate a lot about them and their families; and, their willingness to be held by a stranger tells us about the strength of their attachment to their primary caretaker.¹¹ These nonverbal cues play an integral part of the all-important attachment relationship.¹²

8.1.3 Understanding Attachment Theory

Starting about two months after birth, infants begin to show an attachment preference for certain caregivers.¹³ About the fourth month, this preference is communicated through cues in the presence of that caregiver.¹⁴ These cues, which express the child's emotional response, intensifies as the child ages.¹⁵ They will begin protesting when separated from the key person and will also send rejection cues when reunited.¹⁶

Beginning around the age of three, children begin to generalize attachment however these attachment behaviors last throughout a child's development process, but are simply less visible.¹⁷

The attachment process must be reciprocal.¹⁸ Infants who cannot depend upon their caregiver often form harmful attachments.¹⁹ An infant might display cues seeking closeness until the caregiver responds and then immediately send rejecting cues.²⁰ The vast majority of maltreated infants (up to 82%) develop warped attachments patterns.²¹ These babies also are likely to develop high levels of stress hormones which, impacts their developing brain causing long-term harm.²² Finally these infants are at higher risk for delinquency, substance abuse, and depression.²³

A judge's understanding of attachment theory helps when making decisions about visitation and foster care. A healthy attachment between an infant and the primary caregivers is necessary for social, emotional, and cognitive development providing the bedrock for personal self-reliance, and positive coping as they grow to adulthood.²⁴



8.1.4 The “Still Face” Effect²⁵

One of the most poignant and revealing translational research tools used to convince judges that even babies are affected by the momentary affect of their caregiver is revealed in the excellent DVD “Helping Babies From the Bench.”²⁶ It highlights an experiment known as “the still face.” In the experiment, infants were videotaped with their mother in the face-to-face “still-face” paradigm developed by Tronick, Als, Adamson, Wise, and Brazelton.²⁷ The paradigm involves a two-minute face-to-face play interaction with the mother, a two-minute still-face session during which the mother looks at the child but is unresponsive, followed by another two-minute session involving play interaction between mother and infant.²⁸

The experiment has been used extensively to evaluate young infants’ communicative abilities, sensitivity to changes in maternal behavior, ability to cope with interpersonal disturbances and capacity to regulate affective states.²⁹ During the still-face phase, mothers are asked to look at their infants but not to touch, smile, or talk to them.³⁰ The mothers’ face, position, and eye contact signal the infants that social interaction is forthcoming, while their expressionless face and lack of response communicate the opposite.³¹ The mothers remain expressionless even after the infants try to reinstate the interaction. The video shows the baby avert her gaze, pull at her clothing, point, and scream to try to make her mother to respond to her, and she becomes extremely distressed and deteriorates as her mother, present but non-responsive, fails to meet the her expectations.³²

Young brains are resilient. They can heal from early maltreatment with the right services.

The behavior, which is foreign in a healthy mother-child relationship, puzzles and disturbs the child who is otherwise accustomed to having her needs met.³³

Use of information from tests based upon the still face effect provide information about a caregiver’s responsiveness and can help with an infant’s “attachment classification at age 1, internalizing (e.g., depression, anxiety) and externalizing (e.g., aggression, impulsivity) behaviors at 18 months, and behavior problems at age 3.”³⁴ The effect is also useful when dealing with “cross-cultural differences, deaf infants, infants with Down syndrome,



cocaine-exposed infants, ...children with autism, and children of parents with various psychopathologies, especially depression.”³⁵

8.1.5 Informed Decision-making

The applied results of child development and related research, allow judges to change the way they do their work. For example, judges can learn when, how, and why they must intervene when they learn that a child is fussy during a visit with a parent or otherwise demonstrates that she does not want to visit a parent. Judges should try to help the parent appreciate how much their behavior impacts the child. If the parent wants visits with the child to go well, the parent needs to change her behavior for the child’s health and well-being. This can enhance the court’s effort to create family reunification.

Our juvenile courts should adopt the philosophy of Dr. Selma Fraiberg, an infant mental health pioneer, who recognized the unique possibilities of this work when she said working with very young children is “a little like having God on your side.”³⁶ We now understand that maltreated children have significant disproportionate developmental delays, and that it is the responsibility of the court to do what we can to search for these delays and help these young children.³⁷ Child development research helps us make better decisions about the type and frequency of visitation because one size does not fit all. Judges should work hard to carefully choose the first placement for babies and toddlers, and use concurrent planning to assure, whenever possible, that the first placement can be the final placement if reunification fails.

Judges should also use science when making custody decisions. As Professor Elizabeth Bartholet queries, should we continue to romanticize heritage, or should we really examine the capacity to parent first and foremost?³⁸

Judges don’t automatically determine custody by having the child spend half of the week with each parent. While an easy judicial decision, it is rarely in the best interest of the child who requires routine and stability. The use of existing evidence-based programs that are known to be effective, like home visitation, Early Head Start, and Head Start, must be part of a judge’s toolbox. The judiciary must use programs for our families based upon empirical evidence of effectiveness.



8.1.6 The Necessity for Evidence Based Interventions in Child Welfare

How do we know the programs we send parents and children to work? Do we investigate outcome studies on different treatment modalities? What type of program is best for what type of individuals? These should be the first questions we ask before we order our families into programs as required in their case plans. Does the treatment for Substance Use Disorders work? Does the domestic violence program decrease violent behavior? Are parenting classes appropriate and useful? Are parents learning and changing their behavior? How do we know what works?

Judges must realize what every researcher knows -- some interventions “work,” some have no effect (the null hypothesis) and some actually harm (have iatrogenic effects) the people they were designed to help.

The job of judging, especially in juvenile court, is complex and difficult, but judges have the responsibility to ask questions and demand that the services we order for children and families are well designed, well monitored, and well evaluated to determine whether they are beneficial.

Judges must use parenting intervention services that are evidence-based. An order for parents to attend didactic “parenting classes,” even though many are inadequate and non-evidence-based, is ineffective and a waste of the parent’s money.³⁹ In many jurisdictions, there is no research-based structured curriculum, little monitoring and training, and no interactive component for the parent to practice with their child the new skills they have learned in the presence of the parenting teacher to exhibit their level of understanding.⁴⁰ Other than attendance, the classes do not have structured requirements to measure successful completion.⁴¹ There are no systematic assessments of progress, no observations of parent and child interactions, and no qualitative and quantitative measures to determine if insight has been gained and new practices and beliefs integrated.⁴²

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We can no longer send all of our parents to a parenting program with no evidence of effectiveness and where compliance is measured by attendance only. This is a failure to make “reasonable efforts.”⁴³ And what about families who need more intensive, individualized, longer term services? What is needed when a parenting program is not enough to change the parent’s behavior?

One science-based therapy that addresses inter-generational transmission of child maltreatment uses infant-parent psychotherapy.⁴⁴ Infant-parent psychotherapy is an individual, intensive clinical intervention developed by Dr. Alicia Lieberman and modified by Dr. Joy Osofsky for use in the dependency court.⁴⁵ The dyadic intervention focuses on the relationship between parent and baby in an effort to help the parent gain insight about how the “ghosts in the nursery” interfere with the parent being able to care adequately for her baby.⁴⁶ The infant mental health therapist promotes empathy and models appropriate parenting skills for the parent.⁴⁷

Infant-parent psychotherapy is based on the following concepts:⁴⁸

- The infant has been harmed in the relationship and must be “healed” in that relationship.
- The therapeutic work incorporates a broad range of techniques to enhance the mother’s awareness and responsiveness to her child’s needs.
- Emotional and behavioral problems in infancy and early childhood need to be addressed in the context of primary attachment relationships.
- Promoting growth in the caregiver-child relationship supports healthy development of the child long after the intervention ends.

Research has shown that such intensive evaluation and relationship-based treatment can impact positively on the interactions between very high-risk parents and children and their developing relationship. Findings include:⁴⁹

- Important improvements in both parental sensitivity to the children and in the children’s emotional responsiveness and behaviors.



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- No further abuse or neglect
- 86% reunification rate and 100% permanency placement

Juvenile court judges are some of the most caring and competent people in America. They have begun to understand that their ability to make decisions based on what they think or feel can only be enhanced if they also consider what the research and science tells us.

8.2 CORE CONCEPTS OF HUMAN DEVELOPMENT

A healthy attachment to another human being and the feeling of security and safety it provides is an essential key to a positive development. One of the most critical tasks of infancy is developing that healthy attachment.⁵⁰ Unfortunately, children in our court system often lack this crucial foundation. What is particularly unfortunate is the fact that early relationships form the basis for all later relationships, so the Court must make restoring or creating a healthy attachment for every child a priority.⁵¹

1. Human development is shaped by a dynamic and continuous interaction between biology and experience.
2. Culture influences every aspect of human development and is reflected in childrearing beliefs and practices designed to promote healthy adaptation.
3. The growth of self-regulation is a cornerstone of early childhood development that cuts across all domains of behavior.
4. Children are active participants in their own development, reflecting the intrinsic human drive to explore and master one's environment.
5. Human relationships, and the effects of relationships on all relationships, are the building blocks of healthy development.
6. The broad range of individual differences among young children often makes it difficult to distinguish normal variations and maturational delays from transient disorders and persistent impairments.
7. The development of children unfolds along individual pathways whose trajectories are characterized by continuities and discontinuities, as well as by a series of significant transitions.

Restoring or creating a healthy attachment for every child is a priority. It is the essential key to a positive development.



8. Human development is shaped by the ongoing interplay among sources of vulnerability and sources of resilience.
9. The timing of early experiences can matter, but, more often than not, the developing child remains vulnerable to risks and open to protective influences throughout the early years of life and into adulthood.
10. The course of development can be altered in early childhood by effective interventions that change the balance between risk and protection, thereby shifting the odds in favor of more adaptive outcomes.⁵²

Some things judges can do:

1. Convene a multidisciplinary team to oversee the services each child needs.
2. Frequently monitor the child's development and progress toward a permanent family.
3. For the children who need foster placement, make the first placement the last.
4. Order frequent visits between very young children in foster care and their parents.
5. Visits (when in the child's best interest) offer the best possible opportunity to begin to heal a damaged relationship.⁵³

8.3 VALUABLE RESOURCES

Among the decades of research now available, an indispensable tool for judges is *From Neurons to Neighborhoods: The Science of Early Childhood Development*, published in 2000, by the National Academy of Sciences (NAS). It was published after an expert committee was convened by NAS to summarize the science of early childhood development. It should be on the bench next to this bench book, rules of evidence, and other tomes.

One of the finest websites providing and translating the science of child development was created by Dr. Jack Shonkoff at Harvard's Center on the Developing Child and can be found at: www.developingchild.harvard.edu.

Another book, written by a judge, an early childhood expert and a psychologist working together in a dependency court, *Child Centered Practices for the Courtroom and Community: A Guide to Working Effectively with Young Children and their Families in the Child Welfare System*⁵⁴ is a practical guide to navigating the complex child welfare system and exalting the needs and services for children and families.

Another essential tool is translational research that explains the results for the practitioner. One of the finest examples of this is a DVD created by the Miami Child Well-being Court and Zero to Three, the National Center on Infants, Toddlers and Families, entitled "Helping Babies from the Bench: Using the Science of Early Childhood Development in Court."⁵⁵ It is a 20-minute visual lesson in the science of child development and the possibilities for reform in a research informed court and community environment is a wise investment.

The California Evidence-Based Clearinghouse for Child Welfare⁵⁶ is an excellent resource where researchers and policymakers might find reviews and ratings of relevant programs evaluated on child welfare populations.



8.4 ENDNOTES

1. The terms “Juvenile” and “Family” are used interchangeably in this section since different states have different vocabularies. The cases covered in this section have to do with “dependency” – child abuse and neglect cases and the quest for family reunification.
2. E.J. Maher, et. al., *Overcoming challenges to implementing and evaluating evidence-based interventions in child welfare: A matter of necessity*. 31 CHILDREN & YOUTH SERVICES REVIEW, SERVS REV. 555 (2009)..
3. J. Kelly & M. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 FAM. & CONCILIATION CTS. REV. 297 (2000).
4. Am. Acad. Pediatrics Com. on Early Childhood, Adoption & Dependent Care, *Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145 (2000).
5. *Id.*
6. *Id.*
7. *Id.*
8. ZERO TO THREE, CRITICAL COMPETENCIES FOR INFANT-TODDLER EDUCATORS, <https://www.theounce.org/wp-content/uploads/2017/04/ZTTCriticalCompetenciesforInfant-ToddlerEducatorsinBrief2015.pdf> (last visited April 14, 2019)
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10. F. Wulczyn & K. Hislop, *Babies in Foster Care: The Numbers Call for Attention*, 22 Zero To Three J. (2002). See also S. Dicker, et. al., *Improving the Odds for the Healthy Development of Young Children in Foster Care*. (Nat'l Center for Children in Poverty, Mailman Sch. Pub. Health, Column. U., (2002)).
11. M. Brenner, *Infant Cues and TREATS*, (Center for Dev. & Disability, U. N.M., 2012). www.cdd.unm.edu/ecln/HVT/common/pdfs/2012_4.pdf
12. M. Charbonneau, et al., *A Trauma-Sensitive Toolkit for Caregivers of Children* (Spokane Reg. Health Distr. 2007). www.uwcita.org/wp-content/uploads/2016/05/1-2-3-Care-Trauma-Care-Toolkit.pdf
13. J. Hartson & B. Payne, *Creating Effective Parenting Plans: A Developmental Approach for Lawyers and Divorce Professionals* 9 (Am. Bar Ass'n 2006); ; Id. Engagement cues encourage caregivers to pay attention to the infant. Some of these cues include: Smiling,



vocalizing, making eye contact with caregiver, reaching out to caregiver, turning eyes or head toward caregiver, and lip smacking and other feeding sounds.

14. Disengagement cues signal the infant's need for a break or rest from interacting with the caregiver. Some of these cues include: Crying or fussing, turning head and/or body away from caregiver, squirming or kicking, back arching or pulling away, coughing, choking, spitting up or vomiting, and falling asleep.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. D. Goldsmith, et al., *Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placements of Children in Foster Care*, 55 JUV. & FAM. CT. J. 1 (2004).
20. *Id.*
21. *Id.*
22. C. Rees, *Childhood Attachment*, 57 BRIT.J GEN. PRAC. 920 (2007). www.ncbi.nlm.nih.gov/pmc/articles/PMC2169321/
23. *Id*
24. Harton, *supra* note 13..
25. J. Goldman, *Ed Tronick and the “Still Face Experiment”* SCI. AMERICAN, (2010), blogs.scientificamerican.com/thoughtful-animal/ed-tronick-and-the-8220-still-face-experiment-8221; Babies in Court, *Helping Babies from the Bench*, YouTube (July 9, 2015), www.youtube.com/watch?v=uMdzWanJh98
26. *Id., see, e.g.*, Babies in Court, *supra* note 25.
27. Ed Tronick, *The Neurobehavioral and Social-Emotional Development of Infants and Children* (W. W. Norton & Company, 2007).
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*

32. Goldman, *supra* note 25.
33. *Id.*
34. *Id.*
35. *Id.*
36. R. N. Emde, *Foreword to Selected Writings of Selma Fraiberg* (Louis Fraiberg ed., Ohio State University Press, 1987).
37. S. Font & L. Berger, *Child Maltreatment and Children's Developmental Trajectories in Early- to Middle-Childhood*, 86 CHILD DEVELOPMENTAL 536 (2015). doi.org/10.1111/cdev.12322
38. ELIZABETH BARTHOLET, NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT AND THE ADOPTION ALTERNATIVE (Beacon Press, 2000).
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40. *Id.*
41. *Id.*
42. C. LEDERMAN & J. OSOFSKY, FUTURE TRENDS IN STATE COURTS 2007 (Nat'l Center for St. Cts., 2007).
43. All states and territories as well as the District of Columbia require "child welfare agencies make reasonable efforts to provide services that will help families remedy the conditions that brought the child and family into the child welfare system." For a state-by-state list of statutes, *see, e.g.*, CHILD WELFARE INFORMATION GATEWAY, REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN (March 2016) at www.childwelfare.gov/pubPDFs/reunify.pdf (last visited April 14, 2019).
44. A. Lieberman, INFANT-PARENT PSYCHOTHERAPY: CORE CONCEPTS AND CURRENT APPROACHES, HANDBOOK OF INFANT MENTAL HEALTH, SECOND EDITION (2nd ed. 2005) www.media.axon.es/pdf/96445.pdf
45. C. Lederman & J. Osofsky, *Infant Mental Health Interventions in Juvenile Court*, 10 PSYCHOLOGY, PUB. POL'Y & L. 162 (2004).
46. *Id.*
47. *Id.*

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48. Osofsky, Joy, Trauma through the Eyes of a Young Child: Bringing Relationship Based Assessment and Child-Parent Psychotherapy to Juvenile Court, presentation LSU Health Sciences Center (2009) www.ittakesanohana.org/wp-content/uploads/2011/01/Bringing-Relationship-Based-Assessment-and-Child-Parent-Psychotherapy-to-Juvenile-Court.pdf
 49. J. Osofsky, et al., *The Development and Evaluation of the Intervention Model for the Florida Infant Mental Health Pilot Program*, 28 INFANT MENTAL HEALTH J. 259 (2007).
 50. L. KATZ, ET AL., CHILD-CENTERED PRACTICES FOR THE COURTROOM & COMMUNITY: A GUIDE TO WORKING EFFECTIVELY WITH YOUNG CHILDREN & THEIR FAMILIES IN THE CHILD WELFARE SYSTEM. (Paul H. Brookes Publishing Co., 2010).
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 52. J. SHONKOFF & D. PHILLIPS, FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT (Nat'l Acad. Press, 2000).
 53. Babies in Court, *supra* note 25.
 54. LYNNE KATZ, ET AL., CHILD CENTERED PRACTICES FOR THE COURTROOM AND COMMUNITY: A GUIDE TO WORKING EFFECTIVELY WITH YOUNG CHILDREN AND THEIR FAMILIES IN THE CHILD WELFARE SYSTEM. (Paul H. Brookes Publishing Co., 2011).
 55. Babies in Court, *supra* note 25.
 56. CALIFORNIA EVIDENCE-BASED CLEARINGHOUSE FOR CHILD WELFARE, <https://www.cebc4cw.org> (last visited April 14, 2019).