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CLBB News

A Newsletter from the Center for Law, Brain & Behavior



CLBB
CENTER FOR LAW,
BRAIN & BEHAVIOR



Massachusetts General Hospital
Founding Member, Mass General Brigham
HARVARD MEDICAL SCHOOL
TEACHING HOSPITAL

January 5, 2024

The Center for Law, Brain & Behavior *Year in Review: 2023*

Dear Friends,

This past year has been extraordinarily eventful for the Center for Law, Brain and Behavior (CLBB). Thanks largely to charitable gifts and grants to the Neuroscience for Justice Campaign, we were able to expand CLBB's core activities AND mount ambitious initiatives to demonstrate the transformative impact of neuroscience in "real world" legal-judicial contexts. Notably, we:

- advanced the Elder Fraud Protection White Paper project ("Aging Brains"), with a first draft reviewed at a forum for financial service leaders and gerontology experts
- provided training on trauma among asylum seekers to over 100 federal immigration judges and collaborated on an alternative resolution process for asylum cases ("Trauma at the Border")
- resumed our in-person Science in the Courtroom training seminars for federal judges and developed a four-day Law and Neuroscience series for Massachusetts judges ("Criminal Sentencing")
- collaborated with the Suffolk County District Attorney's Office to design and pilot a pre-arraignment diversion program for young adults ("Juvenile and Young Adult Justice").

Perhaps the most far-reaching work last year was the development of the first digital, open access neurolaw library – Brain InCite. We believe that CLBB's Library will be a "game changer" by facilitating access to neurolaw for persons across society – defendants and inmates, prosecutors and defense counsel, judges and legislators, policy makers, advocates, educators, and researchers. Be on the lookout in February for the release of the Juvenile and Young Adult Justice portal of the Library, to be followed by releases of the three other content repositories over the year.

Ongoing activities included our amicus brief program, legislative briefings, and work with international colleagues on a comparative neurolaw course for the United Nations Institute of Teaching and Research (UNITAR). We continued our individual testimony and participation in legal teams in trial, appellate and parole cases. And we welcomed the opportunity to train and mentor interns from undergraduate, law, medical and public policy programs. All told, we drew upon neuroscience and related science research for broad application— from laboratories to legislatures, from classrooms to courtrooms, from neighborhoods to national arenas.

On behalf of co-directors Dr. Judith Edersheim and Dr. Bruce Price and the entire CLBB team, thank you for your continued interest in CLBB. And to many of you, thank you for your thoughts, guidance, and financial support. Together, we have made a difference, and we are sure that by working together, we will continue to do so in the New Year that is upon us!

Sincerely,

CLBB Highlights



Teaching Judges

Federal District

In June, CLBB partnered with the Federal Judicial Center and Harvard Law School to bring together 12 seven-person teams of judges and court personnel from US federal districts and territories for a three-day training on neuroscience applications in court cases, sentencing and community-based supervision. CLBB faculty worked with participant teams in applying science and “best practices” approaches to cases that reflect the real-world challenges facing federal judges and magistrates, pre-trial and post-conviction probation staff, and attorneys before the federal courts.

Immigration

At the invitation of the Executive Office of Immigration Review (EOIR) of the US Department of Justice, Robert Kinscherff, PhD, JD, and Caitlyn Tabor, JD, joined a colleague from Boston Children's Hospital to present information on childhood neurodevelopment, adversity and trauma to over 100 judges of the federal immigration courts who hear asylum cases involving children and adolescents. The presentation was well received, and the EOIR is interested in additional trainings and discussion of a potential pilot site to implement a trauma-informed alternative to current procedures.



Massachusetts

In collaboration with the Flaschner Judicial Institute, CLBB mounted a multi-session Neuroscience and Law training program for 35 Massachusetts judges. A two-day retreat included teaching of developmental neuroscience, addiction and trauma related to their application in legal cases. The retreat was followed by one-day sessions on the aging brain, direct and vicarious trauma, and the neuroscience of mindfulness and meditation. The latter focused on strategies that judges can use to address the stressors and risks that inevitably come with the role of a judge. The series will conclude with a final session in January 2024.



In December, Drs. Judith Edersheim and Robert Kinscherff trained over 100 judges of the Massachusetts District Courts on brain development, social maturation, and self-distancing of young offenders as they enter their twenties; the prevalence of addictions and trauma among emerging adult offenders; and practical alternatives to incarceration that can be available to courts that decrease recidivism and support long-term public safety outcomes. The program is sponsored by the Race and Ethnic Fairness Committee, Department of the District Court, MA Trial Court.



Dr. Judith Edersheim served as an expert to the Working Group of the Supreme Judicial Court of Massachusetts which released new Standards on Substance Use Disorders and Mental Health Conditions. The Standards, revised for the first time since 1998, offer guidelines for judges and other court personnel and include the recognition that “Recurrence of substance use is common, and is best approached as an opportunity to reset treatment and recovery planning and goals.”





Individual Casework

Individual casework by CLBB leadership during 2023 included forensic evaluation and/or testimony in: 11 Juvenile Court cases, 4 Adult cases, 7 Parole Board cases involving persons incarcerated for capital offenses committed prior to age 18 (2 paroles granted, 4 pending), 14 persons charged for serious offenses committed as emerging young adults (prosecution and defense), 1 governor's pardon (granted), 1 commutation, and 2 civil actions regarding conditions of confinement in juvenile justice facilities (pending). One case on late adolescent brain development has been heard by the MA Supreme Judicial Court with its opinion pending.



Amicus Briefs

Amicus Briefs authored by and/or joined by CLBB during 2023 include: *Nikolas J Kedrowitz v State of Indiana* (Indiana Supreme Court) about the De Facto Life Sentence for 13-year-old tried and convicted as an adult for homicide; *People v. Tony Hardin* (California Supreme Court) about the equal protection clause as applied to emerging young adults in sentencing; *Jerry Cintron v. Paul Bibeault, et al* (US Court of Appeals for the First Circuit) about conditions of confinement and addiction; *Jwainus Perry v. Lewis S. Spencer, et al* (US Court of Appeals for the First Circuit) about neurological changes due to prolonged solitary confinement as a legally cognizable physical injury.



Legislation

Massachusetts

In September and October, CLBB leadership participated in briefing meetings on neuroscience over several days with Massachusetts legislators in relation to pending legislation on managing addiction with persons on probation and raising the age of Juvenile Court Jurisdiction to age 20. These bills are currently passing through committees and are anticipated to be on the legislative agenda during early 2024.



Vermont

CLBB Executive Director Robert Kinscherff, PhD, JD, briefed defense and prosecution attorneys, advocates, and others on adolescent and young adult neurological and social development at a working conference on "Second Chance" legislation sponsored by the Vermont Law and Graduate School. The "Second Chance" bill pending in Vermont would require that offenders convicted of serious crimes as young adults have an opportunity after a set term of years to demonstrate that they have been rehabilitated and can be safely paroled to the community.

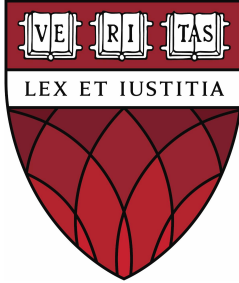


Training the Next Generation

Research Assistants and Associates

In 2023, CLBB taught and mentored 9 research assistants and associates. They included undergraduate, graduate, and law students from schools around the country. Their time with CLBB has given them knowledge and hands-on experience with the intersection of brain science, behavioral and social sciences, law, and public policy. CLBB also continued its partnership with the Petrie Flom Center at Harvard Law School to support a Senior Fellow in Law and Applied Neuroscience and our first International Senior Fellow in Law and Applied Neuroscience. CLBB leaders also serve as mentors in the department of Psychiatry at Mass General and at Harvard Medical School's Program in Bioethics.

Law and Neuroscience Seminar



For seven years in a row, CLBB leadership joined CLBB Managing Director, Judge Nancy Gertner (ret.) in co-instructing the Law and Neuroscience course at Harvard Law School. Available university-wide, the course attracts law students, undergraduate and other graduate students from diverse fields such as medicine, psychology, neuroscience research, theology and religion, child development and education, and government. This year a police officer from the United Kingdom and a graduate student studying correctional architecture participated.



Neuroscience for Justice Campaign

In early 2022, CLBB embarked on an ambitious plan to take its program to scale and to magnify its impact. The anchor of this expansion is philanthropy, and thus CLBB began its first fundraising effort – the Neuroscience for Justice Campaign – led by Advisory Board Chair Silda Wall Spitzer and other volunteers. Now in the silent phase, we have reached the \$3M mark toward a short-term goal of \$5M and a longer term goal of \$10M. Early Campaign gifts have catalyzed three innovative on-the-ground initiatives: the Young Adult Diversion Pilot Program, the Brain InCite Neurolaw Library, and the Aging Brain and Elder Fraud Projection Project.

Current Initiatives



Brain InCite Neurolaw Library

To provide accurate and actionable neuroscience information to persons making life-altering decisions in court cases, legislative debates, policy determinations, and organizations, CLBB is developing a free, open access online platform called the Brain InCite Neurolaw Library. This unique repository will provide robust, continually updated content in four areas: juvenile and emerging adult justice; trauma, memory and asylum law; sentencing reform; and the aging brain and elder fraud protection. CLBB's Library will feature extensive indexes, cross references, and search tools. Through AI technology, complex academic materials can be customized for users with different reading levels. A resource librarian will be present – initially part-time – to respond to user inquiries in real time and to guide future acquisitions.



Alternatives to Incarceration of Young Offenders

CLBB is partnering with the Suffolk County (Massachusetts) District Attorney's Office to dismantle the "cradle to prison pipeline" through a pre-arraignment diversion program for persons aged 18 to 25 years. Guided by dual goals of facilitating positive young adult development and advancing public safety, this diversion program will identify young offenders likely to benefit from social, educational, vocational behavioral health or other services to support rehabilitation and positive engagement in the community. The project is designed to yield a reliable path to decreasing disproportionate incarceration of poor and/or minority youth, lower unacceptably high recidivism rates, and avoid the negative long-term collateral consequences of prosecution and prison time.

Aging and Elder Fraud Protection Project

On November 16, 2023, CLBB hosted a Forum on the Aging Brain and Elder Fraud Protection for financial services and banking professionals, judges, disability and elder rights attorneys/advocates, and medical professionals with experience in elder populations. Participants reviewed a draft of CLBB's White Paper that uses neuroscience knowledge to enhance protections against financial fraud and exploitation for elders in cognitive decline. The completion and dissemination of the White Paper will be followed by a pilot project mounted with several investment



advisory firms to test recommendations regarding regulatory and ethical compliance and protection of their clients.

CLBB Events



[Blaming the Brain: Criminal Responsibility, Addiction, and Neuroscience](#)

CLBB, UNITAR, & Maastricht University | February 28, 2023

Advances in neuroscience have challenged core concepts of personal volition, agency and accountability. This webinar examined criminal responsibility in light of neuroscience models of addiction, psychiatric illness, decision-making, and volition. Webinar leaders from the University of Maastricht, University of Groningen, and the Center for Law, Brain & Behavior at Massachusetts General Hospital (Harvard Medical School) discussed comparative law approaches (European and American) to criminal responsibility and the extent to which these approaches do – or should – reflect current and emerging neuroscience findings. This webinar was presented in anticipation of coursework offered by UNITAR during Fall 2023 leading to an *Executive Diploma on Law and Neuroscience – A Comparative Approach*.



PANELISTS:

Dr. Robert Kinscherff is a clinical/forensic psychologist and attorney serving as Executive Director of the Center for Law, Brain & Behavior (CLBB) at Massachusetts General Hospital, Harvard Medical School.

Dr. Judith Edersheim is the Founding Co-Director of the Center for Law, Brain & Behavior at Massachusetts General Hospital (MGH) and is an Assistant Professor at Harvard Medical School.

Dr. David Roef is an associate professor in criminal law and an extraordinary professor of criminal law and neuroscience at Maastricht University.

Dr. Anna Goldberg is an assistant professor of criminal law at the University of Groningen.



Maastricht University



[When the Science Says Children But the Law Says Adults: Trying and Sentencing Youth as Adults](#)

CLBB & Petrie-Flom Center | April 4, 2023

All 50 states have transfer laws that either allow or require children to be prosecuted in adult criminal court for certain offenses. Attorney Marsha Levick, Esq. provided an overview of the transfer law legal landscape and potential legal challenges to transfer laws. Neuroscientist BJ Casey, PhD spoke about the science of adolescence and explored whether there is a neuroscientific basis for transfer laws as an effective deterrent to delinquency and consistent with rehabilitation. Stephanie Tabashneck, PsyD, JD led a discussion on the role science can play in challenges to transfer laws.

PANELISTS:

Carmel Shachar, Executive Director, Petrie-Flom Center

BJ Casey, PhD, Christina L. Williams Professor of Neuroscience, Department of Neuroscience and Behavior, Barnard College, Columbia University and The Justice Collaboratory, Yale Law School

Marsha Levick, JD, Chief Legal Officer and Co-Founder, Juvenile Law Center and Adjunct Professor of Law, University of Pennsylvania Carey Law School

Stephanie Tabashneck, PsyD, JD, Senior Fellow in Law and Applied Neuroscience, CLBB and the Petrie-Flom Center



Neuroscience and Cannabis: Implications for Law and Policy
CLBB & Petrie-Flom Center | April 20, 2023

The legalization of cannabis has raised significant questions for law and public policy. In this public event, neuroscientist Dr. Yasmin Hurd explored the science of cannabis, CBD, and the future of substance use disorder treatment. Dr. Stephanie Tabashneck then moderated a discussion and audience Q&A about the implications for law and policy.

PANELISTS:

Carmel Shachar, Executive Director, Petrie-Flom Center

Yasmin Hurd, PhD, Ward-Coleman Chair, Translational Neuroscience, Professor of Psychiatry and Neuroscience, and Director, Addiction Institute, Icahn School of Medicine at Mount Sinai

Stephanie Tabashneck, PsyD, JD, Senior Fellow in Law and Applied Neuroscience, CLBB, and the Petrie-Flom Center



Young, Vulnerable, and Betrayed: What can be done to help America's most vulnerable children?

CLBB & Petrie-Flom Center | December 7, 2023

A child born in America today has a 37 percent chance of having their welfare investigated by the state by the time they turn 18. For black children, the probability rises to 53 percent. Over next 18 years, 145 million American children will be referred to child protective services. What does this mean? And what can be done about it?

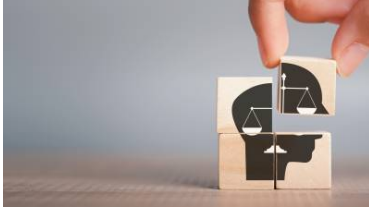
Saul Glick, Senior International Fellow in Law, Policy, and Applied Neuroscience, and Kathryn Spearman, registered nurse and PhD candidate at Johns Hopkins, discussed their research and upcoming paper on the impact crime related events are having on America's children and the system which is designed to protect them. Saul also discussed the novel intervention, C.A.R.E. (Child At Risk Evaluation), which he designed to enhance the training, data gathering, and information sharing techniques used by frontline mandatory reporters. C.A.R.E. will be piloted in early 2024 in a mid-sized American city.

PANELISTS:

Saul Glick, MA is the International Fellow for Law, Policy, and Neuroscience for the Project on Law and Applied Neuroscience a collaboration between CLBB and the Petrie-Flom Center. After graduating with an M.A. in English Literature from the University of Edinburgh, Saul joined London's Metropolitan Police Service, where he was a police constable and a public order (demonstrations and protests) officer. In 2021, Saul won the Kennedy Scholarship, which annually sends British post-graduates on full scholarship to either Harvard or MIT; Saul was a special student attached to Harvard's psychology department.

Kathryn Spearman, MSN, RN is a pediatric nurse and a PhD

candidate at the Johns Hopkins University School of Nursing. Her doctoral training is funded through a F31 training grant from the National Institute of Child Health and Development. Spearman's research focuses on intimate partner violence (IPV) and child maltreatment, firearm injury prevention, IPV-related homicides of women and children, and risk-assessment. Her scientific inquiry is informed by clinical experience working as a pediatric nurse with abused children in inpatient and residential treatment settings. Her BS and MSN are from the University of Virginia and Johns Hopkins School of Nursing, respectively, and she earned a graduate certificate in maternal child health from Johns Hopkins Bloomberg School of Public Health.



[Aligning Criminal Practice with Addiction Science](#)

CLBB & Petrie-Flom Center | December 12, 2023

Drawing on the science of substance use disorders (SUD), this presentation focused on legal responses to SUD that contradict neuroscience and behavioral research, such as incarcerating individuals on probation following a relapse. Implications for bail, sentencing, probation, and parole were discussed, as well as client-centered considerations. The presentation included science-informed criminal justice approaches that support treatment and recovery.

PANELISTS:

Susannah Baruch, Executive Director, Petrie-Flom Center

Lisa Newman-Polk, Esq., LCSW, Lead counsel for Julie Eldred in *Commonwealth v. Eldred*

Stephanie Tabashneck, PsyD, JD, Senior Fellow in Law and Applied Neuroscience, Center for Law, Brain and Behavior and the Petrie-Flom Center

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