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CLBB News

A newsletter from the Center for Law, Brain & Behavior

January 27, 2022

CLBB Highlights



[Reimagining Judging](#)

The Square One Project | January 2022

In the latest paper from the Square One Executive Session on the Future of Justice Policy: [Reimagining Judging](#), the Honorable **Nancy Gertner** makes recommendations for holding judges and the judicial system accountable. This paper considers how the federal judiciary structurally resists change, and provides specific propositions for how judges and courts can overcome this resistance to play an active role in reimagining justice.

Highlight: "Judicial selection should reflect not just diversity in race, gender, and sexuality but also diversity in socio-cultural experience. Judges should be trained in the impact of trauma, exposure to violence, poverty, and lack of access to schools, healthcare, employment, etc. Judges should conduct retrospective reviews, similar to doctors' independent "sentinel audits" conducted following a death or serious injury when there is a wrongful conviction, recidivism, or an unexpected tragic event in a case. Judges' sentencing records should be subject to regular statistical analysis to identify racial bias. Judges should meaningfully engage with the communities in which they serve. Judges should attempt to change the narrative through opinion writing, shining a light on the humanity of individual people and the inhumanity of the criminal legal system."



[Connecticut Supreme Court Holds Sentence Based on Discredited Superpredator Myth Is Illegal](#)

Equal Justice Initiative | January 24, 2022

The Connecticut Supreme Court unanimously ordered a new sentencing hearing for Keith Belcher, a Black child sentenced to 60 years in an adult prison for non-homicide crimes committed when he was 14 years old. The defendant's original sentencing in 1997 was based on the notion that he was a "superpredator." On Monday, the Court held that this sentence was imposed in an illegal manner, as the theory of teenage "superpredators" is erroneous and discredited.

Highlight from State of Connecticut v. Keith Belcher: "We conclude that the superpredator theory was baseless when it originally was espoused and has since been thoroughly debunked and universally rejected as a myth, and it therefore constituted false and unreliable information that a sentencing court ought not consider in crafting a

sentence for a juvenile offender....

In the context of the sentencing of the defendant, a Black teenager, the court's reliance on the materially false superpredator myth is especially detrimental to the integrity of the sentencing procedure for two reasons. First, reliance on that myth invoked racial stereotypes, thus calling into question whether the defendant would have received as lengthy a sentence were he not Black. Second, the use of the superpredator myth supported treating the characteristics of youth as an aggravating, rather than a mitigating, factor."



[Stephanie Tabaschneck Co-Authors Bench Card for Alcohol Use Disorder](#)

Business Wire | October 26, 2021

Soberlink, the experts in remote alcohol monitoring, and the National Council of Juvenile and Family Court Judges (NCJFCJ) have teamed up to create a Judge's Bench Card regarding Alcohol Use Disorder (AUD). The Bench Card, which includes vital information regarding the diagnosis of AUD as well as common misconceptions of the disease, provides practical guidance for judges, family law professionals, litigants, or anyone else involved in a case where parental alcohol misuse could potentially impact the wellbeing of a child.

[The Bench Card for AUD](#) is authored by an esteemed panel of judges and forensic psychologists including Hon. Karen S. Adams (Ret.) and **CLBB-Petrie Flom Senior Fellow in Law and Applied Neuroscience Stephanie Tabashneck, Psy.D., Esq., NCJFCJ**, and the Soberlink Advisory Committee.



[Legal and Scientific Experts Sharply Question Proposed Crackdown on Drugged Driving](#)

The Boston Globe | January 02, 2022

In this article, **Judge Nancy Gertner** comments on the potential passage of a bill headed by Massachusetts Governor Charlie Baker that aims to crack down on drugged driving. Experts warn that the bill "risks sweeping up law-abiding drivers by forcing courts to consider the results of a questionable roadside impairment evaluation — and automatically suspending the licenses of those who refuse to participate in follow-up blood tests. Critics also question whether the Legislature has the power to require that judges accept the testimony of police officers trained in the technique, which in the absence of reliable 'pot breathalyzer' technology leans heavily on their subjective observations."

Highlight: "The notion that police officers after a few weeks of [DRE] training could disentangle bias from their observations is absurd," Gertner said. "It opens the door to selective enforcement."



[Instant Genius Podcast: Brain Myths, with Dr Lisa Feldman-Barrett](#)

Science Focus | November 15, 2021

In this podcast, **CLBB Chief Scientific Officer Dr. Lisa Feldman-Barrett** debunks some common misperceptions we have about the brain and explains how our grey matter works. She asserts that the most important role of the brain is not to think, but to coordinate the physiological systems of the body.

Highlight: "Each of us has inside our bodies a whole drama going on with dozens of systems that have to be coordinated in the most metabolically efficient way. Metabolic efficiency; frugal spending is a major selection pressure on evolution but it's also a major pressure on the adaptation of any individual. If your body is not working in the most efficient way, you are going to pay a price for that, and that price is illness (mental or physical)."

[Opinion: How We Interpret the Constitution](#)



In this opinion piece, **Judge Nancy Gertner** and Laurence H. Tribe describe their eight-month participation in the Presidential Commission on the Supreme Court.

Highlight: "[T]hey object to the court's recent decisions on 'voting rights,' 'gerrymandering' and 'dark money,' and asserting those decisions present 'a uniquely perilous moment that demands a unique response.' They also claim that the current court has been 'packed' with conservative justices, and they propose a simple 'cure': additional 'appointments leaning the other way.'"

Advisory Board Member News



[Despite Uproar Over Floyd's Death, the Number of Fatal Encounters With Police Hasn't Changed](#)

The New York Times | December 24, 2021

Despite two high-profile convictions in Minneapolis and nationwide protests, accountability for police officers who kill remains low. This year, murder and manslaughter charges have increased, however, criminal charges and convictions are rare. **CLBB Advisory Board Member Paul Butler** comments on how isolated high-profile convictions are unlikely to catalyze systemic change.

Highlight: "Criminal trials are not designed to be instruments of change...Criminal trials are about bringing individual wrongdoers to justice. So while there have been high-profile prosecutions of police officers for killing Black people, that doesn't in and of itself lead to the kind of systemic reform that might reduce police violence."



[The Politics of Going Gray](#)

WBUR | January 13, 2022

Assistant Speaker of the U.S House of Representatives **Katherine Clark** speaks on the social and political reaction to her decision to stop coloring her hair. Her health came under speculation as well as her ability to pass legislation and be taken seriously. Clark makes the point that "[t]he narrow definition of acceptable hairstyles for women reflects a broader culture of sexism, ageism and bigotry."

Highlight: "Your hair should be whatever makes you feel happy, strong, or beautiful. Wear your decision with pride and as a challenge to any notion that women should be anything other than equal and empowered."



[WBAL Host Jeremy Eldridge Interviews Judges John Gossart and Andre Davis](#)

WBAL News Radio | January 15, 2022

In this interview, **CLBB Advisory Board Member Judge Andre Davis** voices his support for new legislation which would amend the probation before judgement statute in Maryland.

Highlight: "What this new bill does is that it tweaks the probation before judgement statute in a way that mitigates what is otherwise a very harsh, overly harsh consequence to undocumented immigrant residents in our city and in our state who are deserving of a second chance and who state judges hear in Maryland believe are deserving of a second chance through the grant of a probation before judgement just as citizens are deserving of a second chance."

[CEO Who Recovered from a Workplace Scandal Offers Career Advice for Young Workers](#)

Fortune | January 14, 2022



Anne-Marie Slaughter discusses the evolution of her leadership style, which is a major theme in her recent book, *Renewal*.

Highlight: "Many of the lessons I've learned have to do with sharing power and recognition, which should seem obvious,' she said, adding that women, in particular, have been socialized to believe that being the public face of a company is a traditional hallmark of leadership."

Faculty News



[What the Pandemic Has Done to Our Memories](#)

NBC News | December 29, 2021

CLBB Faculty Member Daniel Schacter discusses how effects of the pandemic such as stress, isolation, and disruption influence memory. He advises structuring your environment as a way to mitigate stress-induced memory loss.

Highlight: "If we're under a lot of stress, sometimes it can very negatively impact retrieval of information."



[The Science Behind the Reality-Bending Mandela Effect](#)

Popular Mechanics | December 30, 2021

This article explores the Mandela Effect; the phenomenon of mis-recollections. **CLBB Faculty Member Daniel Schacter** comments on the inaccuracy of memory and how it is a record of our interpretations of our experiences.

Highlight: "To retrieve a memory, we have to use different parts of our brains and 'different elements of an experience,' says Schacter. Memories are psychological combinations of visual perceptions, auditory perceptions, and emotional responses. They're not like photos, Schacter says. 'They reflect our interpretations of our experiences, and are not literal recordings of what happened.'"

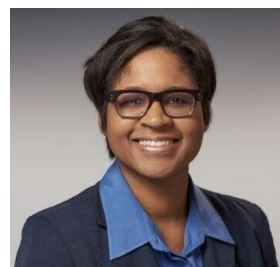


[In the Shadows: The Orphans Covid Left Behind](#)

The Hechinger Report | December 15, 2021

This article focuses on children who lost a primary or secondary caregiver to Covid. According to a study co-lead by **CLBB Faculty Member Charles Nelson**, about one in four children who lost a caregiver are Black.

Highlight: "We need someone to take responsibility for this. Someone to step up and say, 'Oh, my God, there's more than 100,000 children who are now left without parents or grandparents to take care of them.'"



[Polis Appoints Former D.C. Health Official as Behavioral Health Commissioner](#)

The Gazette | January 04, 2022

On January 18th, **CLBB Faculty Member Morgan Medlock** became Colorado's first behavioral health commissioner. She will oversee the brand-new Behavioral Health Administration.

Highlight: "'We are at a pivotal moment in our effort to transform Colorado's behavioral health system, and our success will depend in large part upon bold and effective leadership from the Behavioral Health Administration,' Lt. Gov. Dianne Primavera said in a statement. 'I'm confident that Dr. Medlock is the right person to guide the Administration and ensure that we continue to act urgently and purposefully to help all Coloradans get the behavioral health care that they need.'"



[Massachusetts Legislature is Pressured to Ease Burden of Criminal Records](#)

The Boston Globe | January 03, 2022

"A coalition of criminal justice experts is urging Massachusetts to improve how it treats people previously charged with crimes, saying the state is unnecessarily burdening former defendants — especially those prosecuted as juveniles — with lasting records of past misdeeds." **CLBB Faculty Member Jay Blitzman** shares his view that Massachusetts is behind the curve on this issue.

Highlight: "We know most juveniles will not [reoffend], yet we saddle them with the collateral consequences of an eternal stigma."



[Telemedicine Is Here To Stay](#)

McLean Hospital | January 15, 2022

Dr. Ipsit Vahia at McLean Hospital discusses the benefits of telemedicine, specifically the ability to extend access in new and more flexible ways.

Highlight: "For populations like older adults, where no-shows tend to be higher because of obstacles, virtual care has eliminated these barriers," said Ipsit Vahia, MD, associate chief of McLean's Division of Geriatric Psychiatry and the hospital's director of Digital Psychiatry Translation. "In our program, we've been seeing 30% more patients than before the pandemic. Our no-show and last-minute cancellation rates have dropped to almost zero."

Upcoming Events

[Neuroscience and Criminal Law: The Post-Jones Landscape for Late Adolescents and Emerging Adults](#)

February 09, 2022, 12:30 PM ET

Register [here](#) now!



The U.S. Supreme Court landmark case of *Roper v. Simmons* (2005) barring execution for crimes committed prior to age 18 launched a line of cases extending Eighth Amendment protections for juveniles. These cases clearly established that children are not little adults. The April 2021 SCOTUS decision in *Jones v. Mississippi* appears to signal a shift from federal constitutional cases to litigation and legislation among the states. This has prompted vigorous debate about how science should inform criminal law and policy regarding late teens and emerging adults and sharpens ongoing controversy about how developmental science is or should be applied to those under 18.

This panel surveys the current landscape of cases and legislation focused on crafting developmentally aligned frameworks for responding to misconduct by younger adolescents, late adolescents (ages 18 – 20) and emerging adults (21 – 25), including "raising the age" of full criminal culpability past age 18. The contributions of neuroscience to informing a developmentally aligned jurisprudence for late adolescents and emerging adults will be reviewed.

Panelists

Introduction: [Carmel Shachar](#), Executive Director, Petrie-Flom Center

[Honorable Jay Blitzman \(ret.\)](#), CLBB Affiliated Faculty and Lecturer, Harvard Law School, Northeastern Law School, and Boston College Law School

[Lael Chester, JD](#), Director of the Emerging Adult Justice Project at Columbia University's Justice Lab

[Stephanie Tabashneck, PsyD, JD](#), Senior Fellow in Law and Applied Neuroscience, CLBB and the Petrie-Flom Center

This event is part of the Project on Law and Applied Neuroscience, a collaboration between the Center for Law, Brain and Behavior at Massachusetts General Hospital and the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School.

Families, Substance Use Disorder, and the Courts: Is Compassion Consistent with Accountability?

February 22, 2022, 12:00 PM

Register [here](#) now!



How can family law support parents and their children when a parent has a substance use disorder?

One in eight children live in a home with a parent with a substance use disorder. Most of these children are under the age of five.

This discussion will examine innovations in family law contexts, such as divorce, child custody, and care and dependency cases, that promote safety and recovery while emphasizing compassion and support for parents. Topics of discussion will include family drug court interventions, interventions for mothers with opioid use disorder, integrated family medical and behavioral care, and implications for policy.

Panelists

Introduction: [Carmel Shachar](#), Executive Director, Petrie-Flom Center

[Hon. Beth A. Crawford \(Ret.\)](#), First Justice, Franklin County Probate and Family Court, Massachusetts (Former)

[Davida Schiff, MD](#), Director, Perinatal and Family-based SUDs Care at Massachusetts General Hospital and Assistant Professor of Pediatrics, Harvard Medical School

[Stephanie Tabashneck, PsyD, JD](#), Senior Fellow in Law and Applied Neuroscience, CLBB and the Petrie-Flom Center

This event is part of the Project on Law and Applied Neuroscience, a collaboration between the Center for Law, Brain and Behavior at Massachusetts General Hospital and the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School.

In the News

General

As the Pandemic Drags on, Law Professors are Making Changes

ABA Journal | January 18, 2022

State Rulings Uphold the Use of Diffusion Tensor Imaging in Cases Involving Mild Traumatic Brain Injuries

The National Law Review | December 23, 2021

Connecting Inmates with Health and Social Care Upon Reentry Can Help End the Prison Cycle

MedCity News | January 18, 2022

Brain Scans Could Replace Breathalyzers to Catch Stoned Drivers

News Atlas | January 11, 2022

Two High-Powered Black Attorneys Confront a Justice System's Flaws

New York Times | January 14, 2022

The Criminal Justice Issue Nobody Talks About: Brain Injuries

The Marshall Project | January 06, 2022

Zeynep Pamuk on the Case for Creating Science Courts

Undark | January 07, 2022

Brain 2.0: Transforming Neuroscience

Cell | January 06, 2022

New Neuroscience Faculty Member Helping Students Discover Their Own 'Light Bulb Moments'

Juvenile Justice

[Tennessee Judge Who Illegally Jailed Children Plans to Retire, Will Not Seek Reelection](#)

ProPublica | January 18, 2022

[Black Youths Twice as Likely to be Referred to Virginia's Juvenile Justice System, Report Finds](#)

The Washington Post | December 24, 2021

[Teaching Incarcerated Youth, UChicago Law Students Find New Perspectives on Legal System](#)

UChicago News | January 03, 2022

Elder Justice

[Elder Abuse Spreads, Stoked by the Pandemic](#)

The Wall Street Journal | December 28, 2021

[Using Virtual Reality with Older Patients](#)

Horizons | Fall/Winter 2021

[Surge in Elder Abuse Fueled by Pandemic](#)

Nascent Medical | January 04, 2022

['Simple' Lawsuit Could Pull U.S. Supreme Court Into Indiana Dispute Over Nursing Home Care](#)

IndyStar | January 14, 2022

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