



# Infant Mental Health from the Bench

## Module 3

**(A) Options for Supporting Infant Mental  
Health**

**(B) Interventions**

**(C) Implications for Judicial Practice**

**Transcript of  
Video Panel Discussions**  
(with added citations)

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# Infant Mental Health from the Bench

## Transcript of Video Panel Discussions

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## Module 3 Part A – Options for Supporting Infant Mental Health

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### Can the impact of neglect be fixed later in life?

#### Jean M. Clinton

That's a very important question and as a child psychiatrist one that I have to think a lot about. Of course, our goal as a civic society is not to have it happen and have all of the education and support. What we do know is story after story after story of children from child welfare, foster care, who came across one caring adult who saw in them their strengths, abilities and helped them thrive, and it changed their lives. We know many many stories like that. The issue is that we have no clue which are the children who are going to have that kind of response, who are the children who are not going to have that kind of response. So, we have to work under the operating and guiding principle that all children will suffer significant negative consequences when neglect is present. Let's find a caring adult who can support and mitigate, battle against some of those negatives (National Scientific Council on the Developing Child, 2004).

### Can that neglect have a permanent impact on a child's outcomes if nothing is done?

#### Brenda Packard

Absolutely, and I think that what has happened in child welfare is that we see a large cohort of children leaving foster care or leaving group care and for them life has not moved on the way it should have and they really have not done well in relationships, there have been educational challenges. And as Jean said, if someone took an interest in them or they had one foster parent or even a group care staff who took an interest and was able to help them, they end up devoting a lot of energy to moving from crisis to crisis, and being hyper-vigilant about their surroundings and they aren't able to put that into developing relationships and developing self-regulation - all of the kinds of things that they should have been doing when they were younger. And then they do move on to parents who are victims of this as well, that they were not able to have a successful relationship when they were younger, and they move on to a series of unsuccessful relationships, crisis to crisis, and the whole thing starts again, and when they have children they are not able to respond in a sensitive way to their children because no one responded to them. (National Scientific Council on the Developing Child, 2012)

### Neglect is often rooted in the experiences of the parents so judges may give time to repair or fix their own issues, but during that time the child may still be with the family or be removed and required to have access visits, so in light of the science – what steps can judges take to mitigate?

### **Justice June Maresca**

I think it depends on what kind of proceeding you are in and at what stage you are at. If you are dealing with a child protection case and it is early in the proceeding, then one of the first questions you may want to ask as a judge is -who is this child's "eyes light up" person? Who is in this child's life who can provide that? Whether the child is at home, and the parents are trying to learn how to regroup and re-do what they do, or whether the child is in a foster home or some other kind of caregiving situation, maybe with kin. Who is the person who is going to be there for that child? That is, I think, a critical question that a judge can ask (Crittenden PM, 2001).

## **What steps can be taken to buffer the trauma?**

### **Donna J. Gray**

Well I think that it is important to, again as Justice Maresca said, involve kin and people that are important in that child's life, and I don't think we do enough of that. Often we are concerned because we haven't had the opportunity to assess alternative caregivers or alternate people who could provide that buffering role. It is important to be asking questions of the people who are involved with the child at day care, in schools, and consider the responses of the child to the access that is being provided. It's also really important to place more weight on evidence the social workers that are trained and experienced in the area, because we don't always have easy access to expert clinical information. So I think that is something that should be considered as well – in terms of their particular expertise (O'Connor, 2004).

### **Justice June Maresca**

It's something that parents worry about very much and it becomes very difficult for a parent who is in that situation to see their infant or their toddler developing an attachment relationship with a foster parent, and they feel very threatened about that. So, one of the things that we may need to do as those who respond to these cases is to assist the parent in being able to support that kind of attachment and that kind of bond without feeling threatened. I'm not sure that we do a very good job of that right now, and especially if there is access that is going on, a parent can start to undermine that attachment building if they are not buying into it (Moyer, 2004).

## **What kinds of information would be helpful to a judge in an effort to understand the type of trauma a decision may have?**

### **Justice June Maresca**

I think this kind of education is critical. Judges need to have information so they will know what kinds of questions to ask, and having that framework for analyzing and looking at the information that is coming before you is critical. In that way, if you are dealing with people who don't have lawyers, or if you don't have an assessment, you don't have the luxury of being able to say I'm going to get an assessment or do some kind of a check on the infant or the toddler, at least what we have to do is know the questions to ask. I think this kind of education is absolutely essential, and then from there, if the information is not forthcoming then we need to ask for it. We need to ask questions of the parents, we need to ask questions of the workers who are involved. We need to send infants to have regular checkups in terms of wellness and their own development so that we can assess where that child is, and see whether what we have tried to put into place is good for this kid or not good for this kid (Wotherspoon, Vellet, Pirie, O'Neill-Laberge, Hon. Cook-Stanhope & Wilson, 2010).

**Donna J. Gray**

Can I just add – I think it is really important to focus on the actual child before the court because so often, especially when there is a sibling group, one access order isn't always going to be the right access order for all of the children involved and often it's more expedient to say, "access at the discretion of the society, once/ twice a week, for the children." That may not work for all of the children. An older child might not want to see the parent, and a younger child may want more contact, and it also depends on at the stage of the proceeding, are you trying to foster and maintain a relationship between a parent and a child. So I think that that is another thing that has to happen, that it becomes more child focussed (Moyer, 2004).

## Module 3 Part B – Interventions

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### What information needs to be gathered about a child who has experienced neglect?

#### Jean M. Clinton

How children especially little children reflect how their experience has been is through their behaviour. So you want to have a good knowledge of what typical development is. So, is a little eighteen month old walking, are they developing language. So, we use developmental pathways as one of our big markers of how our very little children are doing in terms of their development. So, that is one. Secondly, we want to look at their physical wellbeing. Do they have bruises, have they been lying in one place, do they have a flat head because they've been lying all of the time, what the state of their mouth, cavities, and what have you. And then the third is looking at the relational part of the development. Does the child engage with others? We have a drive to be social, to connect, it's how we survive, and if you have an infant, baby or a toddler, who is not interested in another person that has to be a red flag. That has to tell us – hmmm – what is going on? Or if we see infants who are turning away, instead of going to, that's one end, and then the other is - are they indiscriminate? Are they coming up to you and sitting on your lap and you don't know them at all. And so they just don't have any idea of who is my "person" and who is not my "person". So there are the three big areas to look for in terms of neglect (Wotherspoon, Vellet, Pirie, O'Neill-Laberge, Hon. Cook-Stanhope & Wilson, 2010).

### Let's talk about interventions – what sorts of interventions are supported by evidence?

#### Dr. Jean Victor Wittenberg

That's a very important question, and one in which unfortunately we don't have enough evidence, particularly for this population which is a very complex population. There are many different kinds of people who show up in these situations. I would think about it in terms of 3 kinds of interventions.

The first one is preventive. How often can we do something with a family, with parents that will make it likely that they will not re-offend, that they will not once again neglect or abuse a child. There are a couple of interventions that have evidence for them. One is a nurse visiting program into the home (Olds, et al, 2014), the other is a Triple-P program that is used quite widely now. It has a little bit of evidence showing that there may be some preventative strength in that (Prinz, et al 2009), and those are the ones in which evidence has been collected (Barth, 2009).

The second type of program has to do with, can we help parents or caregivers with the pathology that they have to change so that they see the child differently. There is a lot less evidence for that, and the biggest issue there is really that we have to protect the child. So, I think probably the majority of, or, in one large study that Charles Zeanah did down in Louisiana with this kind of family, they found that they were able to help some of the parents become better parents for their children and not re-offend, but in fact they took more of the children out of the families, out of the

entire group (Zeanah et al, 2001). So, it's a vital balance for judges – a vital decision for judges to make.

Then the third kind of interventions to think about is what can be done for the children who have been through this. There are some programs that help kids with trauma, help infants with trauma, but generally speaking they are complex interventions that involve supports for many of the kinds of systems that Jean talked about, that we collect when doing an assessment, we have to address each one of those specifically, and in the background is the issue of permanence (de Arellano, Ko, Danielson, & Sprague, 2008).

The most important thing for these infants and young children is that they be put into a set of caregiver relationships that last, because they learn over time. These things don't get turned around quickly, and if they've had a lot of negative experiences to date, it's that much harder to get it turned around to help them develop a sense of trust in what is going on around them, and in the people with them.

## How long is too long for infants and toddlers not to have a permanent plan?

### Jean M. Clinton

One of the things that worries me is sometimes the system can be morphed in ways that children end up in limbo for a very long time. I've said, and June here as judge also, that the babies brains don't go on "hold" as we're waiting for the judge or the system to make decisions. So I think it's essential that decisions be made as quickly and as competently as possible. That we work into a system that we figure out what is the information that needs to come before the judges and the lawyers so that a decision can be made. We know from studies, from Romanian orphan studies, that infants and little children who are left in the orphanage for longer than two and a half years, when they were adopted or when they went into foster care, their results in foster care were not as good as the infants that had been put in foster care before two and a half. But, one of the researchers always emphasizes each individual child is different. Some of the kids who were in for two and a half years had a favorite caregiver. They had characteristics that were somehow protective of them (Zeanah, Smyke, Koga & Carlson, 2005). So, I don't think we can say "how long is too long", because we can't put a solid figure on it, but we do have to say "get this done as quickly as we possibly can" because the baby's brain does not go on hold, and all the experiences are building it.

## How do you address that as a judge?

### Justice June Maresca

It is a difficult balance sometimes, because I think that one has to be very sure as a judge that if you are going to make a permanent decision for a baby, it has to be the right decision, or the best decision that you can possibly make. I think the concern as a judge is, when I see an application, for example, in a child protection context that says "ok we've apprehended this baby, and we want six months society wardship, so we've got six months to sort this out", and that worries me because if you want some time to do this, you can't simply say "six months – that sounds like a good number", because our sense of time and a baby's sense of time are miles apart. What is the blink of an eye to us we who have to organize assessments, and access visits, observations and so forth, is something that a baby just can't tolerate. So I think what we as judges have to pay



very close attention to is what kinds of timelines we are prepared to allow people to work within, and we need to keep the pressure up so that people don't get into a rhythm of "well if it's a baby we ask for six months" (Moyer, 2004).

### **Jean M. Clinton**

So June you're saying, what I'm hearing is really that this developmental period is qualitatively and quantitatively different than it is for older children, so we need to be thinking very differently.

### **Justice June Maresca**

Absolutely, so if I see a child in a family that comes in front of me who is say ten or twelve years old, six months in that child's life, although still, if you can think back to when you were that young seemed like an eternity, that long of time is still significant for them. It's way different than it is for an infant, for a two month old baby or a one month old baby (National Scientific Council on the Developing Child, 2007).

### **Donna J. Gray**

I think that what happens often in an agency such as the Children's Aid Society where I work, as Justice Maresca says, the workers think, "well we have to give six months, something will come together, something will happen in that time period" whereas I think it's important that we all work together to move it along and not see this legislation as permissive. It's a framework. It doesn't necessarily mean that we have to take six months to a year, or even two years. And I think that as lawyers for this agency that we have to take a more proactive role in that as well, in reminding judges and our social workers who instruct us as lawyers for this agency, that it is a framework. That it's not a rule that we have to follow to the letter.

### **Dr. Jean Victor Wittenberg**

Can I just add something to that? It's not just the period of time, but what happens inside that period of time. So, some foster homes or alternate caregivers are very good, and others, or when a child is moved from home to home to home, are much more stressful for a child. So it is time but also the quality of the experience in the time (National Scientific Council on the Developing Child, 2007).

## **Let's talk about interventions for a minute. Is a parenting program for instance enough of an intervention?**

### **Mary Rella**

That's a really good question. When we're looking at parenting programs we really have to be – for those of us who are needing to understand information about parenting and risks that parents promote, one of the things that we have to distinguish between is, is this a skill that a parent needs to develop versus is this a caregiving behaviour that a parent has that a parenting group that offers skill building may not necessarily address.

### **Jean M. Clinton**

I think as Mary is saying, not all parenting courses are created equal. And there may be some parenting courses that are very good for some of the behavioural and common issues that you have in parenting. But the kind of intervention that is required when there has been an attachment disruption, when the parent isn't reading the baby's cues, have to be very very specific, have to be very good. So the judge needs to be thinking about – not just parenting course, but what do I know about the resources available in my community that I might be able to access. Dr.



Wittenberg has developed a program around attachment, we've got Circle of Security, so there are a number of programs that are effective. The only one that is identified as preventing child abuse in high risk situations is the one that Jean has mentioned, and that is the Nurse-Family Partnership, which is an intensive nurse visitation program. So the research is ongoing but we can't wait for these long-term trials (Barth, 2009). So I think it is incumbent on our child welfare agencies, our mental health, to be saying and creating the list of – here are evidence-informed, evidence-based programs for these kinds of behaviours and problems. Because very often the mom or the dad never had the kind of caregiving that we are now asking them to provide for their child, so trauma informed – that's crucial for an effective parenting program.

### **Justice June Maresca**

I think that it becomes very important for judges as well, so when there is a suggestion that a particular intervention being offered to a parent like a parenting course, I think it's very easy for a judge to say "ok a parenting course – that's a great idea" I think we need to ask more question than that. What does this parenting course involve? Who is going to be teaching it, what are some of the things they are going to be teaching, how many people are participating in it, is this something that is going to actually address the concerns that this family is facing. I think that we sometimes use our little tick boxes too quickly and we need to ask these really probing questions to understand whether it's going to be an intervention that is actually going to help.

### **Donna J. Gray**

Just to add to that, I think that judges have to ask and we have to ask too, is the parent even going? Because you can recommend a parenting course and a lot of us do, and beyond looking at whether or not it fits the scenario or situation you need to know whether the parent is going, whether the parent is participating, whether the parent is learning and acquiring skills that he or she can sustain, and I think that as Justice Maresca says, often it's enough to say they've gone, they got the certificate, but I don't think it is enough.

### **Dr. Jean Victor Wittenberg**

So one of the things we're talking about is not only attendance at these programs, but change in the parent. And it's not only change and learning skills, but also building capacity and how robust is that capacity. We can all do things well when we are not stressed, but if we are more stressed we sometimes give those things up and it becomes vital that the parent be able to keep the child in mind even in times of stress, and be able to continue reading the child and understanding what the child's reactions are in stressful situations. I would want to see that change coming out of interventions. Then there is another point which I think is really important, and that has to do with the fact that many of these infants and toddlers have been traumatized by their parents, and just the appearance of the parent on the scene re-evokes all that trauma. Somehow the interventions have to get a hold of that so that a child is not being re-traumatized every time there is an access visit, every time he is exposed to the parent (Child Welfare Information Gateway, 2014).

### **Mary Rella**

And it may be subtle, like some of those indicators may be very very subtle, so one of the areas that is available to all parents and one of the areas for example access, we're not sending parents anywhere. They are coming to access, most of them, they're making use of that time. Generally there is another person, another social worker available, or another mental health professional there to be helpful to the parent and rather than sending these parents off somewhere hoping that whatever intervention they're learning is going to have some sort of positive impact on their parenting and/or on reducing the risks, we have that area, we have that space to be able to understand it better. It's incumbent on us to organize that time and understand how to use that access time so that we can see whether, maybe there is that initial traumatizing, but what the

parent learns in that time, how to attune and respond and be present with a child, helps the child move away from trauma responses to building more security (Rella, 2006).

**Justice June Maresca**

You know, just one other thing about interventions, I know especially outside of the GTA, in jurisdictions where there aren't a lot of resources that are available, there aren't these really good interventions in terms of access and therapeutic access, that's where I think as judges we also need to get creative. If we understand what the parent needs, what the baby needs, maybe there's someone else who can provide this. Maybe there is kin who is prepared to have this parent come in and work with them, and really learn firsthand, hands on, what it means to respond to a baby's cry. What it means to be attuned to a baby's cue. So it doesn't necessarily have to be a government funded program if there isn't one around, I think there are other ways to get to these kinds of learning environments, and I think those are the kinds of questions that judges need to ask as well.

**Jean M. Clinton**

I think that's the key there June, these modules are increasing the awareness of what kinds of things should I be asking about so that we're moving from the checkbox to be more reflective about what is actually going to be happening, and following Justice Maresca, being creative.

## Module 3 Part C – Implications for Judicial Practice

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### What are the potential risks that may be associated with custody and access orders specifically to a child's mental health?

#### **Lisa Hayes**

I think in a family conflict or family violence scenario it would be really important to make sure that you are tailoring the access to avoid the young child being exposed to further conflict. For example you could create an order that provides that where there is family conflict between the spouses that a third party would be involved in doing the transfer of the child from one parent to the other for that access. You may also want to think about whether supervised access is necessary for one or both parents depending on the kinds of risk that they may pose to the child. And within the child protection context the children's aid society would need to point out the evidence in support of supervised vs unsupervised access and whether a parent can manage the access. That's the one big issue that comes to mind - how to make sure that the child is safe, and the specific access order has to be geared to the specific risk present in the case (Jaffe, Crooks & Bala, 2005; Kelly, 2011).

#### **Jean M. Clinton**

I would add, it requires that the source of toxic stress for the child is identified. So that comes back to, how do the judges and how can the judges find out because if a child is going to be continuously exposed to a stressor in a person, the all of the good that may be being done outside of that is undermined. This concept of toxicity of the environment, I think, is a guiding one (Kelly, 2011).

### What kind of orders can be made to take into account what would be appropriate for infants and toddlers when we're talking about access and interventions?

#### **Justice Andrea Moen**

That's a very large question, because when we're talking about infants and toddlers we're usually talking about them in the context of a family that can have children of varying ages, different parents, some parents that are working far away, for example. We need to look at whether or not there is one of the family members that can be a buffer and make sure that that person is given, especially for an infant, probably a great deal of time with the child. We need to take into account how we can protect the child from the toxicity in terms of the access of the other parent. We can probably give grandparents time if that is going to be a way that we can handle these sorts of situations. There are many things that we probably could do but the most important thing is to think about the particular child and the particular family, and try to get evidence about the relationships, because we so often get the duelling affidavits where each parent is so bent on talking about how bad the other parent is that it's very hard to sift through that and come up with those answers, but, I think as judges we need to try to do that (Jaffe, Crooks & Bala, 2005; Kelly, 2011).

## What do you think judges should be looking for when they are dealing with scenarios similar to the ones we've been watching?

### **Justice June Maresca**

I think that we need to be very careful as judges that we create an atmosphere of problem solving in our courts, and try to diminish the emphasis on the adversarial. Because, the more the parents see each other as adversaries, the more they see themselves as adversaries with the Children's Aid Society, the less they are going to be able to attend to what they have to do with this child, the less energy they are going to bring to that, and the more difficult it is going to be for the child in the long run because they are going to bring that conflict, that stress into the home. And I think the other unfortunate consequence is that, no matter what orders we make as judges, we know in a family context anybody can sabotage it. So we can make order after order, after order, and if the parent isn't going to buy in, then they can sabotage that order and the child is much worse off than they were to begin with (Gilmour, 2004).

### **Donna J. Gray**

Just following up on that last point, I would think judges should be asking, have you tried mediation, because I think, particularly in child welfare it's often thought that mediation is not effective in child welfare, but I think that there are points within the act such that we are required to consider alternative dispute resolution. I would like them to ask that. I would also like judges to be asking how long is too long, because I find that it doesn't rest solely on the judges, it rests on all the participants in the process, but there are timelines built into the act, but more and more we go past them, we exceed them. So if I was a judge, and what I'd like to see from a judge is how long do you give a parent to put together a reasonable plan that would be adequate for the child's needs. I think that that question gets lost - often (Jaffe, Crooks & Bala, 2005).

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