

2015

Extralegal Factors Important to Judges' Decisions in Child Abuse Custody Cases

Marilyn Jeanette Nolan
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Walden University

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Marilyn Nolan

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Walden University

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Abstract

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by

Marilyn J. Nolan

MS, Pittsburg (Kansas) State University, 1986

BS, Missouri Southern State University, 1982

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Human Services

Walden University

May 2015

Abstract

Research has shown juvenile court judges are skeptical of mental health testimony; however there is a lack of research regarding what types of testimony by what kinds of experts are valued by judges. Using the theory of legal pragmatism, the purpose of this study was to assess how 83 Oklahoma District Court judges rated extralegal factors influencing their perceptions of the credibility of mental health expert testimony. Quantitative survey research methods were used to collect the data. Friedman ANOVAs by ranks with multiple comparisons were used to test differences across multiple characteristics, and Spearman rho coefficients assessed relationships of age and gender of judges with their importance ratings of extralegal factors. The results showed that judges preferred PhD psychologists over other mental health professionals, witnesses who drew firm conclusions, testimony in layman's terms, and citing theories accepted by the scientific community. A child's testimony and educational credentials of experts were important to younger female judges when deciding custody as was maintaining the integrity of the family when deciding termination issues. Other findings included: all judges agreed sexual abuse was the most important criteria for terminating parental rights, all forms of child abuse were important case factors that influenced judges' decisions, and disparaging parents and substance abuse by a parent were important to older male judges in their decisions. Results from this study will assist in the development of core curricula for courtroom skills training for mental health experts, paving the way for positive social change. With improved training and quality of expert testimony, judges will be more likely to use testimony from knowledgeable unbiased experts when making decisions which will benefit children, families, and communities.

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Dedication

“The quality of a person’s life is in direct proportion to their commitment to excellence, regardless of their chosen field of endeavor.” These words by Vince Lombardi personify the character of a man who was my best friend for life, who always encouraged me to move forward, to strive for excellence, to never give up, to be the best that I could be, and to never waste time having regrets over obstacles getting in the way on the road less traveled, regardless of how difficult the mission. The best rewards are always waiting across the finish line. Well, I have crossed the finish line and you were right, Lawrence R. Nolan. I could do this and I did it. Only an F5 tornado could prevent you from crossing that finish line in body with me, but I know in spirit you were there for the whole race urging me on. Yes. I believe there are angels among us. R.I.P. Lawrence R. Nolan. This (rose) bud’s for you.

Acknowledgments

Alfred North Whitehead once said, "No one who achieves success does so without the help of others. The wise and confident acknowledge this help with gratitude." It would be foolish to believe that I would have accomplished this feat without the support of numerous people along the way. Oscar Wilde once said that an expert is an ordinary person who advises. Dr. William Barkley, my chairperson expert extraordinaire, was the better expert who had the confidence that finishing the dissertation would happen. There were days I did not. I would like to thank you for pulling me through that statistical gray cloud that hovered for what seemed to be forever. But the sun shone once again, thanks to you. I would also like to thank Dr. Tina Jaeckle, who agreed to serve as my committee person and who planted a seed that all of our efforts might be strong enough to get this published, and Dr. Barbara Benoiel, who took the time to read this paper and provide valuable input to make it better. I would be remiss if I did not acknowledge three wise men of the 40th Judicial Circuit who willingly helped in this journey with their own expertise. My thanks to the Hon. Kevin L. Selby, Newton County Associate Circuit Judge, the Hon. John LePage, McDonald County Associate Circuit Judge, and the Hon. Timothy Perigo, Presiding Judge, for providing the expertise in juvenile matters for this study. I, also, want to thank Nicki Neil, attorney at law, who educated this expert on the standards of admissibility. Thanks to my tolerant family and my 3 brilliant children, Pam, and Cody, who provided encouragement, and Barry, who helped with technical issues beyond my control to keep me on track; and thanks to friends who kept life functioning around me when I did not have the time to.

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Chapter 1: Introduction to the Study

According to Childhelp (2015, p. 1), “Children are suffering from a hidden epidemic of child abuse and neglect” in the United States. According to the statistics from the latest reporting period of the National Clearinghouse on Child Abuse Data Systems (NCANDS, 2012), 3.4 million reported incidences of child abuse, neglect, and fatalities involving 6.3 million children occur each year, with 2.1 million of those reported episodes of child abuse being substantiated. The actual numbers of abused children are unknown because many incidences of abuse go unreported or poor investigative procedures may lead to unsubstantiated reports. On average, abusers kill over four children per day, with 70% of those fatalities involving children under the age of 4, and 44.4% of fatalities involving children under the age of 1 year (Child Welfare Information Gateway, 2013; NCANDS, 2012; Safe Horizon, 2015), drawing media attention and sparking a public outcry (Jones, 2006).

Not all categories of abuse receive media attention or become the focus of major research. The data reporting process has often left out children who fall into categories of abuse such as neglect, emotional abuse, and abandonment (Doyle & Timms, 2014, p.104). I completed an additional search and found a paucity of research on studies less than 5 years old. There were numerous articles on child abuse that referenced the older studies or provided updated facts regarding the occurrences of child abuse and domestic violence.

Schulte (2013) reported on the first major study conducted on child abuse in 20 years by the National Academy of Sciences, in which researchers examined and

summarized the research from previous studies on child abuse and domestic violence.

They concurred with older studies that the child abuse remained widespread and that the negative consequences of child abuse had long-term effects on the development of a child into adulthood. According to Austin (2014), Jonson-Reid, Kohl, & Drake (2012), Hertzman & Boyce (2010), and Wang & Holton (2007), trauma from abuse can result in the long-term emotional, physical, social, behavioral, and cognitive impairment extending well beyond childhood and inhibiting individuals' overall capacity for productivity in adulthood. Research associated with brain trauma related to child abuse has suggested that abused children suffer from neurological damage that inhibits cognitive, emotional, and behavioral development (Levitan, Rector, Sheldon, & Goering, 2003; Lewis-Morrarty, Dozier, Bernard, Terracciano, & Moore, 2012; Navalta, Pokari, Webster, Boghossion, & Teicher, 2006). The ramifications of changes in brain function indicate increased incidences of academic impairment, loss of productivity as adults, and development of emotional disorders such as emotional over arousal, trauma-induced depression, dissociation, and symptoms of anxiety associated with posttraumatic stress disorder. Researchers have also reported that impairment to brain functioning manifests in seizure activity (Navalta et al., 2006).

Jonson-Reid, Kohl, & Drake (2012) and Arnow (2004) indicated that early abuse was associated with repeated victimizations as adults, domestic violence, and physical problems leading to more frequent use of hospital emergency rooms, the increased risks of suicide, and antisocial acting out leading to long-term social problems. Studies have linked child abuse with an increased probability of juvenile delinquency and drug abuse

in adolescence extending into adulthood (Wingood & DiClemente, 2006). For example, a 2002 study conducted by the National Institute of Drug Abuse suggested that adults reporting childhood sexual abuse were more likely to develop co-occurring disorders with dependency on drugs and alcohol and behavioral and legal problems associated with juvenile delinquency and adult criminal and violent behavior than adults who were not abused during childhood (Wingood & DiClemente, 2006, p. 215). Trickett, Noll, & Putnam (2011) reported that self-mutilating and suicidal acting out occurred more frequently in sexually abused females.

The cost to the U.S. economy related to child abuse is \$220 million per day and approximately \$80 billion annually as a result of the medical, educational, psychological, legal, and social service intervention to children of abuse and neglect and families suffering from the consequences of domestic violence (Currie & Widom, 2010; Gelles & Perlman, 2012). In an earlier economic impact study, Wang & Holton (2007) also concluded the financial impact that child abuse had on the general population due to annual economic costs for the control and remediation of child abuse was extensive. These monies were spent for medical, social, financial, and legal services to reduce the impact that abuse has on victims and families and on society in general (Wang & Holton, 2007, p. 2). Cardwell (2014) and Miller, Cohen, & Wiersema (1996) suggested that the intangible losses to the victims of abuse could not be measured in dollar amounts because of the lifetime of pain that they endure as a result.

Statement of the Problem

Child abuse is criminal behavior. Media exposure of the atrocities of child abuse has forced the child protection system to examine its approach to protecting these children. Federal laws defining state requirements for writing stringent child protection legislation assigned the overseer role to the juvenile court system to decide the disposition of reported allegations of cases of child abuse (Aiken & Murphy, 2002). The standard of care for children is the best interest standard defining the role of the states in the child protection process (Jones, 2006; McLaughlin, 2009; Pennington, 2013; Steele, 1999). This standard is enforced by the doctrine of *parens patriae* giving each state the legal authority to remove a child from abusive or neglectful parents. The doctrine defines the role of the juvenile court as having the legal authority over the rights of biological parents who harm, fail to protect, or fail to provide for the basic needs of their children (Himes, 2004; Pennington, 2013).

The juvenile court conducts hearings to determine whether the case goal is reunification with the offending parent after rehabilitative services have been provided or if the goal is termination of parental rights according to the NCJFCJ . If abuse allegations are substantiated, a report from a child protection investigator is sent to a county's prosecutor who decides if allegations merit charges to be filed in criminal court (Child Welfare Information Gateway, 2013, 2007; Jones, 2006; NCJFCJ, 2015; Snyder & Sickmund, 2006; Steele, 1999).

Child protection laws have helped to redefine the roles of the mental health professional with increased involvement in the courtroom process as forensic investigator

and expert witness (Child Welfare Information Gateway, 2014, 2013, 2010; Melton, Petrilis, Poythress, & Slobogin, 1997). The primary role of mental health experts is to educate the judge regarding the impact of abuse on child development so that the judge can make an informed decision regarding the best interests of that child (Aiken & Murphy, 2002; Steele, 1999). When children recant allegations of abuse because of feelings of shame over the event or fear of retribution from the offender, judges view them as lacking in veracity, which makes it difficult to prosecute alleged perpetrators. Prosecutors call upon mental health experts to provide to the judge reasons for the erratic and confusing behaviors (Aiken & Murphy, 2002; Galatzer-Levi & Kraus, 1999; Long, 2007; Steele, 1999).

I reviewed several studies that examined the credibility of mental health experts presenting testimony in the courtroom and found that scant research was available that documented judges' opinions as to why they were skeptical of such testimony. Members of the legal profession have questioned expert witness veracity (Otto & Martindale, 2007; Sales & Shuman, (2005, 2007)&) for not providing the type of testimony that is most helpful to judges making custody decisions (Kovera & Borgida, 2001; Steele, 1999). The lack of receptivity by judges in the courtroom makes it difficult for mental health experts to prepare the type of testimony necessary to explain childhood dynamics meeting legal standards for admissibility.

Critics such as Brodin (2004), Melton et al. (1997), Turkat (2005), and Vidmar (2005) insisted that psychiatrists and psychologists have nothing to contribute to the legal process. These commentators viewed mental health experts as unqualified to give

opinions and claimed that their opinions were based upon faulty science. Although a scientific community may generally accept a technique, the evidence it yields has little value in court if it lacks falsifiability or testability. A recent decision on a case of a mother convicted of giving her child a lethal dose of cocaine was brought back before the Canadian courts and reversed because the evidence failed to meet the criterion for falsifiability (Hall, 2014). Forensic experts contended that had the forensic pathologist utilized a follow-up comparable measure with the original hair follicle test, the evidence would have met the standard for criterion-related validity, reducing the likelihood that the conviction would have been overturned and avoiding unnecessary public scrutiny of testimony credibility (Hall, 2014).

Despite the numerous articles written about judges' skepticism toward mental health experts testifying in court, there remains a gap in research on expert witness credibility. The most recent studies available were by Brodsky, Cramer, Neal, & Ziemke (2009) and Cramer, Brodsky, & DeCoster (2009), who studied the impact of expert witness likeability on jurors in sentencing cases. Results in both studies indicated that jurors responded more favorably to expert witnesses who were more likeable or had more engaging personalities when testifying.

This study has the potential to help mental health experts improve the credibility of their testimony and their professional presence in the courtroom when testifying in juvenile or domestic court hearings. Testifying in court can be a daunting experience, even for the most consummate expert. Regardless, child custody experts must provide the judge with accurate and objective information, and many mental health experts do not

know how to present testimony to the judge that is relevant to judicial decision-making (Ceci & Hembrooke, 2001; Otto & Martindale, 2007; Sales & Shuman, 2005, 2007; Turkat, 2005). Exploring the level of importance that judges place on extralegal factors associated with witness credibility is also a way of developing the types of training strategies needed to enhance the technical skills of mental health experts when testifying (Ceci & Hembrooke, 2001; DeMatteo, Krauss, Marcyzk, & Burl, 2009).

The numbers of training and education programs in forensic mental health have increased in this country as the profession continues to expand its role in the judicial process (DeMatteo et al., 2009). Few guidelines are available, however, to assist the expert in developing the kind of courtroom behaviors acceptable to judges (Ceci & Hembrooke, 2001; DeMatteo et al., 2009). The American Psychological Association (Wettstein, 2008) established a set of general guidelines for ethical conduct that are only aspirational and nonbinding and provide little technical assistance to forensic experts.

Despite the expansion of forensic training programs, there is no clear direction as to what types of training would inherently benefit experts in the courtroom. There has been little agreement among legal educators as to the type of relevant core courses for curriculum development to prepare the expert; however, most legal educators have agreed that training programs should include the kinds of information necessary to increase knowledge about how to present testimony to the judge on factors that have the greatest influence on decision-making (DeMatteo et al., 2009, p. 184). Mental health experts also need to develop an understanding of courtroom procedure along with the

type of courtroom skill needed to testify credibly and effectively (Kovera & Borgida, 2001).

Research Questions and Hypotheses

The current study examined what factors influenced judges' decision making in juvenile court involving child abuse cases. The research questions and hypotheses for this study were as follows:

Research Question 1a: Is there a difference in mean importance ratings of juvenile court judges across types of mental health expert witness presenting testimony that influence decisions in child abuse cases: (a) psychologist; (b) psychiatrist; (c) licensed clinical social worker, or (d) professional counselor?

H₀1a: There is no significant difference in mean important ratings of juvenile court judges across types of mental health expert presenting testimony in child abuse custody cases.

H₁1a: There is a significant difference in mean importance ratings of juvenile court judges across types of mental health expert presenting testimony in child abuse custody cases.

Research Question 1b: To what extent do judges' age and/or gender predict their importance ratings for each type of mental health expert?

H₀1b: Neither age nor gender of judges significantly predict importance ratings for each type of mental health expert.

H₁1b: Age or gender of judges or both significantly predict importance ratings for each type of mental health expert.

Research Question 2a: Is there a difference in mean importance ratings of juvenile court judges for the following mental health expert credibility factors that influence decisions in child abuse cases: (a) educational credentials; (b) willingness to draw firm conclusions; (c) ability to communicate information in lay terms; (d) publication in a professional journal; and (e) physical appearance of professional?

H₀2a: There is no significant difference in mean importance ratings of juvenile court judges for mental health expert credibility factors in child custody cases.

H₁2a: There is a significant difference in mean importance ratings of juvenile court judges for mental health expert credibility factors in child custody cases.

Research Question 2b: To what extent do judges' age and/or gender predict importance ratings for each mental health expert credibility factor?

H₀2b: Neither age nor gender of judges significantly predict importance ratings for each type of mental health expert credibility factor.

H₁2b: Age or gender or both of judges significantly predict importance ratings for each type of mental health expert credibility factor.

Research Question 3a: Is there a difference in mean importance ratings of juvenile court judges for the following factors that influence the admissibility of mental health expert testimony: (a) potential error rates; (b) testing of theory; (c) publications on the validity of the theory; and (d) general acceptance of the theory in the scientific community when deciding outcomes in child abuse custody cases?

H_03a : There is no significant difference in mean importance ratings of juvenile court judges for factors that influence admission of expert testimony in child abuse custody cases.

H_13a : There is a significant difference in mean importance ratings of juvenile court judges for factors that influence admission of expert testimony in child abuse custody cases.

Research Question 3b: To what extent do judges' age and/or gender predict importance ratings for each of the factors that influence the admissibility of mental health expert testimony?

H_03b : Neither age nor gender of judges significantly predict importance ratings of each of the factors that influence the admissibility of mental health expert testimony.

H_13b : Age or gender of judges or both significantly predict importance ratings of each of the factors that influence the admissibility of mental health expert testimony.

Research Question 4a: Is there a difference in mean importance ratings of juvenile court judges for the following criteria that influence decisions in termination of parental rights cases: (a) child emotional abuse; (b) child physical; (c) child sexual abuse; (d) fundamental rights of parents; (e) maintaining the integrity of the family; (f) psychological health of the parents; (g) separation of siblings, and; (h) substance/alcohol abuse by the parents?

H_04a : There are no significant differences in mean importance ratings of juvenile court judges for criteria that influence decisions in termination of parental rights cases.

H_14a : There are significant differences in mean importance ratings of juvenile court judges for criteria that influence decisions in termination of parental rights cases.

Research Question 4b: To what extent do judges' age and/or gender predict important ratings for criteria that influence decision-making in termination of parental rights cases?

H₀4b: Neither age nor gender of judges significantly predict importance ratings of criteria that influence decision-making in termination of parental rights cases.

H₁4b: Age or gender of judges or both significantly predict importance ratings of criteria that influence decision-making in termination of parental rights cases.

Research Question 5a: Is there a difference in mean importance ratings of juvenile court judges across the following extralegal factors that influence decisions in child abuse custody cases: (a) age of the child; (b) child physical abuse; (c) child's preference for one parent; (d) child's testimony; (e) difference in parenting skill level; (f) difference in parenting styles; (g) impact of expert testimony; (h) one parent disparaging other parent; (i) psychological health of both parent; (j) special needs of the child, and; (k) substance/alcohol abuse by the parents.

H₀5a: There are no significant differences in how judges rate the importance of each extralegal factor influencing their decisions in child abuse custody cases.

H₁5a: There are significant differences in how judges rate the importance of each extra factor influencing their decisions in child abuse custody cases.

Research Question 5b: To what extent do judges' age and/or gender predict importance ratings of each extralegal factor influencing their decisions in child abuse custody cases?

H₀5b: Neither age nor gender of judges significantly predict importance ratings of each extralegal factor related to a case.

H₁5b: Age or gender of judges or both significantly predict importance ratings of each extralegal factor related to a case.

Definitions of Terms and Variables Terms

Terms

Adversarial system The legal system, as opposed to the social service or mental health profession, in which clear philosophical differences exist between the two professional fields.

Best interests standard A legal standard defining what the court believes meets the emotional and developmental needs of a child involved in child abuse custody cases.

Daubert v. Merrill Dow Chemical criteria The 1993 test accepted by the United States Supreme Court that replaced the 1923 Frye Rule as the standard for admitting scientific expert witness testimony. The new test upheld the general acceptance clause held by the Frye rule and excluded by the 1975 Federal Rule 702 for admissibility of expert witness testimony (Sales & Shuman, 2005).

Expert witness testimony Testimony based on scientific knowledge that has gained acceptance from professionals in a particular field of endeavor.

Extralegal factors The prominent social factors that impact a case heard by the judge. The extralegal factors in this study consist of the independent variables being studied.

Federal Rules of Evidence A 1976 set of standards accepted by the United States Supreme Court to serve as guidelines for the admissibility of evidence in federal court that have been expanded to include civil and criminal proceedings in state courts.

Federal Rule of Evidence 702 The relevancy standard accepted by the United States Supreme Court in 1976 that spelled out standards for qualifying experts to testify to the facts of a case or provide opinion based upon their “knowledge, skill, experience, training, or education” using testimony based upon “scientifically based, technical, or other specialized knowledge” to assist the judge in understanding evidence presented (Mueller & Kirkpatrick, 2006, p. 159).

Federal Rule of Evidence 703 The relevancy standard allowing information that was “reasonably relied upon or known by an expert in a particular field” without the facts or data behind the information being admitted (Mueller & Kirkpatrick, 2006, p. 169).

Federal Rule of Evidence 704 The relevancy standard prohibiting the expert to give opinions or answer questions that speak to the ultimate issue of a case, a designation left solely for the judge (Mueller & Kirkpatrick, 2006, p. 172).

Federal Rule of Evidence 705 The rule defining relevancy that applies to disclosure of facts by experts, allowing them to give an opinion without testifying to the facts of a case except during cross-examination (Mueller & Kirkpatrick, 2006, p. 175).

Frye v. United States criteria The original standard for admissibility of evidence accepted in 1923 by the United State Supreme Court, that defined the conditions for admitting novel scientific evidence under a general acceptance test in which scientific evidence could be applied to a case provided that the evidence was generally accepted by members of a scientific community from where it originated. The older standard was replaced by the 1993 Daubert ruling (Sales & Shuman, 2005).

Gatekeeper Status given to the judges of the court by the United States Supreme Court in its acceptance of the Daubert (1993) standard, which states that judges will decide whether expert witness testimony is reliable and relevant to the issue in a specific case.

General acceptance rule The first rule used as the criteria that defined the terms for admissibility of expert evidence. The 1923 Frye standard allowed experts to present evidence that was generally accepted among members within a particular field of a scientific community. This rule is also applied to the 1993 Daubert standard.

Kumho Tire Standard The 1997 standard accepted by the United States Supreme Court expanding the role of expert witness and the use of expert testimony to include mental health experts use of nonscientific evidence to educate, inform, or teach the judge in juvenile court.

Mental health expert A mental health specialist trained in forensic principles presenting specific knowledge based on specialized training, education, or experience in a specialized field.

Novel scientific evidence New scientific evidence that lacks peer review through publication or has not been proven by acceptable or tested theory. It does not meet the principle for falsifiability as defined in the newer 1993 Daubert standard.

Parens patriae doctrine Public policy giving each state the legal authority to intervene for the protection of minor children at risk for continued abuse from an abusive or neglectful parent or caretaker.

Rehabilitative evidence Clinical testimony presented to refute contentions by opposing attorneys that the behavior of an abused child is not consistent with the act of abuse.

Science-based evidence Evidence that is derived through the use of empirically based methods that are easily verifiable.

Social frameworks testimony The use of broad conclusions derived from social science research ascertaining factual issues that describe certain human behaviors. This type of testimony is used to explain to judges and juries unusual and conflicted behaviors exhibited by children who have been abused.

Standards of admissibility Specific guidelines enacted by the United States Supreme Court that governs the type of testimony allowed as evidence in a court of law.

Substantive evidence Clinical opinions that an abused child shares common attributes with other abused children.

Trier of fact A judge hearing evidence while presiding at a bench trial, or members of the lay community chosen as jurors in a criminal case being heard before a court of law.

Variables

Judges were asked to rate the importance of the following extralegal factors that influenced their decisions in child abuse cases.

Judges' importance ratings for type of mental health expert The term *type of expert* refers to trained professionals from one of the four major disciplines in mental health—psychiatrist, psychologist, licensed professional counselor, and licensed clinical

social worker—who provide information to judges to educate them about the physical, emotional, cognitive, and behavioral developmental milestones impacted by trauma from physical, emotional, or sexual abuse of children. Importance ratings for the type of mental health expert were measured on a scale of 0 = *no importance* to 10 = *extremely important*.

Judges' importance ratings for specific credibility factors Credibility factors are the criteria defined by Federal Rule 702 of the Standards for Admissibility of expert witness testimony based upon knowledge, skill, education, experience, and training of the expert witness (Mueller & Kirkpatrick, 2006). The credibility factors in this current study were educational credentials, willingness to draw firm conclusions, ability to communicate information in lay terms, publication in a professional journal, and physical appearance of the mental health expert witness. Importance ratings for credibility factors were measured on a scale of 0 = *no importance* to 10 = *extremely important*.

Judges' importance ratings for factors related to testimony Factors related to testimony are the criteria for admissibility of expert witness testimony found in the acceptance of the Daubert rule (1993) and include potential error rates; testing of theory; publications on the validity of the theory; and general acceptance of the theory by the scientific community or professional field of the expert's endeavor. The 1999 Kumho standard expanded the Daubert rule to include mental health expert testimony by applying a flexible interpretation to all expert testimony presented in court (Mahle, 1999). Importance ratings for testimony factors were measured on a scale of 0 = *no importance* to 10 = *extremely important*.

Judges' importance ratings for criteria related to termination of parental rights

Factors related to termination of parental rights refers to the relevant legal factors judges use to decide a case for termination of parental rights. Judges' assess the severity of behaviors or actions by parents and apply the legal criteria found in law and legal precedence to seek involuntary termination of their legal rights as parents. Termination of parental rights is based upon "specific circumstances" in which the child cannot safely return to the custody of the parent (Child Welfare Information Gateway, 2007, p. 1). For the purpose of this study, the following issues examined included the fundamental rights of parents; maintaining the integrity of the family; child physical/sexual abuse; or child emotional abuse. The guidelines for juvenile, domestic, and family court judges encourage the reunification process with the parents as long as it is in the best interests and safety of the children involved (Himes, 2004; Pennington, 2013). Importance ratings for the criteria related to termination of parental rights were measured on a scale of 0 = *no importance* to 10 = *extremely important*.

Judges' importance ratings for factors related to child abuse custody

Factors related to child abuse custody refers to the multitude of varying issues associated with child abuse brought before the juvenile court judge described in the literature associated with child abuse custody cases. The specific issues explored in the current study included physical abuse; child's preference for one parent; substance abuse of parents; expert testimony; one parent disparaging the other parent to the child; differences in parenting style; psychopathology of either parent; special needs of the child; and the age of the

child. Importance ratings for these factors were measured on a scale of 0 = *no importance* to 10 = *extremely important*.

Age and gender of judge refers to judges' demographic characteristics of age (in years) and gender (coded as female = 1; male = 0) that were used to determine whether these variables could predict importance ratings for type of mental health expert, credibility factors, testimony factors, factors involved in termination of parental rights cases, and factors involved in child abuse custody cases.

Nature of the Study

In this study, I used a nonexperimental, relational, and comparative quantitative survey research method (Fowler, 1993; Roberts, Kovacevic, Mantel, & Phillips, 1998) to collect data from the population of District Court judges from Oklahoma who heard child abuse custody cases. I assessed the survey data to determine how judges rated extralegal factors that were important to them when deciding child abuse custody cases involving the credibility of mental health expert witnesses, including the types of witness and their qualifications, admissibility of expert witness testimony, termination of parental rights, and issues related to child abuse. Survey research methods were designed to look for differences or relationships reflecting attitudes, feelings, preferences, experiences, and practices (Creswell, 2008; Fink, 1995).

Purpose of the Study

Despite the numerous assumed criticisms about the credibility of mental health expert witnesses and reliability of their testimony in child abuse hearings, few empirical studies have measured mental health expert credibility as perceived by the juvenile court

judges, leaving a gap in knowledge in the literature (Aiken & Murphy, 2002; Bow, 2006; Galatzer-Levi & Kraus, 1999; Otto & Martindale, 2007; Sales & Shuman, 2005; Shuman et al., 1996; Steele, 1999). The purpose of this study was to find out how juvenile court judges rated the credibility of mental health expert testimony from various types of mental health experts. In addition, it sought to find out what criteria judges relied on when considering such testimony.

Theoretical Framework

Judicial decision-making in the United States is dominated by two opposing schools of thought, generating a debate among legal scholars about the relative merits of classical formalism versus legal pragmatism (Butler, 2002; Hwong, 2004). Until the middle of the last century, the dominant theoretical view was slanted toward legal formalism, in which judges decided cases based upon a single set of principles or rules, legal argumentation and analysis, case law, and legal precedent without consideration for the social impact of their decisions (). Sometimes called *mechanical jurisprudence* by legal philosophers, classical formalism places heavy emphasis on the letter of the law, relying extensively on statutory interpretation or constitutional rules (Solum, 2005, pp. 1-2). Legal pragmatism emerged in the mid-20th century to challenge classical formalism as the dominant legal theory (Butler, 2002; Hwong, 2004; Tamanaha, 2003).

Conceptually, sociolegal theory or legal pragmatism has drawn heavily from the 19th- and early 20th-century writings of realist philosophers William James, Bertrand Russell, Oliver Wendell Holmes, John Rawls, Roscoe Pound, and John Dewey to become a viable theory for judicial decision-making over the last three decades (Butler, 2009;

Hwong, 2004; Morales, 2004; Posner, 2008; Solum, 2005; Tamanaha, 2000, 2003). Judge Richard Posner (Posner, 2008) popularized legal pragmatism by formulating his legal decisions and basing his scholarly writings on the premise that the human social condition was personal and subjective, both important concepts of legal pragmatism. Pragmatists argued that judicial decision making was influenced by social and economic factors that could be tested empirically where formalism rested its laurels on abstract legal norms that lacked the ability to pass scientific scrutiny or the ability to test or falsify hypothetical constructs related to any given theory (Hwong, 2004; Morales, 2003; Posner, 2008; Shutterworth, 2008).

Butler (2002) described legal pragmatic theory as a tool for social legal expression. Pragmatic theorists do not endorse a “grand theory” belief rooted in the tenants of formalism where one theory explains all phenomena; rather they view the human condition as forward looking with flexible goals that are subject to change as new information is learned (Butler, 2002; Morales, 2003; Posner, 2008). Pragmatic theorists believe that knowledge is derived through empirical inquiry from a social context in which the thoughts and views of others are based upon their experiences that generate perceptions about truth. Such perceptions are open ended and consistently tested as knowledge increases or ideas change. Knowledge is also viewed as antifoundational and not grounded in any set of fixed beliefs or principles. Rather, ideas are future-oriented (Cotter, 1996; Posner 2003; Tamanaha, 2000). They serve as instruments of action or agents of change, validated by their effectiveness (Cotter, 1996; Posner 2003; Tamanaha, 2000).

Classical formalism continues to dominate judicial decision making in many state court systems in the United States. Where other court processes rely on a case-based theory predicated on legal facts obtained through “argumentation from analogy” in which case law and precedent dictate decision-making (Butler, 2005, p. 1), the juvenile court utilizes a legal pragmatic approach in which the court becomes a tool for seeking resolutions to social problems. The juvenile court addresses social issues involving children and families. Based upon the precepts of sociological jurisprudence derived from legal pragmatism (Posner, 2008), judges’ decisions are influenced by extralegal factors that can be tested empirically. Judges of the juvenile court are required to have an understanding of child and family dynamics, the impact of abuse on child development, effects of substance abuse on the family, mental disorders, parenting practices, behavioral and emotional disorders of children, learning disorders, and the attachment process (Badeau, 2010; NCJFCJ, 2008).

Judges are the ultimate decision-makers in the juvenile court process. The decisions that they make in the best interest of the abused child are difficult at the very least and may have a permanent impact on a family system. As the gatekeeper of that process, they act as the overseer of child protection and monitor the progress of the families involved. The safety of children is the overriding reason for ordering their removal from an abusive situation. The primary goal of the juvenile court process is the reunification of abused children with their primary caregiver if the problems leading to removal have been rectified. (NCJFCJ, 2008, 2015). If not, the next goal is termination of

parental rights with the permanency goal changed to adoption (NCJFCJ, 2008; Badeau, 2010).

Assumptions for the Study

Oklahoma judges are no less subject to prejudice and bias than the general population. In using their discretionary powers, judges will render fair and unbiased decisions on behalf of the best interest of abused children. Juvenile court judges are equally compelled to apply the facts as are all other judges hearing cases.

The instrument that I used to collect data for the study was a self-report measure. I assumed that the results represented the preferences of Oklahoma District Court judges with reference to the use of mental health experts and testimony as it applied to child abuse custody cases.

I assumed that the Oklahoma District Court judges responded to the survey in a timely fashion. It was assumed that the Oklahoma District Court judges consented to participate in this study by returning the survey in the enclosed, self-addressed, stamped envelope.

Limitations of the Study

Only Oklahoma District Court judges who handled juvenile and domestic court matters were mailed a survey for this study. All other Oklahoma judges, including Indian tribal judges, were excluded from the mailing list for this study to keep the sample size manageable (Van Wangenen, 1991).

The judges that were surveyed were a representative sample of District Court judges throughout the State of Oklahoma who adjudicated child abuse and custody cases.

No judges from other states handling juvenile matters were asked to participate in the current research, making it difficult to generalize data from Oklahoma judges to them. It was not known whether the responses collected from judges in Oklahoma were representative of the preferences and opinions of all other judges through the United States, but inferences from the results were used to make inferences to other juvenile court judges who handled child abuse custody cases.

Although all states are compelled by federal statute to establish child protection laws, each state offers its own interpretation of the best interests standard as the legal basis for decisions made in juvenile or domestic court in child abuse custody cases. It was unknown how similar or different each state's interpretation is from the best interests standard established for the state of Oklahoma.

This survey research study was subject to similar weaknesses found in survey research in general where the study participants collectively accepted the survey questions at face value and the reasons for participation in the study without having direct contact with the researcher making it difficult to determine the presence of a non-response bias in this study.

Delimitations and Scope of Study

Scope

For the purpose of this study, I utilized quantitative survey research methods to ask Oklahoma District Court judges, who heard juvenile, domestic, and family issues related to child abuse, to rate the importance of extralegal factors that influenced their decisions in child abuse custody cases.

Delimitations

Judges are skeptical of social science research that questions their neutrality when making decisions. State court judges have been the subject of research criticizing them for making decisions that discriminate against minorities and the economically disadvantaged (Hensler, 1999, p.707). They have been accused of discriminating against women and children in domestic violence cases (Steele, 1999). Judge neutrality was not being questioned in this study. The intent of this study was not to allege unfair bias in decision making based upon personal past experiences, political ideology, religious preferences, or financial influences (Hensler, 1999, p.711), but to assess how juvenile court judges rate in importance various factors related to child abuse custody involving the credibility of mental health expert witnesses.

The sole purpose of this study was to fill in a gap in the research regarding judges' thinking on child abuse, and to gain a level of understanding of what extralegal factors fairly influenced decisions to assist the mental health expert in developing effective technical skills for the courtroom through improved training programs (DeMatteo et al., 2009). Judges were given a gate keeping role requiring them to become consumers of social science research following the acceptance of both the 1993 Daubert standard and the 1998 Kumho rule in which they must scrutinize the relevance and reliability of experts and their testimony (Mueller & Kirkpatrick, 2006). I examined juvenile court judges understanding of extralegal factors related to child abuse issues and the importance they place upon those factors when making critical decisions related to children and families. Juvenile court judges must weigh their decisions on factors

utilizing both the best interests of children and the due process rights of parents. Mental health experts have difficulty balancing their testimony with the differences in the legal doctrine (NCJFCJ, 2008) impacting their credibility.

Significance of the Study

Child abuse is a criminal act and a social problem (Jones, 2006; Steele, 1999). Statistics regarding the numbers of child physical, sexual, emotional abuse and neglect continue to rise in the United States (Child Welfare Information Gateway, 2007, 2013; Steele, 1999). The reported numbers of child deaths resulting from abuse and neglect are also increasing at alarming rates (Child Welfare Information Gateway, 2013; NCANDS, 2012; Safe Horizon, 2015). Cases of child abuse are being brought before juvenile court judges more frequently for adjudication as increased incidences of child abuse are brought to the attention of the public.

Judges often misinterpret the motives of abused children who recant or revise statements made about abuse (Jones, 2006; Gilstrap & McHenry, 2006; Steele, 1999). Mental health experts are called on to inform or educate the judge about child abuse dynamics and impact of abuse on the developing child. Unfortunately, judges do not view testimony provided by mental health experts as being relevant or credible which places the safety of the abused child in jeopardy of being returned to the home of their abuser (Steele, 1999). Legal commentators are quick to judge the reliability of testimony presented by the mental health expert for several reasons including testimony not based upon sound science and lacking relevance, and, mental health experts not possessing the professional credentials needed to provide credible opinions. Regardless, mental health

experts must be prepared to credibly testify to judges about those explanations associated with the confusing behaviors of the abused child (Gilstrap & McHenry, 2006; Otto & Martindale, 2007; Redding & Murrie, 2007; Steele, 1999). Although there are numerous education and training programs in forensic mental health to educate experts in appropriate courtroom behavior, there is little agreement among forensic educators regarding the kinds of programming that would be most helpful to those experts when testifying in court (DeMatteo et al., 2009).

There is a gap in the research regarding which extralegal factors provided by mental health experts would be important to judges when they make decisions in child abuse cases. Because judges find mental health experts lacking in credibility, abused children remain at serious risk for further abuse and possible death (Cramer, Brodsky, & DeCoster, 2009; Bow, 2006; Cross, Finkelhor, & Ormrod, 2005; Steele, 1999). This study helped to provide some insights into what extralegal factors judges found important when deciding child abuse custody issues in the best interests of a child. The study encouraged further research on forensic curriculum development for training mental health experts in developing the type of technical skills needed for testifying to judges (DeMatteo et.al., 2009).

Summary

Mental health experts are criticized for their lack of professionalism when testifying court. Judges expect that their testimony will be reliable and relevant to the decision-making process in child abuse cases. Despite the number of education and training programs to teach mental health experts professional courtroom behaviors, there

is little consensus among educators as to what type of courses would be most beneficial to the expert. Along with the problem of the study, Chapter 1 identified the variables related to the mental health expert and testimony for juvenile court judges to rate as important to their decision-making. This chapter included a theoretical basis for the study, definition of terms, and the research questions to answer the problem for the study were introduced along with the purpose and significance of the study. The methodology to answer the research questions and the data analysis procedures to be used for this study were also introduced.

In Chapter 2, I reviewed the relevant literature on the impact that mental health witnesses and testimony have on judicial decision-making in child abuse cases. I also reviewed the latest research in the literature on the main topics of this study. The social ramifications of child abuse were integrated with the impact that the mental health expert testimony has on the decisions of juvenile court judges, providing the rationale for this study. In Chapter 3, I will describe the methods including the research design, procedures used for data collection, instrumentation, participants, and the data analysis plan for the study. In chapters 4 and 5 I will present the results and interpretation of those results, respectively.

Chapter 2: Literature Review

Child abuse continues to be a sociocriminal problem in the United States, with 1 in 4 children under the age of 4 succumbing daily from injuries at the hands of an abuser (Child Welfare Information Gateway, 2013; NCANDS, 2006, 2012; Safe Horizon, 2015). Mental health experts are called upon to educate or inform the juvenile court judge on information not available to the general public regarding child abuse and the long-range ramifications on the emotional development of the abused child (Long, 2007; Melton et al., 1997; Steele, 1999). Juvenile court judges, as the gatekeeper, must make critical decisions, based upon the testimony presented, about abused children and their families that could have a permanent impact on their lives. Their role is to examine extralegal factors of a case to assist them in making their decisions (Otto & Martindale, 2007).

Unfortunately, judges criticize mental health experts for not providing relevant or reliable testimony and are critical of the lack of clarity by expert witnesses when articulating testimony in understandable terms (Ceci & Hembrooke, 1998, 2001; Otto, Buffington-Vollum, & Edens, 2003; Otto & Martindale, 2007; Saks & Lanyon, 2007; Turkat, 2005; Vidmar, 2005). Mental health experts are caught in an additional dilemma regarding the type of technical training that would enhance testimony skills. Forensic educators involved in program education and development appear to be confused about what type of training would be most helpful to the expert witness, and they seem to differ on which core courses to incorporate into program curriculums to train the experts (DeMatteo et al., 2009). A repeated theme throughout journal articles and books written about mental health expert credibility was based on assumptions by legal commentators

that mental health experts lack the technical skill in the courtroom making them unqualified to provide evidence to the judge (Ceci & Hembrooke, 1998, 2001; Otto, Buffington-Vollum, & Edens, 2003; Otto & Martindale, 2007; Saks & Lanyon, 2007; Turkat, 2005; Vidmar, 2005). Empirical studies have been scant and provided little insight to the mental health expert or forensic educator on how juvenile court judges form their decisions and what impact that mental health experts have on those decisions.

In this review of the literature, I first provide an overview of the social ramifications of child abuse in the United States and summarize the impact it has had on the child protection system, including the involvement of the juvenile court and the mental health profession in the child protection process. I provide a theoretical basis along with an overview of judicial decision making and the available empirical research on extralegal factors impacting judges' decisions in juvenile court. I also discuss the variables for the study including those extralegal factors related to the credibility of mental health experts, factors related to testimony characteristics, types of mental health experts, case characteristics associated with termination of parental rights, and legal factors important to judges were discussed. Despite the presence of numerous articles discrediting mental health expert witness testimony (Ceci & Hembrooke, 1998, 2001; Otto, Buffington-Vollum, & Edens, 2003; Otto & Martindale, 2007; Saks & Lanyon, 2007; Turkat, 2005; Vidmar, 2005), I was unable to find significant research to support or dispute those claims.

Literature Search Strategy

For the review of the literature, I searched several social science, criminal justice, and psychological databases. My electronic search collected scholarly information from the Walden University Research Library, the Pittsburg State University Leonard Axe Library, EBSCO, Questia, American Psychological Association, American Bar Association, Academic Search Complete, Digital Commons BePress, Informaworld Psychology Press, John Wiley and Sons Press, Justia, Lexus-Nexus, Social Science Research Network, PsychINFO, ProQuest Dissertation database, Sage, Walden University Dissertation database, Google Scholar, Google, Yahoo Scholar, and forensic peer-reviewed journals, online articles, and empirical studies. Hard copy information was retrieved from academic books and peer-reviewed journals.

For this study, I collected scholarly information to determine which extralegal factors were important to juvenile court judges involving the credibility of mental health expert testimony in child abuse custody cases. I searched databases for scholarly materials involving theoretical foundations for judicial decision making using the following terms including *best interest standard, domestic court, family court, judicial decision making, factors influencing juvenile judge decision making, juvenile court, judge preferences, juror, jury, trier of fact, mental health expert, mental health expert credibility, mental health expert testimony, testimony credibility, child abuse custody, child abuse, child abuse and neglect, developmental issues, domestic violence, social science evidence, social science criteria, standards of admissibility, termination of parental rights, reunification, legal theory, legal formalism, legal realism, legal*

pragmatism, pragmatism, instrumentalism, and Socio-legal theory. Ultimately, I read over 225 sources for this study, categorized them by name and date, alphabetized them, and then cited and referenced the sources for use in the study.

Incidence of Child Abuse

The number of reported incidences of child abuse and related fatalities has increased over the last 30 years, calling for the child protection system in the United States to reevaluate the types of intervention strategies it employs to protect the best interests of these children (NCANDS, 2012). Nearly 3 million child abuse hotline complaints are reported annually with over 30% substantiated, and an average of 4.4 children under the age of 4 dying from injuries inflicted on them by their perpetrator (NCANDS, 2012). Public exposure to such atrocities perpetrated against children has compelled the federal government to pass comprehensive legislation to define minimal requirements for state legislatures to enhance the prosecution of child crimes Child Welfare Information Gateway, 2013; NCANDS, 2012; Safe Horizon, 2015). The passage of the Federal Child Abuse Prevention and Treatment Act (1974), as amended by the Keeping Children and Families Safe Act (2003) and updated with the Child Abuse Prevention and Treatment Reauthorization Act of 2010, laid the foundation for the states to pass more rigorous statutes protecting children believed to be in danger of harm. Under this umbrella of state child protection laws are the juvenile court, child protective services, and community-based systems including community mental health (Child Welfare Information Gateway, 2008, 2013; Smith, 2007).

The child protection laws mandate professionals working with children to report suspected abuse or allegations (CAPTA, 2010). Mental health professionals, school personnel, health care providers, law enforcement officers, daycare providers, and social service workers are required by these laws to report to a state's child abuse hotline their concerns or observations (Smith, 2007). These laws have mandated systemic changes in public policy regarding how each state's child protection system engages in its remediation or rehabilitation process for abused children and in its prosecutorial efforts toward child perpetrators. Child Protective Services is assigned the role by the states for the investigation of reported abuse in concert with law enforcement (Child Welfare Information Gateway, 2008, 2013; Cross et al., 2005). Although states may vary in how the final laws are written and how mandated procedures are carried out, most states give the responsibility to the juvenile court to provide rehabilitative services as its first measure in resolving a complaint before the judge (NCJFCJ, 2008, 2015). Generally, the child protection system's remediation and rehabilitative strategies governed by law authorize the judge of the county, district, or circuit juvenile court to serve as oversight to the process (Child Welfare Information Gateway, 2013; NCANDS, 2012; Safe Horizon, 2015). Juvenile officers, who serve at the discretion of the juvenile court judge, monitor how services are provided. A county's social service agency, through the adjudicative process, seeks community resources to provide services to the abused child and the distressed family. Community mental health services are contracted by the child protection system for specific rehabilitative services to be provided to the child and

family in order to resolve the issues involved in the complaint. (Humm, Ort, Anbari, Lader, & Biel, 1994).

Based on federal laws governing child protection, the primary role of the juvenile court is to mediate child abuse custody matters that involve child abuse, maltreatment, and neglect through the rehabilitative process. The juvenile court judge ensures that the appropriate services are enacted for distressed families and their children who have been placed into protective care as a result of child abuse, neglect, or endangerment issues resulting from domestic violence or failure to protect related to child abuse or domestic violence. The goal of the court is to effectively mediate these issues so that a child may safely be returned to the home. The juvenile court judge will take into consideration all of the extralegal factors of a case to make a decision on custody in the best interests of a child (NCJFCJ, 2008; 2015). The extralegal factors include all characteristics of a case regardless of the criminal nature of any of those factors or whether they are prosecutable by law or not (Jones, 2006; NCJFCJ, 2008). Child abuse, neglect, and endangerment of a child are all criminal actions in a majority of states and are subject to criminal prosecution in separate proceedings in criminal court where a guilty verdict may lead to imprisonment of the abuser. Extralegal factors involving a criminal act are considered by judges along with noncriminal factors such as a parent's willingness and ability to effectively rehabilitate, parenting skills and the ability to effectively parent, the age and special needs of a child, the mental health of both parent and child, child development and attachment, or whether a parent disparages another parent in front of a child, when deciding issues of visitation, custody, fitness of a parent, or termination of parental rights

(Jones, 2006; NCJFCJ, 2008; Otto & Martindale, 2007). The juvenile court is a civil court operating as a separate entity from the criminal court and the judge must weigh the due process rights of a parent despite the nature of the abuse against the best interests of a child when making a decision regarding the abused child (Jones, 2006; NCJFCJ, 2008; Otto & Martindale, 2007).

Social Ramifications of Child Abuse

Child protection has become a costly burden to society with billions of dollars being spent each year for intervention strategies to assist abused and neglected children deal with the immediate and long range effects of their trauma. The NCANDS (2012) reported that 2.1 million children were substantiated as being abused annually with 1 in 4 incidences of abuse resulting in fatalities to children under the age of 4. The long-range emotional ramifications of child abuse and neglect are staggering with over 10% of children suffering from abuse in this country being diagnosed with mental illness (American Psychological Association, 2000) and 28% of abused and neglected children suffer from chronic health issues (Safe Horizon, 2015). Abused children are at a significantly greater risk for developing mental disorders involving developmental, behavioral, psychological, and social problems as they transition into adulthood (U.S. Department of Health and Human Services, 2006; Child Welfare Information Gateway, 2013).

Despite intervention efforts by child protection groups, the numbers of reported abuses continue to rise. Data on the long term social impact of child abuse in the United States suggests that 80% of abused children entering adulthood experience at least 1

psychiatric disorder; 25% experience teen pregnancy; 59% are likely to be arrested as juveniles; 28% are involved in adult crimes; and 30% are arrested for violent crimes. The data also reflected that sexually abused children were 2.5 times more likely to abuse alcohol, 3.8 were more likely to develop drug addictions, and 67% of individuals of all ages participating in drug treatment had reported being sexually abused during childhood (Safe Horizon, 2015). It has been estimated by national data collection sources that the rate of sexual abuse in the United States has increased 350% from 1980 to 1997 (Fagan, 1997). Sexual abuse is not gender specific. The reported occurrences of sexual abuse in boys range between 3% to 15%, and for girls, the ranges are much higher at 12% to 38%, with first time reports for girls of 9.5%, and boys, 8.3% (NCANDS, 2006, 2012; Safe Horizon, 2015).

The financial burden of child abuse and neglect looms large on society. A study funded by the Edna McConnell Clark Foundation examining the financial impact of child sexual abuse showed that direct annual costs to taxpayers were \$94 billion dollars for mental health treatment, hospitalization, disbursements by social services, and funding for juvenile court actions. Indirect costs associated with the long term social, and psychological ramifications for abused children reaching adulthood were estimated to be at \$64 billion (Cicchotti & Toth, 2006, p. 503). A more recent report indicated the direct costs of child abuse were closer to \$80 billion annually (Gelles & Perlman, 2012).

The Child Protection System

Prior to the 19th century, there were no laws protecting the rights and safety of children against abuse. The juvenile system began to change in the United States when

social reform precipitated the establishment of the first juvenile court in Chicago in 1899. The goal was to rehabilitate youthful offenders rather than punish them for deviant behaviors. At times, youthful offenders were removed from their homes into reform schools for their own protection, giving them an opportunity to rehabilitate. The first juvenile court was founded on the premise of *parens patriae*, a legal standard giving the court the authority to serve in the capacity of the legal parent for those children whose parents abused or abandoned them (Wallace & Koemer, 2003; Snyder & Sickmund, 2006). Procedurally, juvenile offenses were transitioned out of criminal to civil court so that youthful offenders could reevaluate behavior, develop more effective life skills, and avoid criminal prosecution. The 1960s brought more procedural changes to the juvenile court. A limited version of due process was granted to juveniles providing certain legal safeguards to ensure fair and impartial hearings (Snyder & Sickmund, 2006, p. 4-8).

Judicial Decision Making in Juvenile Court

Broad discretionary powers have been given to judges to determine admissibility of expert testimony and the qualifications of the expert witness in juvenile court. The juvenile court seeks to protect the best interests of children under the legal doctrine of *parens patriae*, giving the court the authority to remove children into protective care when putative parents are declared unfit and incapable of protecting or providing for their basic needs. Hearings in juvenile court are held without a jury, giving judges the responsibility of determining the disposition of a case and adjudicating case outcomes. This authority also gives them broad judicial discretion when making decisions (Jones, 2006, p. 7).

To hear a case, the juvenile court judge must decide whether to assume jurisdiction as defined by state statute to determine if the case falls under the court's purview. Aside from hearing cases involving delinquency and status offenses of juveniles (offenses that would not be considered crimes in adult court), an important function of the juvenile court judge is to determine the presence of child maltreatment or abuse, and neglect as defined by law. A primary objective of the judge is to order children's protective services, an arm of the state's social service system, to make reasonable efforts to provide rehabilitative services to the family, if feasible. If clear and convincing evidence can be proven that the severity of abuse or neglect is to a level that prevents the child from safely returning to the custody of one or both parents without risk of further abuse or neglect, and, reasonable efforts were made by social services to provide rehabilitative services to improve the conditions found in the original complaint, termination of parental rights becomes the next consideration of the court with the case goal changed to permanency (Jones, 2006).

Termination of Parental Rights

CAPTA (1974) and strengthened by the CAPTA Reauthorization Act of 2010, defined minimal standards for each state to determine parental fitness to raise their children. Each state was given the discretion to determine statutory grounds for the juvenile court judge to proceed with termination. Although each state defines by statute the minimal standards for parental fitness, the most common grounds are (1) severe, chronic, or unmediated abuse, neglect, or abandonment; (2) abuse or neglect of other children in the household; (3) chronic mental illness or incapacity to parent; (4) ongoing

or long term substance induced capacity to parent; (5) failure to financially support or maintain contact with children; (6) involuntary termination of parental rights involving other putative children; (7) felony conviction for a crime of domestic violence or against a child, or if incarceration is of a length that it would be detrimental to the emotional well-being of a child and only option is a foster placement (Child Welfare Information Gateway, 2007, p. 2, 2013); and, (8) children remaining in foster care for 15 out of 22 months (Adoption and Safe Family Act, 1997).

Unlike other courts, the juvenile court utilizes the expert witness extensively when examining issues associated with child maltreatment. Mental health experts, children's protective service workers, domestic violence specialists, juvenile probation officers, police officers, educators, physicians, child development specialists, and foster parents testify to assist the judge in understanding the elements of a case requiring intervention. A purpose for intervention is to gain insights into events that brought a family before the judge and to determine the type of intervention that needs to occur in order to assist the family to rehabilitate and reunify, if possible (Jones, 2006, p. 7-16).

As gatekeepers of the juvenile court, judges are required to determine the reliability and relevance of mental health testimony and whether it meets scientific scrutiny as defined by the Daubert standard (1993) that expands on the existing Federal Rules of Evidence 702 which is the guide for courtroom procedure. The gatekeeper role was more broadly defined in the 1998 Kumho Tire ruling giving judges more flexibility to admit social science testimony as unscientific and not subject to the rigid standards of scientific scrutiny found in the 1923 Frye standard and the 1993 Daubert ruling

(Faigman, 2000; Otto & Martindale, 2007; Sales & Shuman, 2005). The Kumho ruling opened the door for juvenile court judges to decide relevance of unscientific testimony provided by mental health expert witnesses, and was influential in giving judges the latitude for deciding the direction they would take when deciding child abuse or custody issues. The rule gave judges the sole responsibility to define what the court believed to be in the best interest of children related to child abuse or custody issues. Kumho clarified the role of judges to decide the relevant strength of mental health testimony when determining visitation, child custody, adoption, guardianship, termination of parental rights, admissibility issues, and to decide probable cause for the preponderance of child abuse (Thompson & Cole, 2007).

The newer rulings have imposed additional responsibilities for judges in their gate keeping role. For instance, the Daubert ruling (1993) required that judges utilize scientific knowledge in their decision-making without provisions for applying it in admissibility hearings (Faigman, 2000; Sales & Shuman, 2007). The concern is that the inability to appropriately apply knowledge could lead to biased decisions. Findings from a recent study conducted on post-Daubert judges demonstrated how these concerns were warranted (Gatowski et al., 2001). The results showed that judges struggled with their lack of understanding as to how to apply scientific methods to admissibility, complicating the role of expert witnesses when attempting to testify to relevant details about specific components of a case.

The Gatowsky et al. (2001) survey examined decision-making in cases involving expert witness participation but did not indicate its relevance to decision-making of

juvenile court judges. In this national survey of federal and state court judges, it was found that 5% of judges understood the Popperian principle of falsifiability or how to determine the factors related to the principle. Judges had difficulty applying Daubert criteria to their decision-making and had little understanding about error rates, but understood the application of general acceptance and utilization of peer-reviewed publications. Their application of the Frye general acceptance rule to their decision-making suggested to the researchers that judges continued to apply a Frye-type analysis to the testimony they admitted. The study also showed that only half of the judges believed they had an adequate knowledge of science or understood how to apply scientific methods to evidence presented. The judiciary's ability to apply the Daubert standard when assessing the reliability of scientific evidence was "questionable at best", given that 38% of state trial judges believed clinical testimony obtained from psychologists was scientific, 64% considered testimony derived from psychological studies to also be scientific, and only 17% found testimony based upon economic data to be considered scientific evidence (Gatowski et al., 2001, p. 452-453).

Although the *Kumho Tire* ruling (1998) gave judges more flexibility in admitting social science evidence (Sales & Shuman, 2007), the problem now for mental health experts is that judges had lowered the threshold for admissibility of social science evidence because they believed it lacked the same scrutiny afforded hard science testimony in which strict scientific standards applied. The result is that mental health expert testimony holds the same status as lay witness testimony, and any opinions rendered by an expert is viewed as solely that of the expert. The courts decided that

judges were capable of scrutinizing the credibility of mental health expert testimony at the same time deciding its merits, consequently lowering its threshold and affecting its believability (Shuman et al., 1996, p. 371-382). The legal standards for admissibility of expert testimony will be discussed in more detail later in this chapter.

Judicial Decision Making As a Science

Judges serve as the gatekeeper in every court in this country. They are empowered by statute as the only persons in the courtroom to speak to the ultimate issue of a case (Mueller & Kirkpatrick, 2006). Judges and jurors rely on expert witness testimony to educate or inform them to make decisions that have the ability to permanently alter the lives of litigants (Ceci & Hembrooke, 2001; Otto & Martindale, 2007; Sales & Shuman, 2005; Turkat, 2005).

Judicial decision-making has been the focus of scientific inquiry over the course of the past 60 years (Hwong, 2004) despite its potential not being fully realized by the legal or social science communities. Legal scholars have begun to join with social scientists in legal research because of the level of knowledge that social scientists bring with them. This union is based upon the degree of research experience and knowledge of a variety of different methodologies that make social scientists valued partners of legal scholars in legal research (Gulati, Levi, & Klein, 2010). Although there have been empirical studies conducted on federal, district, and appellate court judges associated with how they make their decisions (Kim, Slinger, Boyd, & Martin, 2010), one of the most frequently studied groups of judges are the justices of the United State Supreme Court to assess voting patterns related to various kinds of cases in which decisions have a

significant impact on the lives of a large group of people. Researchers have explored the level of influence that age, gender, marital status, years of experience as a judge, years in public service, political preference, political ideology, name of the president who appointed them, religious preferences, regional influences, and socioeconomic status has on their voting patterns (Hwong, 2004).

Although research in this area of judicial inquiry is important to the legal and social science literature, legal scholars have suggested that more research needs to encompass those areas that have the most significant impact on the lives of the community that the court system serves. It is within the state court systems that decisions have the most relevant influence and not enough research is being conducted to understand judicial behaviors that are being influenced. "Law touches people's lives far more often and directly through state trial courts than through federal appellate court." The local and state court dockets are focused on the heart of issues important to local groups and communities. It is within these courts that cases involving child custody in divorce matters, domestic violence, and issues associated with child abuse are heard (Gulati et al., 2010. p. 5).

There is a consensus among legal scholars, that too few empirical legal studies exist measuring judicial decision-making, leading to a debate on how to conduct them (Cross, Heise, & Sisk, 2002). Social scientists and legal researchers have explored differing quantitative methodologies to advance techniques for research in this area of inquiry. Nard (1995) polled legal scholars to determine whether they believe that more legal research is warranted. The majority of law professors surveyed believed that legal

empirical research was lacking in the United States because of the time and effort it took to complete these studies. Other legal scholars complained that empirical research was flawed because researchers failed to follow scientific rigor when they conducted their investigations (Epstein & King, 2002). But, Cross et al., (2002) insisted that it wasn't empirical research that was flawed; rather, it was how empirical methods were sometimes employed that attributed to legal research being flawed.

Although doctrinal, theoretical, historical, and comparative methodologies have been used more often in research, legal scholars have been encouraged to broaden their scope by using empirical methodologies to study extralegal factors influencing judicial thinking. They have been encouraged to move beyond case study research to descriptive, predictive, exploratory, and explanatory measures to expand knowledge. The legal scholars believed that by using these methodologies, researchers can gain a more comprehensive understanding of relationships within and between factors influencing judicial thinking.

By examining and comparing behaviors, attitudes, or beliefs about decision-making, researchers are able to find important relationships within and between these factors (Hwong, 2004; Schneider, 2005; Vick, 2004). However, it is not clearly understood whether judges and legal theorists who are hesitant to participate in empirical research do so from the security of customary use of case study research or whether those judges or scholars lack an understanding of quantitative methods and how to interpret data results. Regardless, those legal scholars and judges as participants encourage social

scientists to consider using more qualitative methods in judicial research (Gulati et al., 2010).

Studies that are data-driven explore new phenomenon as a way to generate a new theory and to generate additional research through a case or field study approach. Information is gathered through interviews. Theory-driven studies seek to understand, explain, describe, or predict influences or relationships from the empirical data collected. Observational documentation and surveys or questionnaires are often the data collection methods to assess for relationships. The expanded use of methodologies allows researchers to assess a variety of extralegal factors from studies in judicial inquiry (Hwong, 2004; Schneider, 2005). Hwong (2004) reminded us that judges not only use a compendium of ideas from the law, but also from social, economic, political, behavioral, and psychological venues to make their decisions that can be used as resources for further inquiry. Most social science research on judicial decision-making is theory based and falsifiable. It attempts to generalize a population using the quantitative data to explain, compare, or predict phenomenon (Schneider, 2005).

Gulati et al., (2010, p. 5) made several suggestions for those who carry out legal research. They encouraged researchers who engage in future empirical research to intensify attention on all court systems when studying judicial behavior because of their importance to a larger segment of the general population. Studies exploring judicial behavior in smaller courts are limited and often ignored by judges in the mainstream. Of equal importance to researchers is to understand how judges think; what type of information influences their decisions; how to evaluate the testimony or evidence

presented; what kind of language influences their opinions; and to develop an understanding of the issues that are important to the judges and to the people who enter the state court system (Gulati et al., p. 5-6).

I reviewed the literature for studies occurring within the last five years that had been conducted on Oklahoma juvenile, domestic, and family court judges assessing for extralegal factors that had the potential to influence their decisions. I looked for related demographic variables such as age, gender, education, marital status, and political affiliation of judges and their background variables such as experience, education, and training. I also searched for any studies conducted on Oklahoma judges to determine the type of research available over the past five years. Although I was unable to find any current studies, there were a few studies conducted between 1975 and 1998 that examined legal variables associated with women, race, and sentencing in Oklahoma (Martin & Simpson, 1998). I conducted a second search and expanded it to include all studies of judges decision making involving child abuse custody cases and was unable to find research more current than 5 years investigating judges importance ratings of the extralegal factors that I used in my study. I did find one study conducted by a student from the University of Connecticut (Burke, 2005) assessing the relationship between family court judges' background, training, and knowledge of child development, related to their decisions in child custody matters. Family court judges from 11 states including Oklahoma were asked to complete a Likert-type web-based questionnaire. Because the results were a composite of opinions from all of the judges, the study failed to delineate

the response patterns of individual judges from each of the 11 states making it impossible to determine how judges from Oklahoma responded.

Levin & Mills (2003) reviewed national data on domestic violence involving each state's laws related to child custody and how those laws impact family court judges' decisions. The researchers explored decisional patterns of judges in divorce hearings to assess how issues associated with domestic violence in families and the best interests of children had been integrated into the law. Oklahoma child custody laws have a rebuttal presumption statute related to the best interests of children, preventing abusive or battering parents from gaining sole or joint custody of a child. This limits judicial discretion in which a judge cannot ignore a parental history of battering or violence when awarding custody in divorce hearings. In addition, perpetrators are not allowed unsupervised contact with the child (Levin & Mills, 2003).

The best interest of the child is the uniform standard for child custody in all states. Its interpretation is left to individual state statutes (Child Welfare Information Gateway, 2010, p. 3). Under the Oklahoma Children's Code, parents have a "natural, legal, and moral right as well as a duty" to provide for the emotional and physical needs of their children, with the exception of instances in which their actions are harmful to their children. The intent of the Oklahoma legislature was two-fold: (1) ensure that the best interests of children were implemented; and (2) protect the rights of the parents. Oklahoma statutes define the State's obligation to protect the emotional, physical health, and welfare of children by removing them from further danger or threat of danger into protective custody. The law explicitly states that in cases of physical, sexual, emotional

abuse, and neglect, and when the risks to the safety of children are significant, the authority of the State takes “precedence over the natural right and authority of the parents”. Along with ensuring the safety, emotional, and physical well being of children, maturity and age of the child, integrity of the family, the custodial history of the child including length of time in custody, and need for a legally secure permanent placement are relevant factors for determining the best interests of children (Brown, 2001, p.22). Oklahoma also includes in its child custody statutes involving divorce, a “friendly parent provision” in which meaningful contact is mandated between divorced parents and their children and that divorced parents share all decision-making that affects the welfare of the child. An exception to this provision is when the court finds that such a relationship is not in the best interests of the child because of perpetrator abuse or battering, and neglect (Brown, 2001; Wilks, 2000, p. 291-93).

Oklahoma has dual jurisdictions in which two court entities hold proceedings in juvenile and child custody matters. Abused and neglected Native American children residing on and off reservations, fall under the legal jurisdiction of tribal courts as mandated by Congress through the Indian Child Welfare Act (ICWA) of 1978. The act was passed by Congress to preserve the diminishing cultures of the various Native American clans (Connelly, 1993; Rubin, 1996; Wilson, 2007). According to ICWA, concurrent jurisdiction is to be shared by the state juvenile court and by the tribal court in which a state court is to notify the tribal court within 10 days of an involuntary proceeding involving an Indian child or family. The tribal court has jurisdiction to intervene in a state’s protective custody process at any time except in adoption processes

unless it involves termination of a Native American parent's rights. The tribal court has the authority to transfer the case out of state's jurisdiction unless the parents object to a transfer, the tribal court declines to accept a transfer, a state court deciding 'good cause' if there is no tribal court, the proceedings were in advanced stages in the state court, the child is over the age of 12 and objects to the transfer, undue hardship would be placed on participants to travel to a tribal court, or the child under the age of 5 has been abandoned by its parents.

ICWA also provides legal direction to state courts through the Existing Indian Family Exception Doctrine regarding those Native American families who relocate off of Indian lands. By policy intent and interpretation, the doctrine allows a state court judge to determine whether a child meets the two ICWA "statutory requirements" of membership into a clan when an Indian child is "involved in a child custody proceeding" (Wilson, 2007, p. 3). The determination is based upon the appearance of family members' "Indianess", the family's documented visits to a reservation over the course of a year's time, or parents' participation as children in ceremonial tribal activities (Wilson, 2007, p. 3; Graham, 1998). However, the complexity of the doctrine, according to legal scholars, has contributed to misinterpretation by some state judiciaries, or ignored by others, resulting in 19 states rejecting it, including Oklahoma. The Oklahoma State Supreme Court negated the doctrine in 2004, under the assertion that many Native American families have not maintained "cultural or family ties with their respective" clans. Under this ruling, Oklahoma juvenile court judges can deny transferring jurisdiction to a tribal court (Wilson, 2007, p. 3-5).

In this study, I used relational, comparative quantitative methods to compare several variables to see if a relationship exists between Oklahoma juvenile court judges' importance ratings for certain extralegal factors that have an impact on their thinking in child abuse cases. Using survey research methods, I asked judges to rate in importance the kind of extralegal factors related to mental health expert testimony, type of mental health expert, witness credibility, termination of parental rights, and case characteristics that influenced their decisions. I also assessed demographics of judges to determine if they can predict which factors influence legal decisions.

Mental Health Expert Witnesses

Although there is limited information regarding who receive mental health services, what type of services are offered, and the impact that these services have on a child's well-being, mental health professionals work to assist in the remediation or rehabilitation process of abused and neglected children. By law they are required, as mandated reporters, to report to legal authorities when clients make allegations of abuse (CAPTA, 1974). In recent years, mental health professionals have expanded their practices to include "investigator, evaluator, mediator, and expert witness" becoming more involved in legal proceedings at the investigative, adjudication, and disposition phases (Melton, 1994, p. 103). But Melton purported that a lack of research on mental health expert contributions to the legal process in child abuse cases made it difficult to discern the overall impact they had on the decision-making process.

Melton et al., (1981, p. 74) researched the views of judges to determine the level of engagement in legal proceedings by mental health professionals. Fifty-three judges

from various parts of the country were surveyed to see how many experts were utilized in their courtroom. Results concluded two things: (a) testimony by mental health professionals was presented in less than 25% of child abuse cases brought before the bench; and (b) one quarter of the judges polled did not find mental health professionals opinion to be credible or helpful in their decision-making. However, most all of the studies found in the literature focused on the custody evaluations in divorce hearings so little is known about the effects that the mental health expert has on the juvenile or domestic court process hearing child abuse cases (Bow, 2006; Galatzer-Levy & Kraus, 1999).

With the increased numbers of child abuse and fatalities being reported, and cases being adjudicated in civil or criminal court hearings, mental health experts are being called upon to provide judges with specific information about the impact of abuse on child development they otherwise would not have in their possession (Bow, 2006; NCANDS, 2006; Steele, 1999). A continuously growing and expanding body of knowledge in the field of mental health, specifically in the area of child development, and time constraints from heavy court dockets, prohibit judges from obtaining the information necessary to help them in deciding child abuse custody outcomes on their own (Barsky & Gould, 2002; Otto & Martindale, 2007).

The primary responsibility of mental health experts is that of neutral observer, teaching the judge about crucial stages of child development and the impact that abuse and neglect may have on the successful transition of the child throughout the life span (Barsky & Gould, 2002; Blau, 2001; Otto & Martindale, 2007). The goal is to educate the

judge so that the best interest needs of children can be addressed through the court process. The mental health expert also speaks to issues related to family dynamics including the psychopathology of either parent, poor parenting practices including parent alienation, and child custody issues related to the appropriateness of either parent to function in that role (Condie & Condie, 2007; Otto & Martindale, 2007; Redding & Murrie, 2007). Because of the expanding body of knowledge in mental health, judges rely on the mental health expert to provide this information to assist in the decision-making process (Condie & Condie, 2007; Otto & Martindale, 2007; Redding & Murrie, 2007; Shuman et al., 1996).

Mental Health Expert Qualifications

Psychiatrists, psychologists, mental health counselors, and clinical social workers are called to provide testimony to assist the judge in making a decision. Society considers this group to be the experts in the field of mental health (Otto & Martindale, 2007). Turkat (1993) insisted that there is no scientific evidence that suggests that any one of these professionals were more capable than the other in deciding custody issues nor are they more competent than that of a juvenile or “well-seasoned family court judge” in making custody decisions. He also insisted that the recommendations that the experts render to judges are not based upon any scientific data answering the basic questions regarding good verses bad parenting (Turkat, 1993, p. 175).

Of the professions noted, Turkat (1993, p. 176) maintained that the PhD level psychologist is considered by the legal profession to hold the best credentials because they are “distinguished by the most training in basic science. Having a critical attitude about

data of any kind, and the tools by which to understand scientific literature pertinent to a case, the PhD. psychologist is probably the preferred professional.” However, Turkat (1993, p. 176) suggested that the PhD. psychologist may not have specialty training in child development or “have an understanding of the stages of development or how they interact with the negative or positive attributes of each parent..” Regardless of the professional type, the best professionals to provide evaluative information to the judge is the mental health professional trained in child and personality development, personality disorders, diagnostic skills, and have significant experience as a practicing clinician (Turkat, 1993, p. 176).

Mental health expert qualifications are presented and questioned by attorneys on both sides of a case. A judge will use judicial discretion to decide if the expert is credible by determining if qualifications meet the standards set forth in the Federal Rules of Evidence 702 and 703 defined in the following paragraphs (Mueller & Kirkpatrick, 2006). Although each state applies the Federal Rules of Evidence to court procedure in determining qualifications, every state has their own interpretation of those rules. As experts, mental health professionals must acknowledge the limits of their experiences and training, and to any limitations of research findings guiding the theory they may use in the course of their testimony (Lonsway, 2005).

To be qualified as an expert by the court, the mental health expert must meet the criteria set forth by the Federal Rules of Evidence 702 requiring witnesses to possess knowledge beyond that of the judge or jury in order to help assist in the decision-making process. The expertise that judges and jurors find most credible is testimony that is

neutral and not in support of any faction, is less case specific, and presented in more general terms easily understood by all parties to a case (Lonsway, 2005). Knowledge in a particular field, skill, experience, training, and education are the criteria that judges use to determine the qualifications of the expert readying to testify. The standard rule defining qualifications of mental health experts is found in the Federal Rules of Evidence 702 which states that:

To determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if mental health experts utilize data collected using recognized scientific methodology, has relevance to the case being heard, and assists the judge in rendering an equitable decision. (Cornell University Law School Legal Information Institute, 2009, p. 18)

Because Rule 702 is clear in its assertion that an expert witness is qualified if able to meet the five factors of knowledge, skill, experience, training, or education, the rule gives the judge considerable latitude to qualify or not the mental health expert witness. The language of Rule 702 clarifies its intent with the use of “or” when identifying the factors qualifying the expert. This says that the expert must meet any one or more of the five factors to be considered qualified to testify (Giannelli, 1999; Mueller & Kirkpatrick, 2006).

The rule of thumb applied by the courts regarding qualification of mental health experts is based upon recent test cases that led to the interpretation of Rule 702. For each of the five factors, the court allowed leeway for identifying the markers that would

qualify the expert. A skilled witness is considered anyone who has knowledge beneficial to the judge not known to the general public to help make a legal decision (Giannelli, 1999, p. 1-3). There are no degree requirements, but professional training and experience from a specific knowledge relied upon within their professional field is acceptable. The test cases also determined that there are no mandates for the expert to be licensed, possess certificates of training, be members of professional organizations, or have professional stature as an expert to be considered as an expert. What is required is that the expert must have knowledge that will assist the judge in arriving at an equitable decision ().

Judges from Oklahoma apply a less rigorous standard for qualifying expert witnesses, including those experts from the field of mental health. Although FRE 702 is the standard used by all the states for defining expert qualifications, Oklahoma aligned with 20 other states declaring that expert witnesses do not have to be licensed in the state where testimony is given nor do they have to possess an academic degree. According to Oklahoma standards, education and technical training are not prerequisites for qualifying the testifying expert. However, judges do scrutinize testimony of expert witnesses based upon their experience, knowledge, and skill (Bailey, 2002).

Rule 703 of the Federal Rules of Evidence allows mental health experts to render opinions based upon relevant facts or data relied upon in a particular field of professional endeavor (Cornell University Law School Legal Information Institute, 2009, p. 19; Mueller & Kirkpatrick, 2006;). The rule also states that an expert can provide an opinion on information, data, or facts of a case that have yet to be admitted. The qualifications

specified in Rule 702 apply in this case as well (Cornell University Law School Legal Information Institute, 2009, p. 19).

Credibility Issues

Judges, jurors, and attorneys question the propriety of mental health experts testifying to issues related to child abuse custody in juvenile or domestic court by insisting they lack the proper qualifications to provide relevant and reliable opinion on child custody issues. According to Lloyd (1990), the controversy that has ensued from the skepticism levied by these legal commentators entails three specific areas:

1. The conflict between psychology and law related to both fields' interpretation of truth and how facts of a case are obtained;
2. Whether mental health expert testimony meets the legal definition of relevancy during the adjudication phase and whether it helps the trier of fact understand factual elements of a case without interfering with its probative value;
3. Whether the mental health expert has the qualifications to testify to the factual elements or render a social science opinion to explain cause and effect of human behaviors (Lloyd, 1990).

A serious obstacle for many mental health experts has been their inability to articulate the differences between knowledge they obtain from empirical research and knowledge gained through the legal or adversarial process, in order to provide testimony that has relevance. Some experts are unable to apply the information they have in their possession appropriately to meet legal criteria (Saks & Lanyon, 2007). Adding to the

problem and confusing mental health experts even more so is that many judges fail to understand scientific methods or how to apply them to the testimony proffered (Gatowski et al., 2000).

Admissibility of facts gleaned through the adversarial process is determined by legal precedent interpreted by the judge based upon statutes used as guidelines. Mental health knowledge is founded in empirical discovery and based upon concrete and consistent findings that lead to a general theory or principle, opposite of how legal knowledge is gleaned. The legal profession understands what constitutes relevance, and often, the mental health expert does not. Legal knowledge is based upon differing statutes and judicial opinions regarding case outcomes. Through the adversarial system, case outcomes are arrived through argument and debate of evidence presented by each side of a case, leaving the final judgment to the judge to decide facts in the truth-finding process (Saks & Lanyon, 2007).

The difference in the perceptions of what truth represents to the mental health and legal communities have created a vacuity regarding its application in the courtroom. The issue at hand is that both the legal and mental health professions have a separate operational definition of truth (Lloyd, 1990; Newman, 2000). The mental health community views truth as having only one right answer grounded in science formulating theory. The legal community defines truth based on the facts presented in each case being heard by the judge. Truth in law, therefore, is based upon how effective, believable, and convincing one side is over the other when presenting evidence to the judge or jury as it relates to a case under review. For mental health experts, such polarity in the application

of truth has created credibility problems for them when testifying (Lloyd, 1990; Newman, 2000; Shields, 2003; Shuman et al., 1996).

The conceptual differences in the interpretation of truth between mental health and law, and how legal decisions are determined, have been evident in cases involving child sexual abuse heard in criminal court. Such differences have impacted the credibility of mental health experts providing testimony in those cases. In other words, truth in mental health is gained through observations over time of specific behaviors. Truth in law is what the facts of a case say it is and this varies from case to case. Dynamics associated with sexual abuse have been observed over time and similarities in behavior documented. However, although the dynamics readily describe the consequences of sexual abuse to a child, a lack of a concrete accepted theory to validate erratic behavior enough to assign diagnostic criteria has been missing (Lloyd, 1990).

There are theories associated with the dynamics observed with sexual abuse. However, attorneys have been able to refute these theories by aligning the dynamics with other emotional problems, creating doubt in the mind of a judge or jury in criminal court. The erratic behaviors demonstrated by the child have often been discounted and the propriety of using mental health experts to determine the merits of a child alleging sexual abuse has been questioned (Lloyd, 1990, p. 1-2). Still, mental health experts have been asked to explain behavior observed professionally or by other professionals who document such behavior in published articles. Social frameworks testimony often use dynamics such as Post Traumatic Stress Disorder to explain symptoms associated with the behavior of an abused child (Aiken & Murphy, 2008; Lonsway, 2005; Steele, 1992).

The result is that judges and juries have become skeptical of mental health expert opinion, its contribution to the legal process, and the motivation behind it (Otto & Martindale, 2007). The judges' skepticism has served to lower the threshold for admissibility of mental health expert testimony because they believed it failed to meet the rigors of scientific scrutiny established by the legal standards for admissibility when the Daubert rule had been applied (Galatzer-Levy & Kraus, 1999; Shuman et al., 1996).

The credibility of any type testimony is based upon its capacity to relate to the facts. However, there are vast differences in how such information is collected by mental health and law. Although these two integral forces possess similar goals in the child protection process, they disagree about the route that leads them to this end (Lloyd, 1990; Newman, 2000; Otto & Martindale, 2007; Sales & Shuman, 2005). Their differing interpretations of the truth in sorting out the facts affect the legal intervention for those children being abused (Lloyd, 1990). Moody (2006) discerned between fact and truth, stating that although the two concepts are interpreted in a similar vein, there are significant differences between their functions. Truth is viewed as a function of fact, but the author maintained that truth holds its own identity within the legal community separate from the facts. Facts are based upon a reality of what *is* accepted in the court of law where facts are not necessarily an accurate representation of reality but based upon what is defined by attorneys as the truth and accepted by the judge.

Attorneys utilize "technically correct words" as facts to represent the events surrounding a case being heard in court expressed sometimes in untruthful ways to support their respective positions. The information may be factually accurate but not

necessarily the truth. The actual definition of truth is more than factually accurate, it is a concept based upon honesty (Moody, 2006, p. 1-2). Although words can be represented as fact, they are not necessarily a convention of the truth. Fact becomes “fact speaking” instead of “truth telling. When the motive behind the message is false, then superficially accurate words are false from their foundations . . . this is the very meaning of empty rhetoric: words expressed without wholesomeness of the heart. . . thus, facts can be used in the service of lies” (Moody, 2006, p.1 –2).

The 1993 Daubert standard acknowledged the open debate between the two professions regarding the interpretation of truth and its application to the court process. The standard emphasized that such “debate is an essential part of the legal and scientific analysis. Yet there are important differences between the quest for truth in the courtroom and the quest for truth in the laboratory. Scientific conclusions have been subjected to perpetual revision. Law, on the other hand, must resolve disputes finally and quickly. The scientific project has been advanced by a multitude of hypotheses where truth in law has been guided by facts molded by opposing factions in an effort to encourage the judge to come to a quick, final, and binding judgment” (Daubert, 1993, p. 579-596) in one side’s favor (Brodin, 2004). The scientific basis for the Daubert ruling was derived from the Popperian principle of falsifiability guiding admissibility of evidence (Popper, 1989). The United States Supreme Court included the Popperian principle to clarify the ambiguity surrounding utilization of scientific methods for admissibility by judges when interpreting the standards for admitting evidence in order to enhance the truth-seeking process (Meehl, 1992).

In the final analysis, an attorney's use of fact or the measure of reliability of social science testimony and the credibility of the expert are left to the interpretation of the judge. This is based upon the application of legal criteria found in the FRE Rule 702 "scientific, technical or other specialized" clauses codified by the Daubert standard (Steele, 1999). The underlying premise for any testimony is "whether it is helpful to the trier of fact, is the testimony relevant to the case, does the probative value of the testimony outweigh the risk of confusing the jury or are they unfairly prejudiced by the evidence, and whether the costs of such testimony to the parties and the judicial system outweigh the benefits" (Brodin, 2004, p. 4).

Judges criticize the preparation of some mental health experts who have failed to use social science evidence in a manner that is relevant to a case to explain technical information in a clear and concise manner so that they comprehend (Shuman et al., 1996). Mental health experts are also criticized because of their failure to grasp how to apply legal terminology to their testimony, causing judges to question their ability to meet "exacting standards of reliability" (Calhoun, 2008, p. 1). As a result, judges have been compelled to question which standard of admissibility should regulate authority over mental health expert testimony because of their overall negative impact on judges (Otto & Martindale, 2007; Shuman et al., 1996, p. 2).

Casey (2003) identified certain credibility factors that judges look for when qualifying the expert and determining the quality of their expertise. She insisted that "stringent adherence to court and witness-box protocol" is necessary to be qualified as a credible witness by the judge. Physical appearance is a mandatory component to

complying with “witness-box protocol.” Presentation before the judge in conservative professional apparel shows respect for the legal process and may add to the overall value of the opinions presented by the expert (Casey, 2003, p. 183-190).

Good eye contact, well-articulated speech at the same time using a strong voice to ensure clarity of the testimony presented, and information communicated in language that is easily understood by all participants in the legal process increases the credibility of the expert. Also a functional part of the “witness-box protocol” defined by Casey (2003) is the level of expertise demonstrated by the relevant experience of experts along with the whether the experience is demonstrated by the number of publications in professional journals advocating specialized knowledge (Casey, 2003, p. 183-190).

Other extralegal factors affecting how credible mental health experts appear to judges when testifying occur when they attempt to provide testimony beyond the scope of their experience or knowledge providing information that is of little use or importance to the case. Mental health experts attempting to speak to the ultimate issue by presenting opinion or conclusions regarding innocence or guilt are overriding a boundary, which, by statute, is the sole purview of the judge. Unfortunately for many experts, they lack an ability to convey technical information in lay terms so that judges understand its application, serving to possibly embarrass or usurp the power of the judge. When mental health experts are apprehensive about drawing firm conclusions about the information they present, they are viewed as tentative, lacking experience, or not believable. This is most evident to judges when mental health experts who lack experience on how to testify during cross-examination become confused or misspeak, further damaging their

credibility in the eyes of the judge (Otto & Martindale, 2007; Saks & Lanyon, 2007; Sales & Shuman, 2005).

Despite the number of articles questioning the credibility of mental health experts, and their qualifications, very few studies have challenged the assumptions made by these critics regarding what judges perceive as qualifying the mental health expert to testify on child abuse issues in juvenile court (Aiken & Murphy, 2005; Bow, 2006; Brodin, 2000; Lathrop, 2002; Melton et al. 1997; Otto & Martindale, 2007; Steele, 1999; Turkat, 2005).

Mental Health Expert Testimony

Mental health expert testimony has come to play a significant role in the adjudication process of child abuse custody cases since the early 1990s. It is an important evidentiary component used by attorneys and prosecutors seeking to build their cases in the courtroom (Blau, 2001; Gillotte, 2001). The acceptance of mental health expert testimony in juvenile court arises from changes in state child abuse laws recognizing the need for more effective child protection efforts. Whether mental health experts have a genuine role in the court process to assist the judge in the decision-making process will depend if expert testimony meets criteria established by law (Otto & Martindale, 2007, p. 261). A judge's decision to admit mental health expert testimony can have an impact on the direction of the case and the type of decision that a judge will ultimately make (Cramer et al., 2009). Judges have struggled with admissibility of mental health expert testimony because of the lack of a specific standard to apply to assess the various forms of expertise justly (Aiken & Murphy, 2002; Steele, 1999).

In order for testimony presented by mental health experts to be considered credible by the judge, the testimony must assist the judge in understanding the facts of a case, and it must be relevant and reliable (Aiken & Murphy, 2002; Steele, 1999). The Daubert (1993) standard specified that opinion or testimony must be assessed to determine whether it is based upon valid scientific methods and applied to the facts, data, or information being presented as evidence (Lathrop, 2002; Sales & Shuman, 2005; Steele, 1999; Vidmar, 2005). There were several factors addressed by the Daubert standard that assists the judge in deciding credibility of the testimony being presented:

1. The theory used to support testimony has been subjected to testing;
2. The validity of the theory has been published in a peer related journal;
3. The potential error rates of the theory are available;
4. The theory has been generally accepted in the scientific community (Daubert v. Merrell Dow Chemical, 1993, p. 593-594; Mueller & Kirkpatrick, 2006; Sales & Shuman, 2007).

Admissibility of mental health expert testimony is based upon certain legal criteria applied by the court (Mueller & Kirkpatrick, 2006). Because of the expanding body of knowledge coming from the mental health field, experts are asked to provide information on behavioral and psychological markers (i.e. social science or social frameworks testimony) related to a child's development and the effects that the abuse may have on the developmental process that would not ordinarily be available to the judge. The judge assesses what merit that testimony will have in the decision-making process (Ceci & Hembrooke, 2001; Otto & Martindale, 2007; Sales & Shuman, 2005) by

using guidelines based upon the 1975 ruling by the United States Supreme Court acceptance of the Federal Rules of Evidence 702. The use of such guidelines provides the judge legal precedence to affirm the expertise and special knowledge possessed by mental health experts regarding parent and child issues (Aiken & Murphy, 2002; Mueller & Kirkpatrick, 2006; Steele, 1999). Rule 702 is explicit in its definition regarding what the court views as reliable mental health expert testimony from the expert witness:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, to determine the facts at issue. (Cornell University Law School Legal Information Institute, 2009, p. 18)

The wording in FRE 702 gave broader discretion to judges to perform a gate keeping role. The 1993 Daubert rule later spelled out the guidelines used in deciding admissibility of testimony by determining if the testimony was scientifically reliable and the qualifications of the expert met the requirements for presenting such testimony. Expert opinion was allowed with the acceptance of Rule 703 based upon knowledge generally relied upon in the expert's professional field even if the facts or data surrounding the opinion were not admitted. Rule 704 allows mental health experts to present opinion about ultimate issues but prohibits them from speaking to the ultimate issue which is the sole purview of the judge or jury (Mueller & Kirkpatrick, 2006).

Prior to the acceptance of FRE 702 in 1975, the previous rule determining the type of testimony to be admitted into court was the general acceptance clause found in

the 1923 Frye rule determining testimony relevancy. This rule provided a foundation for the acceptance of science in the courtroom and defined how scientific and technical evidence was to be admitted by the judge. The general acceptance rule became the standard for how novel scientific evidence would be defined and allowed into testimony. Because FRE 702 failed to address the general acceptance rule, the United States Supreme Court decided that judges could not decide admissibility based upon the experts field of knowledge as legal footing for admitting testimony (Faigman & Monahan, 2005, p. 633-34).

The Daubert rule was accepted in 1993 and provided the judges with greater latitude to determine whether evidence or expert opinion presented met the merits of scientific scrutiny. The rule clarified the role of expert witness as well as the type of testimony to be presented. The Daubert rule expanded the requirements for acceptance of how expert witness opinion was arrived at using scientific methods. The rule firmly stated that such opinion must be based upon theory or technique that could be falsified; that a theory or technique has been published or peer reviewed; that the science that the opinion was based upon has a known potential error rate; and that the theory or technique underlying the opinion is generally accepted by the expert's professional field (Daubert v Merrell Dow Chemical, 1993, p. 593-594; Mueller & Kirkpatrick, 2006; Sales & Shuman, 2007).

Joiner v. General Electric (1997) was later accepted to uphold the Daubert rule where evidence presented did not require a more rigorous review. The final clarification ruling for mental health expert witness testimony came with the acceptance of Kumho

Tire v. Carmichael (1998) in which nonscientific evidence was admissible (Nordberg, 2006). This ruling helped to redefine the role of the mental health expert and testimony by allowing such testimony to be admitted into evidence.

With the advent of *Kumho Tire* (1998), mental health expert testimony is now permitted the same scrutiny as that of all expert testimony. Where the Daubert standard attempted to draw all expert opinion under a scientific umbrella of objectivity with a “fixed set of intellectual criteria against which to measure all knowledge”, the *Kumho* standard applied “considerable leeway” to district court judges for allowing social science opinions (Nordberg, 2006, p. 1) at the same time making the distinction that social science testimony was based solely upon expert opinion equivalent to that of a lay witness (Shuman et al., 1996) Social science opinion does not necessarily meet the standard for testability according to legal critics. Such opinion is based upon evaluations, tests, assessments, and procedures not published despite being directly associated with scientific inquiry.

Mental health expert opinion falls within the realm of expertise. The Federal Rules of Evidence 702 qualified experts offering non-scientific opinion (Dahir et al., 2005; Goldstein, Thomason, Redding, & Osman, 2003; Krafka et al., 2002; Shuman et al. 1996). With the acceptance of *Kumho Tire* (1998), opinion based upon clinical experience and professional observation is admissible as long as those observations are “sufficiently reliable to support the expert’s ultimate conclusions” (Lathrop, 2001, p. 14). The majority of expert testimony heard in the courtroom has a scientific foundation. Although social science research is predicated on scientific principle utilizing scientific

methods of observation, legal critics have complained that it failed to meet the rigors of scientific scrutiny because of the difficulty replicating human behavior studies (Melton et al., 1997; O'Connor, 2007).

Results from mock juror studies have suggested that hard science is more believable with hard science experts having more credibility. However, there are no studies available on real juror opinions regarding the use of hard science over social science testimony. Judicial scrutiny of social science or mental health testimony by state and federal court judges is based upon their belief that mental health testimony “carries no more weight than the testimony of the lay witness.” This has led to a conflict between mental health experts and the legal community who question expert witness qualifications and credibility, and the believability of the testimony they present (Shuman et al., 1996. p. 371-382).

Thirty state courts have adopted the Daubert standard with fourteen rejecting it and seven states remaining neutral. Oklahoma, whose judges were surveyed in this study, applies the Daubert and Kumho standard to civil matters when deciding admissibility of scientific evidence. However, the Oklahoma State Supreme Court applies Daubert to criminal cases during a Daubert inquiry and deemed it “appropriate with regard to novel expert testimony or situations in which the expert’s method is not established (Kaufman, 2006, p. 17).” Maye (1999) reported that the Oklahoma State Supreme Court extended the application of Daubert through the acceptance of Kumho for admittance of all types of expert witness testimony, including mental health testimony and, specifically, social frameworks opinion (p. 3857). Although over one-half of the states now apply the

Daubert standard for testimony admissibility, the Frye criteria of general acceptance continues to be the principle standard deciding scientific reliability in the ten most populous states in this country (Calhoun, 2008).

Judicial Scrutiny of Mental Health Testimony in Juvenile Court

A lower level of judicial scrutiny is applied to mental health experts and their opinions than to those experts who ascribe to hard science methodology. This makes it difficult for judges, jurors, and attorneys to view mental health experts as credible or their opinions believable. Research to support judge's skepticism of mental health expert credibility based upon a lower threshold of admissibility was not found in the literature (Shuman et al., 1996).

Mental health testimony provided in juvenile court hearings is based upon issues that directly affect children involved in custody abuse cases. The conceptual basis for the type of social science criteria related to the emotional and behavioral responses to trauma resulting from abuse in children is known as social frameworks testimony. This type testimony is used to explain to judges, psychological phenomenon regarding the unusual reactions of children who, because of their trauma related fear, make contradictory statements to authorities when disclosing details surrounding their abuse (Aiken & Murphy, 2002; Salekin, 2007).

Research in the area of child development has its roots firmly grounded in mental health, leading to the evolution of social and behavioral science theories that trace and interpret those developmental dynamics impacting the abused and neglected child. Interpretations of developmental dynamics are important to a judge's understanding of

the psychosocial history of a child or family members involved in child abuse custody hearings. The effective use of interpretive statements using social frameworks theory depends upon how well mental health experts are able to articulate its application to the proceedings occurring in the court (Otto & Martindale, 2007; Salekin, 2007).

Mental health experts must be able to explain to the judge complex dynamics related to trauma connected with abuse and the “inevitable misconceptions and incomprehensible contradictions” associated with the child’s “perceptions and reactions” (Aiken & Murphy, 2002, p. 103). The confusing and irrational demonstration of behavior by the abused child and the prejudices held by the public regarding the allegations of abuse, bring into question a child’s voracity when disclosing details of that abuse. Alternate explanations are often sought to explain an abused child’s inconsistent behaviors and expert testimony by mental health professionals helps to provide possible reasons underlying such behavior (Steele, 1999). The use of social frameworks testimony assists the judge in understanding social science evidence and helps to explain the relevant dynamics important to a case. Such evidence aids the triers of fact (judge or jury) to determine “a fact relevant to material issues” and suffices the standards established in FRE 702 (Aiken & Murphy, 2002, p. 14).

Many state courts allow social frameworks testimony as evidence to dispel misleading statements and myths about child abuse and domestic violence. Judges are given significant discretion in admitting testimony into evidence in child abuse or battering cases. However, opposition attorneys have successfully argued that social frameworks testimony lacks a scientific foundation and that the experts are void of

“scientific distance” leaving them culpable in the eyes of a judge or jury (Aiken & Murphy, 2002, p.14-15; Steele, 1999).

Despite the admissibility standards exempting social frameworks testimony from the tests for scientific scrutiny, mental health experts who have the experience and the educational credentials have not been allowed to present social science testimony to explain certain elements of abuse to the judge in several states including Kentucky, and Pennsylvania. In accepting this argument, those judges have disqualified the mental health expert from testifying, discrediting them and, at the same time, specific and important elements of a case involving child abuse or battery are ignored (Aiken & Murphy, 2002, p. 14-15; Steele, 1999).

Several state statutes including Delaware, Florida, Louisiana, Missouri, and Oklahoma require consideration of “past bad acts acceptance” under FRE 404 in which “evidence of other crimes, wrongs, or acts, although not admissible to prove character, may be admissible for some other purpose such as proof of motive, opportunity, intent....” applied to both criminal and civil proceedings (Mueller & Kirkpatrick, 2006, p. 76-83). A baseline or history of previous acts of abuse is needed to show the judge that a prior pattern exists and to demonstrate the breadth and depth of the abuse occurring. Social frameworks testimony can demonstrate to the judge that there has been a significant history of prior abuse which increases the propensity that future acts of abuse will occur precipitating a need for protective action to be taken on behalf of the abused child. It can identify characteristics associated with Post-traumatic Stress Syndrome associated with domestic violence and child abuse(Aiken & Murphy, 2002).

Characteristics associated with Battered Women's Syndrome and Child Abuse Accommodation Syndrome are more difficult to prove (Aiken & Murphy, 2002) but trauma associated with these two dynamics can be found in the Diagnostic and Statistical Manual of Mental Disorders (4th edition, American Psychological Association, 2000) description of PTSD (First & Tasman, 2004) and is more readily accepted by the scientific community based upon the theory and research used to develop diagnoses associated with mental disorders found in the manual.

In cases of child abuse involving visitation issues and child custody, domestic violence including abuse of a child is a factor in the consideration of child wellness and safety. While most states require a preponderance of abuse, other states like Delaware, Florida, Louisiana, Missouri, and Oklahoma statutes require abuse as a pattern of conduct and Oklahoma statutes carry language seeking clear and convincing evidence. Each of these state statutes included an exception clause to allow social science evidence under the judge's discretion in criminal court hearings (Aiken & Murphy, 2002).

Other states such as California and Ohio have exempted social frameworks testimony from the Frye (1923) general acceptance test for all legal proceedings, allowing it to be admitted to educate a judge or jury: "a witness may testify as an expert if the witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons" (Raeder, 1997, p. 147). Other states like Kentucky, Pennsylvania, Michigan, and South Dakota have no such exemptions (Aiken & Murphy, 2002; Steele, 1999).

Irrespective of those courts that reject social frameworks testimony or opinion, the use of such testimony remains a major force in explaining the impact of battering and abuse on women and children to judges. Those states that do not permit the use of social science expert opinion are leaving the door open to perpetrators perpetuating their abuse on their victims (Aiken & Murphy, 2002; Steele, 1999). Steele (1999) pointed out that the problem is not how the rules of evidence are written because all states have substantially similar rules weighted by reliability and relevancy that govern the parameters for the use of expert witness testimony. The author maintained that the underlying problem stemmed from judges or jurors narrow interpretation of the rules and the belief that jurors have the ability to understand the developmental differences of children and their emotional responses to trauma without the variances in their behaviors explained by mental health expert witnesses. States like Kentucky view mental health expert testimony as not especially relevant to the decision-making process prohibiting the use of relevant testimony that could protect a child from further exposure to abusive situations.

Often heard during divorce custody hearings are custody evaluators testifying that the abuser is, nonetheless, a good father, despite a legal record or complaint of him assaulting his spouse and children. The lack of validity in this type opinion is found in the research on domestic violence impacting children. The enormity and danger of such opinions regarding placing a child in the hands of an abuser is reflected in the data given by women seeking safety in shelters from their batterers (Aiken & Murphy, 2002). Almost 70% of those women report that children in the home have been emotionally, physically, and sexually abused. Other reports indicate that children of abuse are 15 times

more likely to be at risk for experiencing ongoing abuse in homes where there is a prevalence of violence, are more likely to enter adulthood with serious psychological problems and are at a greater risk to become abusers. In nearly 70% of custody cases involving abuse, the abuser has been awarded either sole or joint custody (Aiken & Murphy, 2002, p. 16; American Judges Foundation, 2008, p. 8-9).

Research on Judges' Perceptions of Mental Health Experts

Despite every state having a best interest standard protecting the rights of children, each state has its own interpretation of what those rights are. With significant inconsistencies in how the individual states interpret these standards, discretion is left up to the individual juvenile or domestic court to decide outcomes (Weisz, 1999). This is disturbing to legal commentators like Mason (1994) and O'Donahue & Bradley (1999) who worried that judges tended to defer to the recommendations of mental health experts when making a decision biased in favor of one parent over the other. To this end, mental health professionals are being challenged by the legal community to address their participation in the court process. They are being asked to conduct empirical studies that provide a basis for the type of opinions they present to the court by examining variables in decision-making that are relevant to advancing the best interests of children.

Mason (1994) indicated that child custody hearings should be used for progressing the physical and psychological best interests of children involved in custody determination hearings. She maintained that social science research is important for this reason but fears that the research data collected by mental health researchers could be misused by those progressing their own agendas in court. However, a survey of custody

evaluators conducted by Ackerman & Ackerman (1996) found that most psychologists prefer to function in the role of a court appointed expert under the direct appointment of the judge, the child's attorney, or both parents instead of one parent.

The absence of empirical research on judges' decision-making in child abuse custody cases and on the function of mental health experts in the courtroom limits the base of knowledge that would be available to mental health experts, judges, and attorneys to advance the best interests of children when outcomes are sought (Weisz, 1999). The literature examining court litigations involving domestic issues on child custody focuses primarily on custody outcomes in divorce hearings with the available research examining the impact that custody evaluations and custody evaluators have on those outcomes (Mason, 1994; O'Donahue & Bradley, 1999; Otto & Martindale, 2007; Vidmar, 2002; Turkat, 2000; Weisz, 1999). Juvenile court litigations in the past have involved juvenile delinquent and status offense cases but child abuse determination cases have increased over the past three decades with judges being asked to decide reunification or termination of parental rights issues (Otto & Martindale, 2007; Snyder & Sickmund, 2006).

Although there were numerous scholarly articles written about judicial decision-making, I found very few studies existing on the impact that mental health experts have on child abuse custody cases in the juvenile or domestic court process, or in civil hearings, in criminal court for child endangerment, or on legal charges associated with a child's death associated with abuse (Melton, 1994). I was unable to find more than a scant number of studies that related to post-Daubert research involving mental health experts impact on the decision-making process, what criteria judges use to admit

testimony, how judges rate the importance across extralegal factors that positively influence their decisions, or on judges' preference for one legal standard over another (Caudill & Redding, 2000; Otto & Martindale, 2007). The lack of research limits the mental health experts' understanding of how to apply admissibility guidelines to their testimony, or whether the Daubert standard has exhibited any influence over judges' decisions weighing mental health testimony. I located one study conducted by Dahir et al., (2005) that provided an explanation for the limited amount of research addressing post-Daubert impact on mental health expert testimony.

Dahir et al. (2005, p. 78) examined the post-Daubert impact on judicial decision-making involving mental health expert testimony and determined that mental health testimony continues to be considered soft science in the eyes of judges who refuse to "hold the discipline to the same rigorous methodological standards as the hard sciences" and suggested that "Daubert will not have" the same type of impact on mental health expert testimony "until they do ". The researchers used vignette methods to survey judges to determine the impact that the passage of the Daubert standard had on social frameworks testimony considered to be novel or junk science grounded in questionable methodology. The results from the study by Dahir et al., (2005) indicated that the Daubert standards held little influence over how judges came to a decision regarding admissibility of frameworks testimony. The study also revealed that state court judges continued to rely upon the more easily understood Frye rule (1923) of general acceptance for determining relevance and reliability and for determining the qualifications of the mental health expert. Also revealed was that social frameworks testimony was the most

common testimony presented in juvenile and domestic court. Judges were more apt to admit social frameworks testimony under the guise of the Frye rule (Dahir et al., 2005).

A study using vignette survey methods conducted by Redding, Floyd, & Hawk (2001) revealed that the receptivity of judges for the type of mental health expert in competency or insanity pleadings preferred the evaluations provided by psychiatrists instead of psychologists and other mental health professionals. The results demonstrated that the psychiatrist to be most reliable followed by the doctoral level psychologist, with master's level psychologist and social worker least preferred by judges. The study did not include mental health counselor preferences such as psychotherapists, clinical mental health or professional counselors, family or marriage therapists, or substance abuse counselors. In an earlier study, Poythress (1983) found similar results in a survey of Michigan judges hearing sanity defenses. The judges believed psychiatrists to be more reliable and provided information more that was more relevant to the decision-making process.

A few studies have examined judge preferences associated with child custody practice. Studies conducted by Ackerman & Ackerman (1997), Bow & Quinnell (2004), and LaFortune & Carpenter (1997) used survey research methods to assess issues related to child custody practice involving divorce litigation. Bow & Quinnell (2004) surveyed judges in Michigan to determine their preferences for the type of information from child custody evaluations they believed to be most useful to them when making divorce custody determinations. The majority of judges believed that the custody evaluations were too lengthy, biased, that evaluators lacked an understanding of legal standards for

admissibility, recommendations lacked scientific backing, and the evaluators took too long to submit them to the court. Judges also preferred court-ordered evaluations and preferred that qualified evaluators provide recommendations regarding custody.

LaFortune & Nicholson (1995) surveyed both attorneys and judges for their preferences of the type of mental health expert believed to be most reliable in custody evaluation hearings and found that psychiatrists were favored only slightly higher than doctoral level psychologists. Judges also identified three areas of importance when deciding child custody: one parent disparaging the other; substance abuse; and the needs of the child when deciding for one parent over the other in divorce settings.

Ackerman & Ackerman (1997) evaluated judges' preferences for custody practice including custody evaluations used in divorce custody cases and determined that judges preferred custody evaluations to be prompt, neutral, and court-ordered. Unfortunately, limited as it has been, most of the older research that I located had been focused on sanity defenses or competency hearings with a few studies directed toward custody evaluations in divorce proceedings. I found only a few references to studies examining characteristics of child abuse cases over the course of the last five years. Legal commentators have challenged the mental health community of experts to conduct studies on judicial decision-making in order for them to understand what factors are important to judges when making decisions. They viewed research as a way to validate the opinions that experts provide in order to assist the judge in that decision-making process (Bow, 2006; Mason, 1994; O'Donahue & Bradley, 1999; Vidmar, 2000).

To that end, I conducted a search to assess what empirical research was available and found five studies from the last decade that explored child custody issues and child custody evaluations. A 2003 study by Wallace & Koemer examined which family factors influenced decisions in cases of contested custody in divorce hearings. Another older study (McWhirter, 1996) reported on factors of importance to divorce court judges in contested custody cases. D'Angelo (2006) studied judges attitudes regarding what factors influenced waiver decisions to transfer jurisdiction of a juvenile offender to be sentenced as an adult. A study by O'Donnell & Lurigio (2008) examined psychological factors that lead to juvenile delinquency, and a study by Hamel, Desmarais, Nicholis, Malley-Morrison & Aaronson (2009) examined decisions in child custody disputes in divorce cases involving domestic violence and how the erroneous beliefs of judges and other court professionals about the victim and the perpetrator effected decisions that end up not being in the best interest of the children involved. More recent research by Walsh, Jones, Cross, & Lippert (2010) examined the importance of evidence type in prosecution of sexual abuse cases. Other studies involved the impact of domestic violence on juvenile delinquency and a 2004 study by Hwong assessed the impact of social demographic variables on decision making by justices of the Supreme Court of both Canada and the United States. The current study addressed the gap in the literature on judicial decision-making in a mailed survey to those judges hearing juvenile and domestic court matters by examining their importance ratings of extralegal factors that may influence their decisions in child abuse custody cases.

Previous Research on Extralegal Factors

I found only a limited number of studies that targeted judge or juror preferences or attitudes toward the believability of mental health expert witnesses or their testimony in cases involving children or juveniles. In other research in which mental health experts were used in other kinds of cases, I found only a scant number of older studies that examined the ability of juror demographics to explain the relationship between extralegal factors testified to by mental health experts and juror ability to find their testimony believable or relevant. Age, education, occupation, gender, and previous experience as jurors were examined (Shuman et al., 1996).

Austin (1982) examined in a case study of jurors from two separate trials to assess what impact juror occupations had on their ability to understand expert evidence presented to them. The first panel of jurors studied by Austin revealed that most jurors were blue collar and had a negative opinion of experts. He found that jurors believed the experts were arrogant, tended to be condescending, and found that jurors were not impressed by expert qualifications and that jurors believed that the qualifications of experts testifying in this trial to be full of “tasteless self-praise” (p. 16). The second panel of jurors consisted of individuals in middle management. Their opinions of the experts were more positive and they appeared to understand the evidence being presented (Austin, 1982, p. 15). Limitations of this particular study included the small number of participants utilized. No judge demographics were examined.

Saks & Wissler (1984) examined characteristics of prospective jurors in their study and found that education of the juror played an influential role in how they assessed

simulated mental health expert witness testimony. The results revealed that the higher the educational level of jurors, the less impressed they became with the expert witness. Juror critical analysis of expert witnesses impacted juror believability (Saks & Wissler, 1984, p. 445). When examining the impact that age of juror had on expert witness believability, they did not find this characteristic to influence their impressions generally, but did find that younger jurors tended to believe mental health experts more than the older jurors. Gender of the juror had little impact on relevancy in believability of mental health experts.

Results of research by Hastie, et al. (1983) determined that the higher the educational and occupational level of mock jurors in a murder trial the greater the impact on their decisions. Jurors appeared to take a more active interest in the testimony presented by expert witnesses. The results also indicated that these jurors were able to recall more details about the evidence being presented to them. When assessing ages of jurors, the authors found that middle-aged jurors between the ages of 35 and 57 believed mental health expert witnesses to be more credible than did either the younger or older jurors. Younger jurors had better recall of testimony presented than older jurors but the older jurors took their duties more seriously. Male jurors tended to be more outspoken than female jurors but that female jurors were more critical of female litigants and more defense- oriented than men. The study also revealed that the more experienced the juror was, the likelihood of the juror to side with the prosecution (Hastie et al., 1983, p. 142-43).

The available research measuring expert characteristics for juror believability suggested that personal and professional characteristics play an important role. Most of the studies examined and reported in the following paragraphs measured characteristics of experts from other fields of endeavor and mental health experts involved in sanity or competency hearings. How the results of those studies would generalize to mental health experts providing testimony in juvenile or domestic court proceedings is unknown. The majority of the data is very old and I found a scant amount of research available that would apply to this study. I included a few examples of studies with factors that demonstrate any similarities to the current study. The paucity of research on judicial decision-making in the juvenile court demonstrates a need for more current research in this area and this study helped to update the current literature.

Qualifications of expert witnesses, an understanding of the facts of a case, professional presentation, and expert ability to communicate technical information in lay terms, personal appearance of experts, and witnesses ability to remain impartial and unbiased when presenting information to the court were the focus of a few of these older studies. The same factors associated with other studies were used in the current study to assess which factors that juvenile or domestic court judges find most beneficial to them when making decisions regarding child abuse custody matters.

Champagne, Shuman, & Whitaker (1991) assessed judges and jurors in Dallas, Texas over a three-month period to determine how expert witnesses were perceived in the courtroom. Educational qualifications and professional credentials of witnesses examined included MDs, PhDs, DVMs, JDs, and witnesses with masters and bachelor level

degrees. The researchers found that judges and jurors were not nearly as impressed by expert credentials as they were by their ability to convey technical information in lay terms along with their willingness to draw firm conclusions. Communications skills, ability to draw firm conclusions, and the ability to articulate non-technical information in a concise and impartial manner carried heavier weight than the education and credentials of expert witnesses. Attractiveness of the expert witness or presence of a good attitude and pleasant personality held less weight than all the characteristics being measured. Jurors and judges defined the biased expert witness as ‘hired guns’ being paid by attorneys. When questioned about impartiality, 35% of the respondents viewed those expert witnesses who received remuneration for their services by one side as not credible and lacking objectivity when presenting testimony (Champagne et al., 1991, p. 371-388). They also found that jurors were highly skeptical of expert witnesses because they believed that such expert testimony favors the side that pays them.

Shuman et al., (1996) examined attitudes of judges and jurors in three metropolitan cities. They found that those jurors and judges surveyed in Tucson, Seattle, and Baltimore believed the qualifications and credentials were less important to them than witness capacity to articulate relevant factual information in lay terms as well as their ability to draw firm conclusions when determining the believability of the expert witness (p. 193-201). Brekke & Borgida (1988) surveyed mock jurors in a simulated rape case to determine the importance that familiarity with the facts of a case were to them and how effective expert witnesses would be in providing evidence to them. Jurors were asked to assess if specific information provided was of more value to them than an

opinion or generalized information. They found that the jurors preferred specifics of a case and that the earlier in the trial that the expert witness presented the information the more likely they were being swayed by the experts (Brekke & Borgida, 1988, p. 413).

The American Bar Association (1989) carried out a study on the impact that expert witnesses had on juror believability. They examined jurors participating in nine civil and criminal trials. Their results indicated that those expert witnesses who were most helpful to their ability to make decisions could convey both technical and non-technical information in a manner that was easily understood and that those experts who presented technical information in highly technical terms were not helpful to them (p. 42). Jurors also found those experts who were perceived as “hired guns” as being unbelievable and those experts who had completed independent research in a specific area were most credible (p. 40). Rosenthal (1986) also measured the impact of juror perceptions on the credibility of expert witnesses in general. He found that when testimony became too difficult to understand or too technically complex, jurors tended to resort to using other factors to weigh their decisions. The jurors relied on the outward appearance and ability to communicate to form conclusions. Verbal fluency, voice inflection, and external factors such as length and style of hair, eyeglasses, and manner of dress tended to sway jurors. Experts with longer hair and casual dress were viewed as less professional and less scientific than those experts with short hair, wearing glasses, and dressed in a business suit.

A Theoretical Foundation for Judicial Decision Making

Legal research on judicial decision-making has been a focal point of disagreement among legal scholars for nearly a century. Two major theories guiding legal research on how judges make decisions have created a theoretical divide among legal scholars who aligned themselves to the tenets of either classical formalism or legal pragmatism (Hwong, 2004). Classical legal formalism relies on the rule of law, or case law, and legal precedent to settle cases. Jury trials or tort cases are subject to case law resolution (Stephenson, 2009). Legal pragmatism allows for more flexibility in the process leading to the decision-making. As events or situations change, or new information is provided to the judge, outcomes may also change (Butler, 2009; Hwong, 2004). The juvenile and family courts have shifted their decision-making process to incorporate a more flexible structure to assist families who are involved with the court process by providing services to mediate problems that would inhibit resolution of those problems (NCJFCJ, 2008).

A theoretical framework for judicial decision-making grounded in “a pragmatists model of law” (Butler 2009, p. 1) provides the juvenile court judge with a common sense approach for making decisions in child abuse custody cases. This approach to jurisprudence allows the court to function “as a social tool” (p. 1) based upon “a set of practical measures” (Grey, 1996, p. 41-42). Legal pragmatism is an outpouring of the works of Farber (1995), Posner (1996), Radin (1990), and Rorty (1990) who sought to incorporate a more utilitarian approach to legal proceedings and subsequent legal decision-making instead of the more inflexible model of classical jurisprudence that

extracts its tenants from moral reasoning and relies on precedence to regulate outcomes in legal proceedings.

The more contemporary model of legal formalism emanated from the works of Levi (1949) and from Dworkin's rule of law theory (1986) that mandated that people ascribe to an ideology based upon a set of institutional laws that dictate their behavior. Through the use of previous case law to influence legal decisions, the classical formalist's model of argumentation and case precedence is viewed by modern legal pragmatists as lacking the insight to adequately resolve social conflict because legal verdicts are based upon prior published legal decision-making. In those cases, judges formulated their decisions based upon an absolutist legal reasoning and rules of law written from opinion stemming from previous case law (Butler, 2002, 2009).

Legal pragmatism, on the other hand, is a multifarious approach that attempts to apply a social science perspective to the field of legal decision-making. It allows for a broader look at any given situation by examining the numerous elements involved in a case (Butler, 2009; Posner, 1996; Tamanaha, 2000). It is most closely aligned to cognitive behaviorism in which interpretation of behavior is incorporated to explore the thinking and acting of people involved in the court system. This interpretive behavioral approach is a more functional tool for resolving social conflict because it takes into consideration the behavior of a litigant. It allows for an interpretation of specific behavior and its impact on the overall situation and, based upon the facts of the case, the judge has the flexibility to make a decision that will be in the best interest of a social entity or group. This more eclectic approach to judicial decision-making provides flexibility to the

process that does not rely upon a cookie cutter decision commonly found in an institutionally grounded ideology associated with traditional law (Tamanaha, 2000).

There are four basic principles guiding the decisions made by pragmatic judges: importance of context, instrumental nature of law, lack of foundation, and alternative perspectives (Butler, 2009, p. 2-4). Contextualism, as a tenant of legal pragmatism, refers to each case heard before a judge as being a composite of elements specific to that case. Legal decisions seek to resolve the basic conflict related to those elements associated with that case. Instrumentalism posits that law is a tool or instrument used for the good of society; law is characterized as a means to an end. The legal pragmatist will assess how a decision will impact the future of society as a whole or an individual entity within that social realm. Pragmatic decisions are influenced by empiricist application of what kind of consequences the overall interpretation of a legal decision will have on society (Butler, 2009; Posner, 2008, 1995, p. 252; Tamanaha, 2000).

Antifoundationism implies that there is no binding history to decide the elements of a case. Human behavior is based upon individual experiences impacting how a person thinks and subsequently acts. No two sets of experience are interpreted alike. Legal formalists, however, view that all decisions are derived from a set of core values or principles applying to all legal decisions deduced from past case history or precedent and previous rules of law (Butler, 2009; Posner, 2008, 1995; Tamanaha, 2000). There is no flexibility in how decisions are made. The legal pragmatists reject this concept because they view that knowledge is an open -ended concept always in need of exploration and analysis (Butler, 2009, p. 3, Posner, 1995; Tamanaha, 2000).

With antifoundationalism, change in human behavior is generated by changes in knowledge and subject to ongoing revision, and any derived decision would not support a foundational challenge deduced by legal formalism where decisions are restricted in their interpretation bound in the law and applied to each situation. Because legal decisions are open ended, pragmatic jurisprudence encourages creative problem solving in the decision-making process (Butler, 2009, p.4; Posner, 2008). The legal pragmatists adhere to the idea that under any circumstance there are alternative perspectives that may explain a problem. They view that every circumstance is different and imbued in conflict, requiring any decision to be open ended in order to support the infusion of additional information or injection of another perspective that may change the face of an outcome and need for altering judicial opinion (Shutkin, 1993, p. 66).

Advocates of legal pragmatism describe this model of law as “rooted in practice and custom” (Grey, 1996. p. 41-42) derived from existing human behavior. In other words, the concept is based upon what people think, and how they act, and the consequences that are derived as a result of those actions. The model avoids delving into the abstract and focuses on concrete issues associated with the ongoing mechanisms of current human action or behavior. Its purpose is to employ creative judgments and practical tools of judging to improve on the common good of people by providing choices, guidance, and consequences to mold their behavior. Through this process, consequences are manifested from specific situations, conflicts, or cases seen before the judge (Butler, 2009; Posner, 1995, 2008).

How does the pragmatic model of jurisprudence apply to the decision-making of the juvenile court judge? A child-centered approach to decision-making is the model currently encouraged by the ABA (2008) and the NCJFCJ (2008). The model possesses many of the tenants found in legal pragmatic theory. Because child abuse custody decisions are among the most complex made in the judicial system, juvenile court judges must determine the impact that their decisions will have on the future safety and well being of a child. Such disputes surround a multitude of issues and concerns for the judge who must decide for the best interests of a child in custody or permanency hearings. The decision-making process seeks a means to an end of the dispute and judges do not rely on precedent or previous law to render their decisions (ABA, 2008; NCJFCJ, 2008).

A composite of the facts make up the evidence that is used to formulate an opinion about the case in question. Each case has its own set of issues that must be examined by the judge. Alternative perspectives by legal professionals are presented to the judge who must then examine the information to determine the risk to a child when deciding visitation or permanency. Given the cultural, social, legal, mental health, and economic factors that have an impact on outcomes, judges must examine all of the presented data when applying the best interest standard. Issues outlined in the best interests standard considered by the judge include sexual, physical, and emotional abuse, termination of parental rights, custody and visitation, mental health of the parents, substance use, parenting practices, domestic violence, and developmental issues of the child (ABA, 2008; NCJFCJ, 2008).

Juvenile court judges have the discretion to change the direction or flow of a case. Judge decisions are open ended and flexible regarding the evidence presented, with each directive or decision open for revision. When the mental health expert is called upon to present new evidence regarding the safety and well being of an abused child or to present information to educate the judge regarding the impact that abuse has on the developing mind, judges utilize discretion as to how to apply that information. A determination by the judge will be made regarding admissibility any information presented and its relevance to the case. The judge will assess whether the expert testimony considers the physical and emotional well-being of the abused child and whether recommendations made considers all available alternatives satisfying the best interests of the child (ABA, 2008; NCJFCJ, 2008). Every state is required by federal law to enact a best interest standard with each state applying its interpretation of the federal standard to state law. Case law, however, is of little benefit to a juvenile court judge who receives little guidance under its instruction (ABA, 2008; NCJFCJ, 2008).

Methodology

I employed a non-experimental, relational, and comparative quantitative survey research method to gather data from a mailed questionnaire sent to juvenile court judges to assess which extra legal factors were most important to them when making decisions in child abuse custody cases. The mailing format increased confidentiality of data, was less costly and time consuming, minimized sampling errors, and reduced the possibility of interviewer bias given the lack of direct contact with the participants (Salant & Dillman, 1994, p. 35). However, Bell (1996) pointed out that nonresponse bias is a

problem for mailed surveys and this was a consideration when I conducted the survey to judges. I selected the survey method to investigate and compare importance ratings of judges to assess for relationships between those ratings and various extra legal factors that influence their decisions (Lie & Boker, 2006).

The use of survey research allowed me to quantitatively identify specific characteristics of the selected population of judges and use their subjective data to determine existence of any relationships. With survey research, there was the possibility of my being able to generalize the results from the quantified findings back to that population (Kraemer, 1991; McIntire, 1999, p. 74). Survey research provided me with an opportunity to assess a large group of judges and to collect demographic information that would tell me something about this population while assessing their opinions on which variables would influence their decisions (Bell, 1996, p. 68; McIntire, 1999, p. 75).

A self-report questionnaire, Judge Questionnaire Regarding Expert Testimony In Juvenile/Domestic Court Cases (Neil & LaFortune, 1997) was used to collect data asking judges to select responses on extra legal factors of importance to them (McIntire, 1999, p. 75). The survey was developed by Neil who received assistance from a panel of legal and forensic experts with courtroom knowledge and research experience. The panel believed that the questions would reliably measure what they were intended to measure (Fowler, 1995, p. 2) and the results that Neil obtained from her 1997 research project confirmed this (N. Neil, personal communication, August 22, 2010). Because the Neil study was more than 5 years old, I conducted an expert review asking a panel of juvenile court judges as experts for their opinions about the composition and clarity of the survey

questions and whether revisions to the questions are necessary prior to conducting the main research project.

I found in the literature, other methods used for conducting survey research in addition to written questionnaires that are mailed or sent by electronic transmission. Verbal surveys are direct interviews conducted either telephonically or face-to-face contact with participants. This survey method is beneficial for gaining additional insights through direct observations of participant's body language if the interview is conducted in person (Isaac & Michael, 1997, p. 140). Such interviews allow more flexibility for assessing respondents who are resistant to completing written surveys. A drawback to using the verbal interview is that it is time consuming and difficult to transfer data for analysis (Isaac & Michael, 1997, p.140; Salant & Dillman, 1994, p. 42). A third method, the mixed mode survey, utilizes the least restrictive, least time consuming, and most cost effective techniques to gain the highest response rates. A combination of different mediums are used including written questionnaires that are electronically transmitted and verbal interviews to elicit high responses rates (Salant & Dillman, 1994, p. 50).

I examined the studies that were available from the literature to assess the types of study design and methodologies used to collect data on judicial decision-making. Tate & Sittiwong (1989) used a scalogram to assess the types of decisions made by judges of both the Canadian and United States Supreme Court based upon political attitudes and affiliations. A multivariate regression was used to examine social backgrounds of judges to determine whether they made decisions based upon an attitudinal model, strategic model, institutional model, legal model, or personal attributes model.

Tate & Sittiwong (1989) found an overlapping of personal attributes and attitudes in their study. Nard (1995) used a telephone survey to ask U.S. law professors if they believed there was a lack of empirical legal research and both tenured (80%) and untenured (95%) professors agreed and provided the lack of training in research methodologies as the primary problem, a lack of understanding of statistical measures, and acknowledgement that the research process was too time consuming and costly. Schuck (1990) used a similar method to poll Canadian law professors but found that his response rate was low compared to that of the Nard study. He was unable to generalize the results between Canadian and U.S. law professors who offered opinions regarding the shortage of empirical legal research in the field of academia.

Survey research appears to be the most widely used method for identifying specific factors in child custody matters that judges rate as important to their decision-making (Bow, Gould, & Flens, 2009; Bow & Quinnell, 2004; LaFortune & Carpenter, 1998; Lafortune, 1997; Ackerman & Ackerman, 2004). Extralegal factors were derived from best interest standards identified by state statutes but differ across jurisdictions and most state laws allow judges to decide which factors are most relevant on a case- by- case basis (Bow, 2006; Otto & Martindale, 2007). Multivariate analysis, analysis of variance, multiple regression, content analysis, t-tests for significance, and correlations to assess for relationships between variables were used to analyze the data from these studies.

Summary

Because there was a scant amount of research that I found addressing judges concerns about the contributions made by mental health experts and their testimony

involving child abuse cases, an opportunity exists to gain clarification of what extralegal factors juvenile court judges find most helpful to them in their decision-making process. Most of the studies that I found were conducted on judge or jurors to assess characteristics of experts from other professional fields or mental health experts providing testimony in competency and insanity pleadings. There were a few older studies that examined the role of mental health experts in court involving divorce custody cases and a few studies that examined juvenile proceedings involving criminal actions of juvenile offenders, and transfer-sentencing cases (Redding & Murrie, 2007). Studies that examined variables influencing judges thinking in child abuse custody cases that I was able to locate were conducted over five years ago. I conducted a second search with similar results.

The current study explored judges' importance ratings across extra legal factors that influenced their thinking about expert witness credibility, child abuse cases, termination of parental rights, testimony characteristics, and type of mental health expert in child abuse custody cases. The purpose of this study was to assess how juvenile court judges rate the credibility of mental health experts and the believability of their testimony by examining the criteria that most influenced their decisions. Because of the scant number of empirical studies that I found that measured the influence that mental health experts have on decisions made by juvenile court judges, the result of this study narrowed a gap in the current literature and encouraged further research. Training and education of mental health experts is an essential component to improving their technical skill in the courtroom and improving their credibility. Although there are numerous programs

available, there is confusion about what core courses should be taught to provide the technical skill needed in the courtroom (DeMatteo et al., 2009). The results of this study provided some insights to educators about what judges want and need from mental health expert testimony to make informed decisions in child abuse cases.

In Chapter 1, I introduced the nature of the study including the research questions, problem statement, need and purpose of the study, a description of the methods used to address the research questions, and background information leading to a broader discussion in Chapter 2. The review of the related literature in Chapter 2 examined the extralegal factors involving the credibility of mental health experts and expert testimony that influence the decisions made by juvenile court judges in child abuse custody cases. Judicial decision-making as a science and the current state of research on judicial decision making were also discussed. Chapter 3 will describe the methodology used in the study including the procedures, research design, the participants, instruments, and the data analysis for the study.

Chapter 3: Research Method

I found very few studies that assessed the preferences of juvenile court judges for the type of mental health testimony that would best help them decide child abuse cases. Given the severity of child abuse that occurs in this country (Childhelp, 2006; Jones, 2006; NCANDS, 2007; Wang & Holton, 2007) and the number of child abuse cases heard in juvenile court (Bow, 2006; Otto & Martindale, 2007), the gap in the literature regarding the influence that extralegal factors have on judicial thinking suggested the need for more research in this area. Most previous studies were more than 5 years old, and only a few studies have been conducted in the past 5 years on factors influencing juvenile court judges' decisions. I found no studies investigating judge importance ratings across types of extralegal factors influencing decision making in child abuse custody cases that I assessed in my study. A more recent search found no newer studies examining the same extralegal factors that were assessed for this study. One purpose of this study was to add to the current literature by clarifying the type of criteria judges find useful in testimony presented in child abuse cases and to discern what role qualified mental health experts play in the juvenile court decision-making process. In the current chapter, I explain the data collection and data analysis process by describing the research design and method, study population, the instrumentation, and how I answered the research questions and tested the hypotheses from the extralegal factors that I studied.

Research Design and Analysis

A nonexperimental, relational, and comparative quantitative survey research method was used to collect the data for the current study (Fowler, 1993). Survey research

has been found to be a viable tool for assessing relationships that involve feelings, attitudes, beliefs, preferences, opinions, experiences, or practices of a sample population (Creswell, 2003; Fink, 1995). Borg & Gail (1983) reported that survey methods are excellent for obtaining empirical data to understand relationships between dependent and independent variables. Questionnaires asking respondents to select preferences will enable an accurate assessment of those preferences if the instruments are constructed using subject-specific questions that provide a clear understanding of the topics being examined (Borg & Gail, 1983). According to Babbie (2003) and Fowler (2009), advantages of survey research include less researcher bias and standardized methods, which lead to increased reliability of results; allow the researcher to analyze traits and attitudes of a large sample while examining several variables; are time- and cost-effective, especially if the research project has monetary and time constraints; offer design flexibility; and allow a research to replicate results or compare them between groups or to similar groups. In addition, in the case of the present study, the survey required minimal time from judges with heavy court dockets.

A survey response rate of at least 50% is an acceptable number for analyzing data and generalizing results to a given population (Babbie, 2003). According to Fowler (1993), researchers have agreed that there are no acceptably agreed upon limits for minimal response rates. He indicated that return response rates generally fall somewhere between 25% and 95%. Return response rates below the 25% level will not provide a credible analysis of the sample population (Fowler, 1993, p. 40). Barkley & Furse (1996) found that low response rates negatively affected survey results. In their study examining

patient satisfaction, they compared data from two response sets and found that low response rates generated different results than high response rates, making it difficult to generalize to the sample population. They concluded that a 30% response rate was insufficient to provide the type of information needed to make decisions regarding improving patient satisfaction (Barkley & Furse, 1996). Langer (2003) reported that although response rates for mailed surveys are generally lower, these rates have little impact on the results of analysis from surveys seeking opinions. Keeter, Miller, Kohut, Groves, & Presser (2000) validated the Langer premise in their study in which they determined that there were no differences in results between identical surveys using a 5-day data collection period (36.0% response rate) and an 8-week data collection period (60.0% response rate). Curtin, Presser, & Singer (2000) replicated the Keeter et al. study and found that differences in response rate had minimal impact on cross-sectional studies.

Both descriptive and inferential analyses were performed for this study. Quantitative methods are useful tools for compiling data, analyzing results, and explaining the observed phenomenon. They are useful for assessing the kind of influence that one variable will have on another variable (Creswell, 2003). These types of analyses are also used to predict or explain relationships or generalize results to the population being examined (Babbie, 2003).

Initially, descriptive statistics provided a picture of the entire judge population from Oklahoma adjudicating juvenile or domestic court matters involving child abuse custody issues. Means and standard deviations were computed for all study variables. Because this study was the first, to my knowledge, to test the differences and

relationships among the variables used in this study, statistical tests were two-tailed using an alpha level of .05. A regression analysis was first used for this purpose. When I discovered that the residuals were not normally distributed despite omitting outliers, I used a Spearman correlation coefficient to rank order the data. A Friedman ANOVA by ranks test was used to explore the relationship between judge importance ratings for the type of mental health witness; credibility factors of the mental health expert witness; type of admissible testimony; case factors associated with termination of parental rights; and factors associated with child abuse cases. These variables were presented in Research Questions 1a through 5a. Age and gender of judges were assessed to determine if they influenced importance ratings of judges in conjunction with the extralegal factors outlined in Research Questions 1b through 5b.

Description of Variables and Variable Ratings

All study variables included were examined through the use of a self-administered survey mailed to judges who were asked to select their preferences from 12 sections with multiple items included in the Judges Questionnaire Regarding Expert Testimony In Juvenile/Domestic Court Cases instrument. Measurement ratings were assigned to the variables with those ratings listed below.

Variables

Because juvenile court judges serve as the gatekeeper of their court and decide child abuse custody cases based upon the testimony of expert witnesses, they were asked to rate the importance of extralegal factors surrounding these cases that have a bearing on their decisions. For this study, the following extralegal factors were examined to

determine what influence they have on judges' importance ratings: (a) the types of mental health expert of psychiatrist, clinical social worker, psychologist, or licensed professional counselor; (b) credibility factors of educational credentials, willingness to draw firm conclusions, ability to communicate technical information in lay terms, publications in professional journals, and physical appearance; (c) testimony characteristics of the importance of potential error rates, testing of theory, publication of the validity of the theory, and general acceptance of the theory in the scientific community; (d) characteristics of the case involving termination of parental rights including the importance of the fundamental rights of parents, maintaining the integrity of the family, child physical abuse, child sexual abuse, child emotional abuse and neglect; psychological health of parents, separation of siblings, substance and alcohol abuse of parents; (e) extralegal factors related to child abuse cases including physical abuse, child's preference for one parent, expert testimony, child's testimony, parent disparaging other parent, differences in parenting styles and skill levels, psychopathology of either parent, substance and alcohol abuse of parents, special needs of the child, and age of the child.

The variables were measured by asking judges to rate their importance on a Likert-type scale of 0 = *no importance* to 10 = *extremely important* by assigning their own numerical values between a range of 0 to 10 to each extralegal factor in the order of importance to them. The ratings were coded and then analyzed using descriptive and inferential analyses. However, I was not able to find any research that addressed how

judges rate these extralegal factors when making a decision, or the type of influence these factors have on the importance ratings.

Participants

The entire population of potential survey respondents was the 232 Oklahoma District Court judges serving 77 counties. I attempted to collect data from all members of this population but learned from several judges among these respondents that they no longer handled juvenile and domestic court matters significantly reducing the potential pool of respondents. To improve upon the response rate, I contacted the 77 county court clerks and found that the counties were divided among 26 judicial districts. With the assistance from the clerks, I identified the juvenile and domestic court judges who became the 145 eligible respondents for the study instead of the 232 I originally thought. 106 judges responded to the survey with 23 judges stating that they no longer handled child abuse custody matters. Only Oklahoma judges adjudicating child and family matters were polled in this current study. Although Oklahoma judges are not a representative sample of other state court judges throughout the United States, the judge population being polled may possess similar characteristics of those of other state court judges performing similar duties.

Judges adjudicating juvenile and domestic court matters adhere to certain standards assigned to them by the United States Supreme Court through the acceptance of the original Frye standard (1923), the Federal Rules of Evidence (1975), Daubert criteria (1993), and the Kumho standard (1999). According to Baute (2000) and Manfredi (1997), all judges have been assigned a gate keeping role under the 1993 Daubert standard for

admissibility of evidence. Interpretation of the evidence is left to the discretion of individual judges based upon state statute. The best interest standard is the decision model established by federal child abuse laws (CAPTA, 1976) with each state applying the standard according to their interpretation spelled out in written statutes.

Data Collection Procedures

Because the survey being used for the present study to collect data was used by Neil (1997) in her research more than a decade ago, I asked an expert panel of 6 juvenile and domestic court judges from the 29th and 40th Missouri judicial circuits for their opinions regarding the construction of the instrument and whether the wording was clear and easily understood by them. This study began with me asking judges from the 40th and 29th judicial district of Southwest Missouri to review Sections 1, 4, and 8 through 11 on the survey. They were told that they were not being asked to take the survey; rather, they were asked to answer several questions about the clarity of the survey content and whether the items were worded in a manner that they could easily understand if they were to be asked to complete the survey. I asked the judges whether they understood what the intent of the survey items were, and whether item content was relevant to the kinds of cases they decide on a regular basis. I also asked them for any changes to the format they feel would make the instrument more accommodating to the study participants.

A mailing list of all 232 Oklahoma District Court judges was originally obtained from the Clerk of the Oklahoma State Supreme Court system website. Upon receipt of this list, I mailed a pre-notification letter (see Appendix A) to all judges 7 days prior to the initial mailing of the survey to introduce the survey and its purpose, to legitimize the

survey by removing skepticism or suspicion, to communicate the importance of the survey to research (Beebe, Rey, Ziegenfuss, Jenkins, Lackore, Talley, & Locke, 2010, p 3), and to improve response rates (Yammarino, Skinner, & Childers, 1991). I then mailed the survey to all Oklahoma District Court judges who heard child and domestic court issues. A cover letter and a copy of the informed consent letter (see Appendices B and C) accompanied the survey with a stamped, self-addressed envelope included for the respondent's convenience in returning the completed survey. The cover letter explained the purpose of the study as well as the procedures to be employed in order to assure confidentiality. Respondents were informed that I would mail a copy of the survey results at the completion of the study. I told them in the informed consent document that because participation in the study was voluntary, the returned survey served as their implied consent to participate; therefore, it was not necessary to return the informed consent document but kept for their records. I explained to the judges that the American College of Forensic Examiners Institute had agreed to be a community partner for this study but were not asked to provide financial support. A reminder cover letter (see Appendix D), informed consent letter, and a copy of the survey along with a postage paid return envelope was mailed two weeks after the first mailing of the survey and original cover letter. To improve the response rate of the mailed surveys, I contacted the judges' clerk by telephone and e-mail to ask them to encourage the judge to fill out the survey and return it with my thanks.

To ensure confidentiality of survey responses, a randomly assigned number was placed in the lower left hand corner of the envelope for data tracking purposes. Each

number was randomly drawn from a box of numbers ranging from 1 to 232 along with the name of a judge randomly drawn from a second box containing all 232 names of active Oklahoma District Court judges and then recorded on a master list. When the responses were returned, the survey instrument was removed and separated from the envelope. The empty envelope was checked against the master list so that duplications for responses to follow-up mailings were avoided.

The completed surveys were placed in a separate container so that the responses could later be coded and analyzed statistically. Additional mailings of the survey were sent only to those judges who failed to respond to the initial request. The respondents were informed in their cover letter that their confidentiality will be protected and that their responses will not be matched with any information that would reveal their identity. Returned responses from judges were acknowledgement of their implied consent to participate in this research project. The returned surveys will be kept in a locked container for a period of 5 years before being destroyed.

Instrumentation

The Judge Questionnaire Regarding Expert Testimony in Juvenile/Domestic Court Cases (Neil & LaFortune, 1997, see Appendix E) was originally developed for a study examining attitudes of judges adjudicating juvenile and domestic court issues. The primary goal of Neil in her 1997 study was to extract information regarding judges opinions related to child custody issues. Neil sought to (a) obtain clarification as to how judges utilized somewhat ambiguous but recognized legal criteria when admitting social science evidence already in place, and (b) to secure recommendations by judges for their

future training in mental health that may impact their decision-making in juvenile and domestic matters (N. Neil, personal communication, August 22, 2010). She employed standard survey research methods to establish an empirical foundation on numerous issues that might be of interest to those judges who adjudicate child custody issues (Fowler, 1993). The survey construction was monitored and peer-reviewed with input for clarity and brevity from a published law professor with a background in research on child custody issues (Lafortune & Nicholson, 1995; LaFortune & Carpenter, 1998), a prosecutor from a large metropolitan county, a defense attorney, and a forensic mental health expert, all of whom possessed significant courtroom knowledge and experience in child custody issues.

The content of the survey instrument was reviewed by the panel of professionals before its presentation to judges in the Neil study and determined that its content was related to the professional field of the prospective participants. The panel believed that, on the face of the survey, the instrument would measure what it intended to measure. Content validity was built into the survey instrument through the careful selection of the variables to be measured (N. Neil, personal communication, August 22, 2010).

The survey items were designed to assess four content areas. The first content area included demographics and background variables to assess the impact that those factors may have on judges decision-making including age, education, gender, years of experience serving as a judge, years of experience as a judge handling domestic matters, years of a judge handling juvenile matters, number of mental health experts heard in court, and the type of case load devoted to juvenile and domestic matters. A second

content area explored judges' opinions regarding the credibility of the mental health expert including qualifications and preferences for the type of expert who could provide the type of information judges needed to make decisions. The third content area examined factors judges believed to be most helpful in admitting testimony including the preference for a standard of admissibility that influenced judges' decision-making. The fourth content area examined the type of criteria rated by judges that is most important to them when making child custody decisions (N. Neil, personal communication, August 22, 2010).

After the preliminary review by the panel of professionals, Neil field-tested the survey as she sampled preferences of judges in order to gain clarification of how they utilized recognized legal criteria for admissibility of social science evidence. She also asked about the type of training judges felt they needed to help them understand social science criteria when admitting it into evidence or utilizing it to make a decision. Neil found in her research that the instrument reliably extrapolated preferences in judges pertaining to child custody, providing her with results that suggested a need for additional research (N. Neil, personal communication, August 22, 2010).

The Judge Questionnaire Regarding Expert Testimony in Juvenile/Domestic Court Cases was selected for the current study because the format of items presented on the survey were constructed in a manner to effectively collect the type of data for analysis to meet my research objectives (Fowler, 1993). In my study, I asked judges to rate items of importance to them when deciding child abuse custody cases in order to assess the role of the mental health expert and testimony in the court. The data from the survey was also

used to assess what influence judges demographics of age and gender may have on their importance ratings of extra legal factors involving credibility issues, type of mental health expert witness, type of testimony, case factors related to termination of parental rights, and case characteristics related to child abuse.

Description of the Survey

The survey consists of 12 sections with multiple items in which judges were asked to rate the importance of extra legal factors related to child abuse custody cases on a 10 point Likert-type continuum. The scale items employed an importance rating ranging from 0 = 'no importance' to 10 = 'extremely important'. For the purpose of this study, survey sections 1, 4, 8, 9, 10, and 11 were used to collect data to answer the research questions and to test the hypotheses.

Judges demographics were obtained from several questions found in Section 1. Age and gender were explored in more detail to determine if they predicted judges' importance ratings across types of mental health expert witnesses, credibility factors, admissibility of testimony, termination of parental rights, and child abuse case factors.

Section 4 of the survey asked judges to rate credibility factors for expert mental health witnesses on a Likert-type rating scale. The variables that were rated included educational credentials, willingness to draw firm conclusions, ability to communicate technical information in lay terms, publications in professional journals, and physical appearance of the witness.

Section 8 on the survey asked judges to rate the importance of certain criteria when making decisions on child abuse custody using the Likert-type rating scale. The

factors that were rated included child physical abuse, child sexual abuse, child's preference for one parent, impact of expert mental health witness testimony, one parent actively disparaging the other parent to the child, differences in parenting skills, differences in parenting styles, psychopathology of either parent, special needs of the child, and age of child, and substance abuse of parents.

Judges were asked in Section 9 of the survey to rate the importance of certain criteria when making a decision to determine termination of parental rights using a Likert-type rating to obtain their responses. Judges rated fundamental rights of parents, maintaining the integrity of the family, child physical abuse, child sexual abuse, child emotional abuse separation of siblings, and substance abuse by the parents...

When making admissibility determinations, the judges were asked in Section 10 of the survey to rate which of the admissibility standards they believed to be most important to them when deciding whether to admit mental health expert witness testimony. Admissibility standards rated on the Likert-like scale included the potential error rates of theory made available, the theory/test has been subjected to testing, the validity of theory/test has been published in a peer related journal, and the theory/test has been generally accepted in the scientific community.

On Section 11, judges rated which types of mental health expert they believed to be most important to their decisions when presenting testimony to the juvenile/domestic court using a Likert-type scale for their responses. The mental health experts that the judges rated were the psychiatrist, the psychologist at the doctoral level, the licensed professional counselor, and the clinical social worker.

Utilization of the survey and its relationship to the research questions and hypotheses were described in the analysis plan of this document.

Research Questions and Analysis Plan

I examined which factors influenced judges' decision-making in juvenile court involving child abuse cases. The research questions and hypotheses, along with an analysis plan for answering the research questions are stated below.

Analysis Plan

Originally, I used the ANOVA but the assumption of normality was violated by the data. The Friedman ANOVA by ranks was then applied instead of the ANOVA to my analysis plan to rank order the data. The Friedman test is not restricted by assumptions that the data have to follow a specific distribution and the test allowed for the comparison of the population mean which is not susceptible to change or outliers (Rumsay, 2009, p. 279; Kitchen, 2008). The authors asserted that nonparametric tests were only slightly less precise than the parametric procedures with power loss only minimal which makes the Friedman test an appropriate and justifiable measurement for replacing the ANOVA.

In order to reject the null and retain the alternative hypothesis, I calculated the statistical power for the 33 factors found in the 5 research questions being studied to determine the probability of obtaining a difference between two means, if one existed, that was at least one-half standard deviation in order for me to make inferences about the findings using the Friedman test. A post hoc power analysis was conducted using the power of the parametric repeated measures ANOVA of .99 derived using G* power to calculate the power for the less efficient nonparametric Friedman test based on a medium

effect size of .25, an alpha level of significance of .05, sample size ($N = 83$) and a power efficiency correction factor for Research Questions 1a, 2a, 3a, 4a, and 5a, using power efficiency criteria from Siegel & Castellan, 1988, p. 183). The power of the Friedman for 1a and 3a for finding a medium effect was .75, based on the power efficiency correction factor of .75. The power for finding a medium effect for 2a was .81 based on a correction factor of .81; for 4a, the power for finding a medium effect was .84 relative to the correction factor of .84; and for 5a, the power for finding a medium effect was .87, using a power efficiency correction factor of .87 (Cohen, 1988; Faul, Erdfelder, Buchner, & Lang, 2007, p.175-191).

Linear multiple regression analyses were initially conducted on the 5 research hypotheses to assess whether a predicted relationship could be found between age and gender having any type of influence over importance ratings of judges. Because the distribution of the residuals were not normal despite my attempts to eliminate the outliers, I used a simple Spearman correlation coefficient to investigate for any relationships between age and gender and importance ratings of judges on extralegal factors influencing decisions in child abuse custody cases. A post hoc analysis was conducted using an alpha significance level of .05, a sample size of 83, and a medium effect size of .30 for a power of .80 (Cohen, 1988; Faul et al., 2007, p. 175-191; Siegel & Castellan, 1988, p. 183).

Research Questions

Research Question 1a: Is there a difference in mean importance ratings of juvenile court judges across types of mental health expert witness presenting testimony

that influence decisions in child abuse cases: (a) psychologist; (b) psychiatrist; (c) licensed clinical social worker, or (d) professional counselor?

H₀1a: There is no significant difference in mean important ratings of juvenile court judges across types of mental health expert presenting testimony in child abuse custody cases.

H₁1a: There is a significant difference in mean importance ratings of juvenile court judges across types of mental health expert presenting testimony in child abuse custody cases.

Research Question 1b: To what extent do judges' age and/or gender predict their importance ratings for each type of mental health expert?

H₀1b: Neither age nor gender of judges significantly predict importance ratings for each type of mental health expert.

H₁1b: Age or gender of judges or both significantly predict importance ratings for each type of mental health expert.

Research Question 2a: Is there a difference in mean importance ratings of juvenile court judges for the following mental health expert credibility factors that influence decisions in child abuse cases: (a) educational credentials; (b) willingness to draw firm conclusions; (c) ability to communicate information in lay terms; (d) publication in a professional journal; and (e) physical appearance of professional?

H₀2a: There is no significant difference in mean importance ratings of juvenile court judges for mental health expert credibility factors in child custody cases.

H₁2a: There is a significant difference in mean importance ratings of juvenile court judges for mental health expert credibility factors in child custody cases.

Research Question 2b: To what extent do judges' age and/or gender predict importance ratings for each mental health expert credibility factor?

H₀2b: Neither age nor gender of judges significantly predict importance ratings for each type of mental health expert credibility factor.

H₁2b: Age or gender or both of judges significantly predict importance ratings for each type of mental health expert credibility factor.

Research Question 3a: Is there a difference in mean importance ratings of juvenile court judges for the following factors that influence the admissibility of mental health expert testimony: (a) potential error rates; (b) testing of theory; (c) publications on the validity of the theory; and (d) general acceptance of the theory in the scientific community when deciding outcomes in child abuse custody cases?

H₀3a: There is no significant difference in mean importance ratings of juvenile court judges for factors that influence admission of expert testimony in child abuse custody cases.

H₁3a: There is a significant difference in mean importance ratings of juvenile court judges for factors that influence admission of expert testimony in child abuse custody cases.

Research Question 3b: To what extent do judges' age and/or gender predict importance ratings for each of the factors that influence the admissibility of mental health expert testimony?

H₀3b: Neither age nor gender of judges significantly predict importance ratings of each of the factors that influence the admissibility of mental health expert testimony.

H₁3b: Age or gender of judges or both significantly predict importance ratings of each of the factors that influence the admissibility of mental health expert testimony.

Research Question 4a: Is there a difference in mean importance ratings of juvenile court judges for the following criteria that influence decisions in termination of parental rights cases: (a) child emotional abuse; (b) child physical; (c) child sexual abuse; (d) fundamental rights of parents; (e) maintaining the integrity of the family; (f) psychological health of the parents; (g) separation of siblings, and; (h) substance/alcohol abuse by the parents?

H₀4a: There are no significant differences in mean importance ratings of juvenile court judges for criteria that influence decisions in termination of parental rights cases.

H₁4a: There are significant differences in mean importance ratings of juvenile court judges for criteria that influence decisions in termination of parental rights cases.

Research Question 4b: To what extent do judges' age and/or gender predict important ratings for criteria that influence decision-making in termination of parental rights cases?

H₀4b: Neither age nor gender of judges significantly predict importance ratings of criteria that influence decision-making in termination of parental rights cases.

H₁4b: Age or gender of judges or both significantly predict importance ratings of criteria that influence decision-making in termination of parental rights cases.

Research Question 5a: Is there a difference in mean importance ratings of juvenile court judges across the following extralegal factors that influence decisions in child abuse custody

cases: (a) age of the child; (b) child physical abuse; (c) child's preference for one parent; (d) child's testimony; (e) difference in parenting skill level; (f) difference in parenting styles; (g) impact of expert testimony; (h) one parent disparaging other parent; (i) psychological health of both parent; (j) special needs of the child, and; (k) substance/alcohol abuse by the parents.

H₀5a: There are no significant differences in how judges rate the importance of each extralegal factor influencing their decisions in child abuse custody cases.

H₁5a: There are significant differences in how judges rate the importance of each extra factor influencing their decisions in child abuse custody cases.

Research Question 5b: To what extent do judges' age and/or gender predict importance ratings of each extralegal factor influencing their decisions in child abuse custody cases?

H₀5b: Neither age nor gender of judges significantly predict importance ratings of each extralegal factor related to a case.

H₁5b: Age or gender of judges or both significantly predict importance ratings of each extralegal factor related to a case.

Summary

Chapter 1 introduced the problem of the study with Chapter 2 examining the related literature and latest research. Chapter 3 established the parameters for measuring the data by stating the research problem, questions, describing the participants, instrumentation, procedures, the quantitative research design, and methods for data analysis. The Judges Questionnaire Regarding Expert Testimony in Juvenile/Domestic Court Cases was used to poll Oklahoma judges' ratings of importance for the type mental

health expert, testimony factors, credibility factors of the expert, case factors for termination of parental rights, and case factors for child abuse cases, and age and gender of judges. In Chapter 4, I will analyze the data and describe the results. In Chapter 5, I will summarize the results, make conclusions about the findings, and explore the utility of the findings and make recommendations for social change.

Chapter 4: Results

Introduction

My purpose for conducting this study was to examine which extralegal factors influenced juvenile and domestic court judges' decision making in child abuse custody cases. In addition, I sought to determine whether judge demographic variables of age and gender could be used to predict which factors, if any, would influence how the judges decided a case. In this chapter, I will provide a summary of the data collection process, examine the collected data, and present results of the data analysis as they pertain to the research questions. Descriptive statistics were used to describe the population of Oklahoma District Court judges hearing child abuse custody cases and inferential statistics were used to assess for relationships between the variables associated with how the judges decided their cases. Results were obtained using IBM SPSS 21. The data were derived from judges' responses to the Judge Questionnaire Regarding Expert Testimony in Juvenile/Domestic Court Cases (Neil & LaFortune, 1997). The research questions were as follows:

Research Question 1a: Is there a difference in mean importance ratings of juvenile court judges' across types of mental health expert witnesses presenting testimony that influence decisions in child abuse cases: (a) licensed clinical social worker, (b) licensed professional counselor (c) psychiatrist; or (d) psychologist?

Research Question 1b: To what extent do judges' age and/or gender predict their importance ratings for each type of mental health expert?

Research Question 2a: Is there a difference in mean importance ratings of juvenile court judges for the following mental health expert credibility factors that influence

decisions in child abuse cases: (a) ability to communicate information in lay terms; (b) educational credentials; (c) physical appearance; (d) physical demeanor/presentation; (e) publication in a professional journal; and (f) willingness to draw firm conclusions?

Research Question 2b: To what extent do judges' age or gender predict importance ratings for each mental health expert credibility factor?

Research Question 3a: Is there a difference in mean importance ratings of juvenile court judges for the following factors that influence the admissibility of mental health expert testimony: (a) general acceptance of the theory in the scientific community when deciding outcomes in child abuse custody cases; (b) potential error rates; (c) publications on the validity of the theory; and (d) testing of theory?

Research Question 3b: To what extent do judges' age and gender predict importance ratings for each of the factors that influence the admissibility of mental health expert testimony?

Research Question 4a: Is there a difference in mean importance ratings of juvenile court judges for the following criteria that influence decisions in termination of parental rights cases: (a) child emotional abuse; (b) child physical; (c) child sexual abuse; (d) fundamental rights of parents; (e) maintaining the integrity of the family; (f) psychological health of the parents; (g) separation of siblings, and; (h) substance/alcohol abuse by the parents?

Research Question 4b: To what extent do judges' age and gender predict importance ratings for each factor that influences decision-making in termination of parental rights cases?

Research Question 5a: Is there a difference in mean importance ratings of juvenile court judges across the following extralegal factors that influence decisions in child abuse custody cases: (a) age of the child; (b) child physical abuse; (c) child's preference for one parent; (d) child's testimony; (e) difference in parenting skill level; (f) difference in parenting styles; (g) impact of expert testimony; (h) one parent disparaging other parent; (i) psychological health of both parent; (j) special needs of the child, and; (k) substance/alcohol abuse by the parents.

Research Questions 5b: To what extent do judges' age and gender predict importance ratings of each extralegal factor influencing their decisions in child abuse custody cases?

I will provide a detailed analysis of the results as they apply to each of the research questions and hypotheses later in this chapter.

Data Collection Procedures

Prior to the actual data collection process, I met with a panel of six experts who heard juvenile and domestic court cases from the 29th and 40th Judicial Circuit in Southwest Missouri to ask them to examine the survey for the study. I explained the nature of the study to each of the judges, emphasizing that I was not asking them to take the survey; rather, I informed them that I needed their expert opinion regarding whether they believed that the contents in the survey were related to the cases they heard in court, if they understood the questions in the survey easily, and if there were any necessary changes to make the survey more user friendly. Once the panel completed their review of the survey, I made the following minor changes according to their suggestions:

- An additional variable, the number of children of judges, was added to Section 1 of the survey with the section name changed to Judge Demographics. One expert was curious as to how many judges had children and asked that the variable be added to assess whether this influenced judges' responses.
- In Section 2, Section 3, Section 5, and Section 9 of the survey, the judges believed that emotional, physical, and sexual abuse should be added as separate variables because the variables each represented characteristics of cases that they adjudicated. Separation of siblings was added to Section 9 because the judges believed this was important criteria to be considered during termination of parental rights hearings.
- Section 8 was expanded to include additional variables judges believed have an impact on child custody decisions. Section 7 was expanded to include additional types of training related to child custody that are related to juvenile and domestic court issues and required for judges to complete annually for continuing education.
- Section 12 was expanded to include the Kumho admissibility standard related to child custody issues testified to by mental health experts.
- In all sections, the survey format was changed for easier readability with variables arranged in alphabetical order and lined in one column for easier selection by the judges.

In July of 2013, I obtained a complete list of Oklahoma District Court judges from the Oklahoma Court System website. I then mailed a pre notification letter to all 232

Oklahoma District Court judges. I mailed a copy of the survey to all judges 1 week later followed by a second copy of the survey 2 weeks later to those judges who failed to respond to the first mailing. A total of 106 judges responded. Twenty-three judges returned the survey with a note saying that they no longer handled juvenile/domestic court matters. In those instances where a note of encouragement was attached, the judges indicated their interest in my research project. Several offered additional assistance to the project by redirecting me to those judges who would be of assistance during the data collection process. Because I had previously obtained a complete census of Oklahoma judges for use in my research, I did not accept this offer.

Given the low response rate, I contacted all 77 district court clerks from the 26 judicial districts of Oklahoma to seek their assistance in asking their judges to complete the survey. The clerks informed me that not all of their judges handled juvenile or domestic court matters, and with their assistance I was able to identify the 145 judges who handled juvenile or domestic court issues participating in this study. I was informed by the clerks that several of the judges presided over these matters in more than one county. In larger counties, there were several judges assigned to handle juvenile and domestic court dockets. Therefore, my starting eligible population was 145 judges, not 232 as I originally thought based on the court website.

According to Babbie (2003), a survey response rate of 50% is acceptable in order to analyze the data and generalize the results to the population from which the sample was drawn. According to Fowler (1993), there are no acceptably agreed upon limits by researchers for minimal response rates; however, Barkley & Furse (1996) found that when

hospital administrators made decisions based on the first 30% to respond, they later changed their priorities for improvement over half of the time when the response rates increased to over 50%.

In order to be able to generalize any relationships found in the results to the entire population of Oklahoma District Court judges who handle juvenile and domestic court cases, I concluded that a 50% survey response rate would be acceptable for this study. The actual response rate was 57% (83 out of 145) and I am moderately confident that these data reflect the views of the 145 eligible judges.

Data Analysis Procedures

Prior to the analysis process, I screened the data for inaccuracies in the database to identify any typographical, coding, or data entry errors in order to avoid producing inaccurate results. I asked a colleague to cross check the data with the original data entry sheet for accuracy for any inconsistencies that I might have overlooked. My colleague found that I had duplicated one of the surveys on the data entry sheet and I deleted it. Both my colleague and I checked the data again separately and found no additional data entry errors. I noted that two judges failed to provide their age and gender on their returned survey.

Both descriptive and inferential statistics were performed for this study to answer the research questions and test the hypotheses. The results presented later in this chapter provide a description of the judge population from Oklahoma adjudicating juvenile or domestic court matters involving child abuse custody issues. Ordinal scale measures were used to rank order the non-dichotomous data obtained from a range of responses found in

the Judge Questionnaire used for the study. The survey questions were made up of Likert-like scales rating extralegal factors that judges found to be important when making decisions on child custody matters. Ordinal scale data was used to describe the continuous judge background information used for making predictions about the data.

I first used an ANOVA repeated measures to assess relationships between the independent and dependent variables; however, after examining the data from the histograms and normal probability plots, I determined that the ANOVA assumption of normality of the distribution had been violated. I, therefore, decided to use the Friedman ANOVA by ranks test as an alternative because it made no assumption regarding the normality of the distribution of the data. Green & Salkind (2008) maintained that the Friedman test was applicable to a repeated measures design because the criteria assumed that the dependent variables for the study were continuous or ordinal data and that there were no prerequisites for the results to be normally distributed as is with the analysis of variance. The Friedman test allowed me to compare the sample of judges over multiple measures. I was able to compare the means of the variables by ranking their values to assess judge importance ratings for the following variables: (a) the type of mental health witness; (b) credibility factors of the mental health expert witness; (c) type of testimony; (d) case factors associated with termination of parental rights; and (e) factors associated with child custody decisions. Follow up multiple comparisons analyses were used to identify differences between the variables in each research question.

To test the hypotheses, I employed a non-directional two-tailed statistical test to check for significant differences in relationships among variables using an alpha level of

.05. I first applied a series of regression analyses to assess whether the predictor variables of age and gender of judges had any influence on importance ratings of the judges in connection with the extra legal factors outlined in Research Questions 1b, 2b, 3b, 4b, and 5b. However, the residuals for the most part, were not normally distributed and deleting outliers did not improve distribution of normality, preventing me from making predictions about the type of influence that age and gender had on importance ratings of judges.

I replaced the multiple regression analyses with a Spearman correlation coefficients test and was able to assess for the presence of a relationship between age and gender of each of the extra legal factors.

Results

Of the 145 judges identified as domestic and juvenile court judges from Oklahoma, a total of 106 judges completed and returned the mailed survey to me. From those participants, I identified 83 judges as serving the juvenile and domestic court systems.

Descriptive Statistics

Table 1 contains descriptive statistics for continuous judge demographic characteristics. The mean age of judges from the sample was 56.0 years. The average length of tenure as a judge was 11.8 years. The average length of tenure as a domestic court judges was of 9.5 years and 6.9 years as the average length of tenure as a juvenile court judge. The average number of children per judge was 2.2.

Table 1

Descriptive Statistics for Continuous Judge Demographic

	<u>N</u>	<u>Range</u>	<u>Min</u>	<u>Max</u>	<u>Mean</u>	<u>Std. E</u>	<u>Std. D</u>
Total Yrs. Judge	83	34.00	1.00	35.00	11.76	.84586	7.706
Tot. Yrs. Juvenile	81	35.00	.00	35.00	6.93	.89483	8.053
Tot. Yrs. Domestic	81	35.00	.00	35.00	9.47	.82468	7.422
Age	80	34.00	35.00	69.00	55.99	.9651-	8.623
<u># of Children</u>	80	6.00	.00	6.00	2.22	.1245-	1.114

Table 2 contains categorical data for judge demographic variables, providing additional insights as to what the overall picture of the participating in this study looked like. The vast majority of judges were male (78.3%) and most were married (92.8%). The most common undergraduate major was political science (32.5%) followed by business and business administration combined (10.8%). There were an average of 2.22 children for each of the judges participating answering the survey.

Table 2

Descriptive Statistics for Categorical Judge Demographics

<u>Variable</u>	<u>Frequency</u>	<u>Percent</u>
<i>Gender</i>		
Male	65	78.3
Female	16	19.3
<u>Other</u>	<u>2</u>	<u>2.4</u>
<i>Marital Status</i>		
Married	77	92.8
Divorced	3	3.6
<u>Single</u>	<u>3</u>	<u>3.6</u>
<i>Undergraduate Major</i>		
Political Science	27	32.5
Business	8	9.6
Criminal Justice	5	6.6
History	4	4.8
<u>Business Admin</u>	<u>1</u>	<u>1.2</u>

To add to the overall picture of the participants for this study, I asked the judges to rate the types of training experiences they believed would be most beneficial to their overall understanding of the dynamics of abused children. On the survey, they were asked to use a 1-10 scale to rate a list of potential training experiences that would be most helpful to them when making decisions associated with cases they hear involving families and children with 10 indicating most important.. All of these factors were important to the

judges, however, on average, they rated training that involved domestic violence as most important. The psychological health of the parents and the type of information derived from psychological evaluations regarding the parents' personality were less important to these judges. See Table 3 for mean importance ratings of all categories of training.

Table 3

Mean Importance Ratings for Types of Training

	Mean	SD
Domestic Violence	8.49	2.11
Sexual Abuse	8.23	2.14
Effects of Divorce	8.22	2.22
Physical Abuse	8.11	2.21
Psych Health of Child	8.10	1.99
Child Neglect	8.02	2.44
Psych Health of Parent	7.52	2.29
<u>Psychological Evaluation</u>	<u>7.49</u>	<u>2.33</u>

Another factor that might have influenced judges' decision-making process was their level of understanding of how to apply the rules governing the admissibility of evidence and how the testimony provided by expert witnesses impacted their thinking. The measure of admissibility of testimony was based upon the judges' interpretation of these rules. (Sales & Shuman, 2005). The three main standards of admissibility of expert testimony studied were the Frye standard, the Daubert standard, and the Kuhmo standard. Court rulings based upon the scrutiny of scientific evidence for admissibility and general acceptance fall under both the Frye (1922) and Daubert (1993) standards affecting how

opinion testimony provided by a forensic mental health professional would be interpreted. The use of nonscientific expert evidence was advanced by the 1999 acceptance of the Kuhmo ruling and, of particular interest to forensic mental health experts, was the manner in which a judge allowed their testimony in as evidence (Gilstrap & Greene, 2005). The primary concern expressed by Sales & Shuman (2005) was how well the judge understood the difference between scientific and nonscientific evidence and how the two would be utilized in the decision-making process.

Judges were asked in the survey to rank the importance of the type of standard of evidence they believed to be most helpful to them when deciding admissibility of testimony from mental health experts. The Daubert Standard was ranked by judges as having more impact on decision making, followed by No Preference, the Frye Standard, and the Kumho Standard in this order. See Table 4 for mean ratings of how judges ranked the standards for the admissibility of expert testimony.

Table 4

Mean Preference Rating of Standards of Admissibility of Expert Testimony

	Mean	SD
Daubert Standard	.675	.471
No Preference	.277	.450
Frye Standard	.253	.437
Kumho Tire Standard	.229	.422

Research Question 1a

Is there a difference in mean importance ratings of juvenile court judges' across types of mental health expert witnesses presenting testimony that influence decisions in

child abuse cases: (a) licensed clinical social worker; (b) professional counselor; (c), psychiatrist; or (d) psychologist?

H_01a : There is no significant difference in mean importance ratings of juvenile court judges' across types of mental health expert presenting testimony in child abuse custody cases.

H_11a : There is a significant difference in mean importance ratings of juvenile court judges' across types of mental health expert presenting testimony in child abuse custody cases.

I assessed mean ratings of judges on factors related to the importance of the type of expert witness deemed most credible to provide testimony. I found that judges rated the PhD psychologist higher in importance over the other experts with the testimony by the licensed clinical social worker as the least important in helping judges decide child custody matters. See Table 5 for the results of importance ratings for the four types of mental health experts.

Table 5

Judge Importance Ratings of Mental Health Experts

Variable	Mean	SD	Min.	Max
PhD Psychologist	8.096	2.3038	0	10.0
Psychiatrist	7.928	2.2941	0	10.0
Licensed Professional Counselor	7.361	2.1160	0	10.0
Licensed Clinical Social Worker	6.988	2.2003	0	10.0

I conducted the Friedman ANOVA by ranks and found that there were statistically significant differences in the mean ranks of judges across the types of mental health experts

providing testimony in child abuse custody cases ($\chi^2(3) = 73.779, p < .000$). Table 6 shows the mean rank for each type of expert with 3 representing the highest rank.

Table 6

Mean Ranks for Type of Mental Health Expert

	<u>Mean</u>
Psychologist PhD	3.00
Psychiatrist	2.84
Licensed Professional Counselor	2.24
<u>Licensed Clinical Social Worker</u>	<u>1.92</u>

Since findings for the Friedman test were statistically significant, I conducted a multiple comparisons analysis for mental health experts. The following parameters were used to calculate the critical value (CV) of differences between ranks for the multiple comparisons based on Siegel & Castellan (1988).

- $N = 83$ (number of subjects)
- $k = 4$ (types of mental health experts)
- $\#c = 6$ (number of paired comparisons)
- Critical $Z = 2.638$ (Appendix Table A_{II}, p. 320)
- $CV = (Z * \text{SQRT}((k+1))/6N) = .53, p.180$.

As shown in Table 7, I found judges ranked PhD psychologists and psychiatrists significantly higher than licensed professional counselors or licensed clinical social workers, however, I did not find significant differences between PhD psychologists and

psychiatrists or between licensed professional counselors and licensed clinical social workers. Table 7 shows the different ranks of the types of mental health experts.

Table 7

Multiple Comparisons for Differences in Ranks of Type of Mental Health Experts

<u>Mental Health Expert</u>	<u>Avg Ranks</u>	<u>psychiatrist</u>	<u>licensed professional counselor</u>	<u>licensed clinical social worker</u>
PhD psychologist	3.00	0.16	0.76**	1.08**
psychiatrist	2.84	x	0.60**	0.92**
licensed professional counselor	2.24		x	0.32
licensed clinical social worker	1.92			x

** .05 level of significance

Research Question 1b

To what extent do judges' age and/or gender predict their importance ratings for each type of mental health expert?

H_01b : Neither age nor gender of judges significantly predict importance ratings for each the type of mental health expert.

H_11b : Age or gender of judges or both significantly predict importance ratings for each type of mental health expert.

Initially, I ran multiple regression analyses to see if I could predict relationships between age and gender across types of mental health experts. However, the residuals were not normally distributed preventing me from making predictions about age and gender having the ability to influence judge importance ratings of mental health experts. I conducted Spearman correlation coefficient between gender and age and between each of

these demographic variables and ratings of credibility of each type of expert... Age and gender were negatively correlated in which I found male judges to be older than female judges. However, I did not find any significant relationships between age or gender with ratings of any type of mental health expert (see Table 8).

Table 8

Spearman's Rho Correlation Coefficient for Type of Mental Health Expert

		Age	Gender
Age	Correlation	1.000	-.273**
	Sig (2- tailed)		.014
	N	80	80
Gender	Correlation	-.273**	1.000
	Sig (2-tailed)	.014	
	N	80	81
Clinical Social Worker	Correlation	-.028	.001
	Sig (2-tailed)	.808	.990
	N	80	81
Professional Counselor	Correlation	-.021	-.035
	Sig (2-tailed)	.856	.757
	N	80	81
Psychiatrist	Correlation	-.083	-.068
	Sig (2-tailed)	.465	.544
	N	80	81
Psychologist PhD	Correlation	-.140	-.086
	Sig (2-tailed)	.215	.445
	N	80	81

*Correlation is significant at the .05 level (2-tailed)

Research Question 2a

Is there a difference in mean importance ratings of juvenile court judges for the following mental health expert credibility factors that influence decisions in child abuse

cases: (a) ability to communicate information in lay terms; (b) educational credentials; (c) physical appearance of professional (d) physical demeanor of professional; (e) publication in a professional journal; and (f) willingness to draw firm conclusions?

H₀2a: There is no significant difference in mean importance ratings of juvenile court judges for mental health expert credibility factors in child custody cases.

H₁2a: There is a significant difference in mean importance ratings of juvenile court judges for mental health expert credibility factors in child custody cases.

I assessed ratings of judges for the type of credibility factor that influenced their decisions. Judges ranked the expert's ability to communicate technical information in lay terms as the most important expert credibility factor with publications in a professional journal as least important. See Table 9 for judges' importance ratings for expert credibility factors.

Table 9

Judge Importance Ratings of Expert Credibility Factors

<u>Variable</u>	<u>Mean</u>	<u>SD</u>	<u>Min.</u>	<u>Max.</u>
Technical Information	8.542	2.1086	0	10.0
Draw Firm Conclusions	7.253	2.6450	0	10.0
Educational Credentials	7.241	2.0278	0	10.0
Physical Demeanor	6.518	2.4612	0	10.0
Physical Appearance	4.988	2.7297	0	10.0
Publications	3.602	2.2575	0	10.0

A Friedman ANOVA by ranks was used to assess differences in the mean ranks of judges across the types of mental health expert credibility factors and I found those differences to be statistically significant ($\chi^2(5) = 198.795, p < .000$). Table 10 presents the mean rank for expert credibility factors with 5 representing the highest rank.

Table 10

Mean Ranks for Expert Credibility Factors

	Mean
Technical Information	5.08
Draw Firm Conclusions	4.22
Educational Credentials	3.95
Physical Demeanor	3.55
Physical Appearance	2.47
Publications	1.74

Because the findings for the Friedman test were statistically significant, I conducted a multiple comparisons test to examine mean rankings for types of mental health expert credibility factors. I used the following parameters to calculate the critical value (CV) of differences between ranks for the multiple comparisons based on Siegel and Castellan, (1988).

- $N = 83$ (number of subjects)
- $k = 6$ (types of mental health expert credibility factors)
- $\#c = 15$ (number of paired comparisons)
- Critical $Z = 2.935$ (Appendix Table A_{II}, p. 320)

- $CV = (Z * \text{SQRT}((k+1)/6N) = .85)$, (p.180).

I found that judges ranked technical information communicated in lay terms significantly higher than the other expert credibility factors. There were no significant differences between willingness to draw firm conclusions and educational credentials, between educational credentials and physical demeanor, or between physical appearance and publications in a professional journal. See Table 11 for multiple comparisons for the differences of credibility factors.

Table 11

Multiple Comparisons for Differences of Expert Credibility Factors

Credibility Factors	Avg. Ranks	Firm Conclusion	Educational Credentials	Physical Demeanor	Physical Appear	Publications
Technical Information	5.08	0.86**	1.13**	1.53**	2.61**	3.34**
Draw Firm Conclusions	4.22	x	0.27	0.67**	1.75**	2.48**
Educational Credentials	3.95		x	0.40	1.48**	2.21**
Physical Demeanor	3.55			x	1.08**	1.81**
Physical Appearance	2.47				x	0.73
Publications	1.74					x

** .05 level of significance

Research Question 2b

To what extent do judges' age or gender predict importance ratings for each mental health expert credibility factor?

H_0 2b: Neither age nor gender of judges significantly predict importance ratings for each type of mental health expert credibility factor.

H₁2b. Age or gender or both of judges significantly predict importance ratings for each type of mental health expert credibility factor.

Initially, I performed six regression analyses for this series of extra legal factors as outcome variables. However, the distribution of the residuals was not normal despite my attempt to delete the outliers preventing me from making predictions about age and gender of judges. I performed a Spearman correlation coefficient to assess for relationships between age and gender and between each of these demographic variables and ratings of these types of mental health credibility factors. I found a negative correlation between age and gender in which male judges were older than female judges but that women judges found education credentials to be more important than male judges when admitting testimony (see Table 12).

Table 12

Spearman's Rho Correlation Coefficient for Types of Expert Credibility Factor

		Age	Gender
Age	Correlation	1.000	-.273**
	Sig (2- tailed)		.014
	N	80	80
Gender	Correlation	-.273**	1.000
	Sig (2-tailed)	.014	
	N	80	81
Technical Information	Correlation	-.042	.036
	Sig (2-tailed)	.713	.713
	N	80	81
Draw Firm Conclusions	Correlation	.044	-.127
	Sig (2-tailed)	.856	.655
	N	80	81
Educational Credentials	Correlation	-.203	-.274**
	Sig (2-tailed)	.465	.544
	N	80	81
Physical Demeanor	Correlation	-.136	-.074
	Sig (2-tailed)	.228	.544
	N	80	81
Physical Appearance	Correlation	-.122	.024
	Sig (2-tailed)	.282	.831
	N	80	81

(table continues)

		Age	Gender
Publications	Correlation	-.205	.050
	Sig (2-tailed)	.069	.655
N		80	81

*Correlation is significant at the .05 level (2-tailed)

Research Question 3a

Is there a difference in mean importance ratings of juvenile court judges for the following factors that influence the admissibility of mental health expert testimony: (a) general acceptance of the theory in the scientific community; (b) potential error rates; (c) publications on the validity of the theory; and (d) testing of theory when deciding outcomes in child abuse custody cases?

H₀3a: There is no significant difference in mean importance ratings of juvenile court judges for factors that influence admission of expert testimony in child abuse custody cases.

H₁3a: There is a significant difference in mean importance ratings of juvenile court judges for factors that influence admission of expert testimony in child abuse custody cases.

I assessed judges' importance ratings on factors that had an influence on admissibility of expert witness testimony. Expert testimony based on theory generally accepted by the scientific community of the expert was rated highest in importance by judges over the other admissibility factors with potential error rates of theory viewed as least important (see Table 13)

Table 13

Judge Importance Ratings of Testimony Admissibility

<u>Variable</u>	<u>Mean</u>	<u>SD</u>	<u>Min.</u>	<u>Max.</u>
General Acceptance	8.337	2.354	0	10.0
Theory Tested	8.024	2.504	0	10.0
Theory Published	7.193	2.680	0	10.0
Potential Error Rates	6.783	2.951	0	10.0

I performed a Friedman ANOVA by ranks test to assess differences in mean ranks of judges for testimony admissibility factors and found a significant difference between the rankings ($\chi^2(3) = 56.790, p < .000$). Table 14 provides a representation of the mean rankings for the testimony admissibility factors with 3 as the highest rank.

Table 14

Mean Ranks for Testimony Admissibility

<u></u>	<u>Mean</u>
General Acceptance	3.00
Potential Error Rates	2.01
Theory Published	2.21
Theory Tested	2.78

Because the findings for the Friedman test were statistically significant, I conducted a multiple comparisons analysis to examine mean rankings for types of mental health testimony admissibility factors. I used the following parameters to calculate the critical value (CV) of differences between ranks for the multiple comparisons based on Siegel and Castellan, (1998).

- $N = 83$ (number of subjects)
- $k = 4$ (types of mental health expert credibility factors)
- $\#c = 6$ (number of paired comparisons)
- Critical $Z = 2.638$ (Appendix Table AII, p. 320)
- $CV = (Z * \text{SQRT}((k+1)/6N)) = 0.53$, (p.180).

As shown in Table 15, I found judges ranked expert testimony based upon theory generally accepted by the scientific community of the expert and theory scientifically tested significantly higher than published theory and potential error rates of a theory. I found no significant difference between theory generally accepted by the scientific community of the expert and theory that was scientifically tested or between theory that was published and potential error rates of a theory.

Table 15

Multiple Comparisons for Differences in Ranks of Type of Expert Credibility Factors

<u>Admissibility Factors</u>	<u>Avg. Ranks</u>	<u>General Acceptance</u>	<u>Tested Theory</u>	<u>Theory Published</u>	<u>Potential Error Rates</u>
General Acceptance	3.00	x	0.22	0.79**	0.99**
Tested Theory	2.78		x	0.57**	0.77**
Theory Published	2.21			x	0.20
<u>Potential Error Rates</u>	<u>2.01</u>				<u>x</u>

** .05 level of significance

Research Question 3b

To what extent do judges' age and gender predict importance ratings for each of the factors that influence the admissibility of mental health expert testimony?

H₀3b: Neither age nor gender of judges significantly predict importance ratings of each of the factors that influence the admissibility of mental health expert testimony?

H₁3b: Age or gender of judges or both significantly predict importance ratings of each of the factors that influence the admissibility of mental health expert testimony?

I first performed a series of regression analyses to determine if age and gender predicted importance ratings of judges on extralegal factors that influence testimony admissibility. Because the distribution of the residuals were not normal for the most part, I conducted a Spearman correlation coefficient test to assess for the existence of relationships between age and gender and between each demographic variable and ratings of the testimony admissibility factors (see Table 16). I found that age and gender were negatively correlated, with women judges being younger than the male judges but found no significant relationship between age and gender of judges and testimony admissibility factors.

Table 16

Spearman's Rho Correlation Coefficient for Types of Testimony Admissibility Factor

		Age	Gender
Age	Correlation	1.000	-.273**
	Sig (2-tailed)		.014
	N	80	80
Gender	Correlation	-.273**	1.000
	Sig (2-tailed)	.014	
	N	80	81
General Acceptance	Correlation	.096	.018
	Sig (2-tailed)	.397	.877
	N	80	81
Theory Tested	Correlation	-.001	.063
	Sig (2-tailed)	.993	.579
	N	80	81
Published Theory	Correlation	-.159	-.084
	Sig (2-tailed)	.160	.459
	N	80	81
Potential Error Rate	Correlation	.049	.041
	Sig (2-tailed)	.664	.715
	N	80	81

**Correlation is significant at the .05 level (2-tailed)

Research Question 4a

Is there a difference in mean ratings of juvenile court judges for the following criteria that influence decisions in termination of parental rights cases: (a) child emotional abuse and neglect, (b) child physical abuse, (c) child sexual abuse, (d) fundamental rights of parents, (e) maintaining the integrity of the family, (f) psychological health of both parents, (g) separation of siblings, and (h) substance/alcohol abuse by both parents?

H₀4a: There are no significant differences in mean importance ratings of juvenile court judges for criteria that influence decisions in termination of parental rights cases.

H₁4a: There are significant differences in mean importance ratings of juvenile court judges for criteria that influence decisions in termination of parental rights cases.

I assessed mean importance ratings of judges on factors related to termination of parental rights and found judges rated sexual abuse significantly higher than other termination factors with integrity of the family rated least important (see Table 17).

Table 17

Judge Importance Ratings for Termination of Parental Rights

<u>Variable</u>	<u>Mean</u>	<u>SD</u>	<u>Min.</u>	<u>Max</u>
Sexual Abuse	7.880	3.9583	0	10.0
Physical Abuse	7.807	3.9369	0	10.0
Emotional Abuse	7.470	3.8772	0	10.0
Sub. Abuse of Parents	7.265	3.7190	0	10.0
Separation of Siblings	6.602	3.4639	0	10.0
Psych Health Parents	6.277	3.5176	0	10.0
Fund. Rights of Parent	6.060	3.5212	0	10.0
<u>Integrity of the Family</u>	<u>5.000</u>	<u>3.1968</u>	<u>0</u>	<u>10.0</u>

I performed a Friedman ANOVA by ranks on mean rankings for this hypothesis and found significant differences across types of termination factors used by judges to decide termination of parental rights ($\chi^2 (7) = 209.812, p < .000$). The mean ranks for the data are provided in Table 18 with 5 representing the highest rank..

Table 18

Mean Ranks for Termination Factors

	<u>Mean</u>
Sexual Abuse	5.89
Physical Abuse	5.77
Emotional Abuse	5.36
Sub. Abuse of Parents	4.91
Separation of Siblings	3.92
Fund. Rights of Parent	3.68
Psych Health Parents	3.81
<u>Integrity of the Family</u>	<u>2.66</u>

Given that the findings were significant, I performed a multiple comparisons analysis to determine differences in mean rankings across types of termination factors. I used the following parameters to calculate the critical value (CV) of differences between ranks for the multiple comparisons according to Siegel and Castellan, (1998).

- N = 83 (number of subjects)
- k = 8 (types of mental health expert credibility factors)
- #c = 28 (number of paired comparisons)
- Critical Z = 3.125 (Appendix Table A_{II}, p 320)
- $CV = (Z * \sqrt{(k+1)/6N}) = 1.19$, (p.180).

I found judges ranked sexual abuse, physical abuse, emotional abuse, and substance abuse of the parents significantly higher than separation of siblings, psychological health of

the parents, fundamental rights of the parent, or integrity of the family; however, I found no significant differences between the last four factors (see Table 19).

Table 19

Multiple Comparisons for Differences in Ranks of Type of Expert Credibility Factors

Termination Factors	Avg. Ranks	Physical	Emotion Abuse	Substance	Sep of Siblings	Psych Health	Fund Rights	Integrity Family
Sexual Abuse	5.82	0.12	0.53	0.98	1.97**	2.08**	2.21**	3.23**
Physical Abuse	5.77	x	0.41	0.86	1.85**	1.96**	2.09**	3.11**
Emotional Abuse	5.36		x	0.45	1.44**	1.55**	1.68**	2.70**
Substance Abuse	4.91			x	0.99	1.10	1.23**	2.25**
Separation of Siblings	3.92				x	0.11	0.13	1.15
Psych Health/Parents	3.81					x	0.13	1.15
Fundamental Rights	3.68						x	1.02
Integrity of Family	2.66							x

** .05 level of significance

Research Question 4b

To what extent do judges' age and gender predict importance ratings for each factor that influences decision-making in termination of parental rights cases?

H_04b : Neither age nor gender of judges significantly predict importance ratings of each factor that influences decision-making in termination of parental rights cases.

H_14b : Age or gender of judges or both significantly predict importance ratings of each factor that influences decision-making in termination of parental rights cases.

I initially performed eight regression analyses to investigate the effects of age and gender on judge importance ratings for extralegal factors involving termination of parental rights. Because the distribution of residuals were not normal, I could not make predictions

about the data and ran a Spearman correlation coefficient test between age and gender, and between each of these demographic variables and ratings of each type of termination factor (see Table 20). Age and gender were negatively correlated in which I found that female judges were younger than male judges and that maintaining the integrity of the family was significantly more important to female judges than to male judges..

Table 20

Spearman's Rho Correlation Coefficient for Termination of Parental Rights Factors

		Age	Gender
Age	Correlation	1.000	-.273**
	Sig (2- tailed)	--	.014
	N	80	80
Gender	Correlation	-.273**	1.000
	Sig (2-tailed)	.014	--
	N	80	81
Sexual Abuse	Correlation	-.162	-.119
	Sig (2-tailed)	.152	.290
	N	80	81
Physical Abuse	Correlation	-.103	-.090
	Sig (2-tailed)	.362	.424
	N	80	81
Emotional Abuse	Correlation	-.132	-.060
	Sig (2-tailed)	.243	.597
	N	80	81
Substance Abuse	Correlation	-.019	-.010
	Sig (2-tailed)	.870	.931
	N	80	81
Separation of Siblings	Correlation	-.151	-.153
	Sig (2-tailed)	.181	.174
	N	80	81

(table continues)

		Age	Gender
Psych Health of Parent	Correlation	-.103	-.030
	Sig (2-tailed)	.340	.174
	N	80	81
Fundamental Rights	Correlation	-.188	-.121
	Sig (2-tailed)	.094	.284
	N	80	81
Integrity of the Family	Correlation	-.256**	-.135
	Sig (2-tailed)	.022	.228
	N	80	81

*Correlation is significant at the .05 level (2-tailed)

Research Question 5a

Is there a difference in mean importance ratings of juvenile court judges across the following extralegal factors that influence decisions in child abuse custody cases: (a) age of the child; (b) child's preference for one parent; (c) child's testimony; (d) expert testimony; (e) parent disparaging other parent; (f) parenting skills; (g) parenting style; (h) physical/sexual abuse; (i) psychopathology of either parent; (j) special needs of the child; and (k) substance/alcohol abuse by parents?

H_05a : There are no significant differences in how judges rate the importance of extralegal factors influencing their decisions in child abuse custody cases.

H_15a : There are significant differences in how judges rate the importance of extralegal factors influencing their decisions in child abuse custody cases?

I assessed mean ratings of judges on type of factors related to child custody decisions. I found judges rated physical abuse of a child significantly higher than the other child custody factors, with parenting skills rated as least important.. Table 21 provides a representation of importance ratings on child custody case factors..

Table 21

Judge Importance Ratings of Child Custody Case Factors

Variable	Mean	SD	Min.	Max.
Physical Abuse	9.410	1.8743	0	10.0
Sub Abuse Parents	8.566	2.2152	0	10.0
Spec. Needs of Child	8.181	2.1928	0	10.0
Psych Health of Parent	8.060	2.2597	0	10.0
Disparaging Parent	7.976	2.3216	0	10.0
Age of Child	7.133	2.6677	0	10.0
Expert Testimony	7.000	2.3788	0	10.0
Parenting Skills	6.410	2.5759	0	10.0
Child Preference	6.012	2.1213	0	10.0
Child Testimony	5.614	2.4882	0	10.0
Parenting Skills	6.410	2.5759	0	10.0

Findings from the Friedman ANOVA by ranks test were significant for mean rankings of judges for the extra legal factors that influence their decisions in child abuse custody cases ($\chi^2(10) = 345.165, p < .000$). Table 22 shows the rank of each type of child custody case with 9 representing the highest rank.

Table 22

Mean Ranks for Child Custody Case Factors

	<u>Mean</u>
Physical Abuse	9.34
Sub Abuse Parents	8.13
Special Needs	7.31
Psych Health	7.25
Disparaging Parent	7.06
Age of Child	5.89
Expert Testimony	5.27
Parenting Skills	4.61
Child Preference	4.03
Child Testimony	3.78
<u>Parenting Styles</u>	<u>3.32</u>

Since the findings were significant for this hypothesis, I performed a multiple comparisons analysis to determine differences in mean rankings across type of child abuse custody factors. I used the following parameters to calculate the critical value (CV) of differences between ranks for the multiple comparisons based on Siegel and Castellan, (1998).

- N = 83 (number of subjects)
- k = 11 (types of mental health expert credibility factors)
- #c = 55 (number of paired comparisons)
- Critical Z = 3.891, (Appendix Table A_{II}, p 320)

- $CV = (Z * \text{SQRT}((k+1)/6N)) = 2.00$, (p.180)

Judges ranked physical abuse of a child and substance abuse of a parent statistically significantly higher than special needs of a child, psychological health of a parent, disparaging parents, age of child, mental health expert testimony, parenting skills, child preference for one parent, child testimony, or parenting style. However, I did not find a statistically significant difference between physical abuse and substance abuse by the parents, nor did I find a statistical difference between mental health expert testimony, parenting skills, child preference for a parent, child testimony, or parenting styles. Table 23 shows the differences in the ranks of type of expert credibility factors.

Table 23

Multiple Comparisons for Differences in Ranks of Type of Expert Credibility Factors

Custody Factors	Avg. Ranks	Substance Abuse	Special Needs	Psych Health	Disparaging Parent	Age of Child	Expert Test	Parent Skills	Child Prefer	Child Test	Parent Style
Physical Abuse	9.34	1.21	2.03**	2.09**	2.28**	3.45**	4.07**	4.73**	5.31**	5.56**	6.02**
Substance Abuse	8.13	x	0.82	0.88	1.07	2.24**	2.86**	3.52**	4.10**	4.35**	4.81**
Special Needs	7.31		x	0.06	0.25	1.42	2.04**	2.70**	3.28**	3.53**	3.99**
Psych Health	7.25			x	0.99	1.36	1.98	2.64**	3.22**	3.47**	3.93**
Disparaging Parent	7.06				x	1.17	1.79	2.45**	3.03**	3.38**	3.74**
Age of Child	5.89					x	0.62	1.28	1.86	2.11**	2.57**
Expert Testimony	5.27						x	0.66	1.24	1.49	1.95
Parenting Skills	4.61							x	0.58	0.83	1.29
Child Preference	4.03								x	0.25	0.71
Child testimony	3.78									x	0.46
Parenting Style	3.32										x

** .05 level of significance

Research Question 5b

To what extent do judges' age and gender predict importance ratings of each extralegal factor influencing their decisions in child abuse custody cases?

H₀5b: Neither age nor gender of judges significantly predict importance ratings of each extralegal factor related to a case.

H₁5b: Age or gender of judges or both significantly predict importance ratings of each extralegal factor related to a case.

I initially used a series of regression analyses to assess age and gender of judges as predictors of importance ratings of each custody case factor but residuals were not normally distributed and, despite removing the outliers, I was unable to make predictions about age and gender of judges on important ratings of each of the factors. I conducted Spearman correlation coefficients between age and gender, and between ratings of each case custody factor and these demographic variables. There was a negative correlation with child testimony and child testimony was a statistically significant factor for female judges. A positive correlation existed for disparaging parent and substance abuse by a parent and were statistically significant factors for male judges. The correlations for child custody case factors are provided in Table 24.

Table 24

Spearman's Rho Correlation Coefficient for Child Custody Case Factors

		Age	Gender
Age	Correlation	1.000	-.273**
	Sig (2- tailed)		.014
	N	80	80
Gender	Correlation	-.273**	1.000
	Sig (2-tailed)	.014	
	N	80	81
Age of Child	Correlation	.060	.104
	Sig (2-tailed)	.598	.357
	N	80	81
Physical Abuse	Correlation	-.095	.167
	Sig (2-tailed)	.403	.137
	N	80	81
Child Preference	Correlation	-.018	-.038
	Sig (2-tailed)	.465	.739
	N	80	81
Child Testimony	Correlation	-.275**	.036
	Sig (2-tailed)	.014	.752
	N	80	81
Parenting Style	Correlation	-.170	.098
	Sig (2-tailed)	.131	.382
	N	80	81

(table continues)

		Age	Gender
Parenting Skills	Correlation	-.030	.124
	Sig (2-tailed)	.793	.269
	N	80	81
Expert Testimony	Correlation	-.167	.040
	Sig (2-tailed)	.138	.724
	N	80	81
Disparaging Parent	Correlation	-.146	.265**
	Sig (2-tailed)	.196	.017
	N	80	81
Psychological Health	Correlation	-.081	.093
	Sig (2-tailed)	.475	.408
	N	80	81
Special Needs of Child	Correlation	-.056	-.048
	Sig (2-tailed)	.620	.673
	N	80	81
Substance Abuse	Correlation	-.135	.277**
	Sig (2-tailed)	.231	.012
	N	80	81

*significant at the .05 level (2-tailed)

Conclusion

With these findings, I sought to gain clarity on what extralegal factors influenced juvenile and domestic court judges' decisions in child custody cases. I compared the differences in mean ranks of judges' importance ratings across types of mental health expert, expert credibility factors, testimony admissibility factors, termination of parental rights factors, and child custody case factors and found the results to be statistically significant for each hypothesis for this study. I found that judges ranked the PhD psychologist and the psychiatrist higher than the other mental health experts. Judges found more credible those mental health experts who communicated technical information in lay terms and who demonstrated a willingness to draw firm conclusions when testifying. For factors influencing testimony admissibility, judges ranked theory generally accepted from the scientific community of the expert and tested theory easily replicated as highest in importance. Sexual, physical, emotional abuse of a child and substance abuse by a parent were ranked highest by judges as causes for termination of parental rights. Case factors that judges ranked highest in importance for influencing their decisions in child abuse custody hearings were physical abuse of a child and substance abuse of a parent.

I conducted correlations between age and gender of judges, and between ratings of each of the extralegal factors and both of these demographic variables. I found negative correlations between age and gender in which female judges were younger than male judges. Negative correlations were also found between female judges and importance of education to mental health expert credibility and the importance of maintaining the integrity of the family when deciding termination of parental rights cases. When

determining which custody case factors were important to child custody decisions, a negative correlation was found between female judges and testimony of a child, A positive correlation was found between male judges and custody case factors of one parent disparaging against the other parent to a child and substance abuse of a parent when deciding custody. Chapter 5 will provide a detailed interpretation of these findings as well as limitations of the study, recommendations, and implications for social change.

Chapter 5: Discussion, Conclusions, and Recommendations

Introduction

I conducted this quantitative study to examine how much credibility that juvenile and domestic court judges gave to mental health expert witnesses and their testimony when testifying on child abuse custody matters. The purpose of the study was to answer the research questions and test the hypotheses investigating the relationship between importance ratings of judges and extra legal factors such as type of expert, testimony admissibility, termination of parental rights, mental health expert credibility, and child custody issues. I also assessed whether there was a relationship between age and gender of judges and extralegal factors on importance ratings of judges.

The study was justified by the scant amount of research I found in the literature on extra legal factors associated with mental health expert credibility influencing judges' decisions in child custody matters. Although there have been numerous studies conducted on jury decision-making, very little research exists on judges' decisions. Fundamental to this study was the lack of research conducted on how forensic mental health experts were viewed by the judges in juvenile and domestic court (Redding & Murrie, 2006).

When conducting the literature search, I found a significant gap in the literature on the manner in which forensic mental health experts presented evidence to the judges pertaining to criminal actions against children or how judges applied mental health testimony on child abuse to criminal sentencing. Little research was available on how they applied mental health testimony to dispositional hearings, guardianships, and custody placements in child abuse cases (Redding & Murrie, 2006). I conducted a second

search and was unable to find studies less than 5 years old focused on the importance of the extralegal factors used in this study in child abuse custody cases decided by juvenile and domestic court judges.

An overarching issue is the hostility of judges toward mental health expert witnesses and their use of social frameworks evidence in child custody cases. However, one of the most influential legal scholars in the latter part of the 20th century, Judge Robert Wisdom (1975) of the 5th Circuit Court of Appeals, disagreed with conventional legal scholars who discounted the use of social science research testimony, and expressed his strong support of the use of social science evidence in judicial decision-making with these remarks: “Judicial decision making represents social science in action” (p. 148). Tanford (1990) reported that legal scholars have ignored mental health research as being faulty science. Judges have viewed mental health expert testimony as irrelevant because they believe the concepts of human behavior are incompatible with the law. There may be some credibility to what legal scholars believe and how judges act because of the scant amount of research available to dispel those beliefs. More research is needed to fill in the gap for identifying extra legal factors that identify what judges view as important to their decision making and to develop an understanding of why judges have difficulty applying social frameworks theory to evidence presented by the mental health expert (Fradella, Fogarty, & O’Neill, 2003).

Interpretation of Findings

This study helps to bridge the gap in the literature due to a paucity of research on the amount of influence that mental health expert credibility and the type of extra legal

factors have on child custody decisions. The findings were statistically significant and offer greater understanding on what elements of mental health expert testimony and characteristics of the mental health expert that judges deemed important to admitting evidence.

In this study, I investigated various elements that judges found important when making their decisions. In order to understand how judges formed their opinions, I examined their background demographics to determine the presence of any relationships having the capacity to influence how they understood the cases they decided. For me to gain insights on the decision-making process of judges, it was important to have an understanding of their background. I examined demographic characteristics and found that male judges (78.3%) outnumbered female judges (19.3%). These results showed a lack of gender diversity at the state court level, and 92.8% of judges were married with 2.2 children. The mean age of all judges was 56 years.

I found that judges endorsed factors related to the best interest of the child by rating domestic violence highest in importance along with factors related to child abuse such as sexual abuse, physical abuse, emotional abuse and neglect, substance abuse by parents, psychological health of the child, and the effects from divorce as beneficial training experiences. A study by Levin & Mills (2003) examined national data on state approaches to custody in cases where domestic violence has occurred. Oklahoma is one of 10 states where the law supports a rebuttable presumption statute in which an abuser is not permitted to have joint or sole custody of a child (Levin & Mills, 2003). Unsupervised contact is not permitted and there are safety provisions for the protection of

children and battered women from the abuser. Other states have no such protection in which judges fail to recognize the dangers imposed by not protecting the abused from the abuser (Levin & Mills, 2003). According to the Breiding (2014), studies have shown that women who attempt to leave their abusive partner are stalked, threatened, at high risk of suffering more physical trauma, or even killed. Children are also victims of abuse in more than half of the reported cases of abuse to women.

The legal standard for admissibility of mental health testimony preferred by Oklahoma judges was the Daubert standard. The original Daubert language did not acknowledge the relevance of mental health testimony. The acceptance of the Kumho ruling expanded the Daubert language to include this type testimony (Mueller & Kirkpatrick, 2006). I was curious how the judges would rate the Kuhmo standard giving them broader discretionary powers for allowing nonscientific or social science testimony in to evidence. Kumho was not ranked as statistically significant to the judges. Despite the number of scholarly articles written about the legal standards of admissibility, Caudell & Redding (2000) reported that there have been scant studies related to the influence that the standards have had on judicial decision making and that psychiatric and psychological evidence has had limited influence in Daubert rulings. Studies have suggested that mental health evidence is often excluded because judges either do not trust social science evidence or because they did not understand what the evidence meant (Mueller & Kirkpatrick, 2006). They were more likely to admit clinical testimony than social science testimony (Slobogin, 1998). Dahir et al. (2005) maintained that judges did not hold social science methodology to the same rigorous standards that they did medical

science (p.78), and Shuman & Sales (1999) claimed they judged mental health expert qualifications and testimony admissibility using the same standard as medical science (p.10). I found that the Daubert standard was the accepted legal standard for admissibility in Oklahoma but do not know whether the judges selected this standard as legal guidance or because of its familiarity as the legal rule accepted by the Oklahoma State Supreme Court Justices as their standard for admitting evidence.

I investigated age and gender to see if these two variables influenced judges importance ratings on extralegal factors of child custody issues that impacted their decision making. I found, for the most part, that these two variables did not have a significant relationship with the types of factors that judges considered when they decided child custody cases. However, age of judges was a factor in a 2002 study by Stamps in which older judges favored mothers as the preferred custodian of children in situations of divorce. The study did not separate genders of judges. The gender of a judge was viewed as important to a majority of people in this country who preferred diversity in the court system. According to Redding & Murrie (2006), gender was a factor in judges' decision making with the tendency for judges who were female or members of ethnic or racial minority groups to be more liberal, voting in favor of social issues. White male judges tended to be more conservative and more likely to be less supportive of social issues. Such attitudes often impact the decision making process, affecting case outcomes (Reddick, Nelson, & Caufield, 2009; Redding & Murrie, 2006). Results of a nationwide study by Reddick et al. (2009) on gender diversity in the court indicated that gender and minority diversity remained a problem despite small, graduated increases over a 40 year

span. The percentage of female and minority judges during the 1970s was at 4.0% with the percentage of minority judges increasing to 12.6% and female judges increasing to 16.0% in 2008. From 2000 to the present, the percentage of female judges selected was 29.2%. In states such as Missouri, Hawaii, New York, Virginia, and Louisiana, the percentage of selected minority judges were higher than female judges. In Oklahoma, the percentage of minority judges at the state level was 6.9% and female judges at the state level was 18.8%, slightly lower than the numbers I found in this study for gender. In states where political selection, age, and legal qualifications were used as selection methods, judges who were female or were female and a minority fared worse, but in states where merit selection was the criteria for selection, and diversity was a priority, females and minority judges did better (Reddick et al., 2009). As the gatekeeper of the court, judges hold the key to all decisions made in civil hearings involving children, and their decisions have the capacity to have long term effects on the lives of these children and their families (Redding & Murrie, 2006).

In a recent search on studies regarding the relationship of age and gender on judges' decision making, I discovered that the majority of them involved United States Supreme Court justices, state supreme court justices, Federal District Court judges, and Appellate Court judges deciding cases on racial and age discrimination, affirmative action cases, criminal sentencing cases, and mental competency cases. I found no recent studies on age and gender influencing decisions of juvenile, domestic, or family court judges involving the extralegal factors used in this study.

Originally, my intent was to answer the research questions and test the hypotheses for the study by asking judges to rate in importance the extralegal factors that influenced their decisions. I had also planned to assess whether age and gender could predict judges importance ratings of the extralegal factors in the decision making process. Because the residuals were not normally distributed, I rank-ordered the data using a Friedman ANOVA by ranks on the extralegal factors of importance to judges and then used a simple Spearman correlation coefficient to test the hypotheses for any relationships that existed between age and gender and the extra legal factors being investigated.

Below, I will discuss the interpretation of the findings from rankings on judges' importance ratings of extra legal factors, and any relationship found between age and gender of judges and extra legal factors investigated in this study.

Research Question 1a: Type of Mental Health Expert

A statistically significant relationship was found between importance ratings of judges across types of mental health experts with PhD psychologist ranked significantly higher as the most credible by judges over the other mental health experts. The psychiatrist was ranked statistically higher than the licensed professional counselor with the licensed clinical social worker ranked least important to the judges. Although I did not find any recent comparable research regarding juvenile or domestic court judges preferences for a specific type of mental health expert, a study by Redding et al., (2001) on hypothetical sanity hearings found that judges preferred forensic evaluations by psychiatrists and then PhD psychiatrists over all other mental health experts including the masters level

psychologist. Other studies by LaFortune & Nicholson (1995), and Melton et al., (1997) found similar results and attributed judges' preferences for the psychiatrist as related to their education and training in medical science. A study by Turkat (1993) concurred with these results, suggesting that judges believed that the PhD psychologist held the most distinguished credentials because they were trained in basic science. Turkat (1993) proposed that most judges accept testimony from mental health experts of any type with backgrounds in child development, personality development, diagnostic training, and clinical experience along with the ability to use their training to convey relevant information to the judge in a professional manner (p. 176). However, because licensed professional counselors had more training in child development and had a better understanding of how children respond to trauma than the psychologist or psychiatrist, their testimony had merit with the judges' surveyed (Turkat, 1993; Aiken & Murphy, 2002).

Research Question 1b: Relationship of Age and Gender to Ratings of Type of Mental Health Expert

I rank-ordered the data to test for the presence of a relationship between age and gender of judges and their importance ratings for the type of mental health expert that had the most influence on how they decided child custody matters. The findings were not statistically significant in which the findings revealed that the judges did not vary in their opinion about the mental health expert across types regardless of their ages and gender.

Research Question 2a: Type of Mental Health Expert Credibility Factor

I found that judges rated the ability of the mental health expert to communicate technical information in language that was easily understood as statistically significantly

more important to them than the other credibility factors. Testimony presented using scientific terminology commonly used between professionals in their practice is confusing to judges. Most judges do not understand scientific terminology, therefore, for purpose of clarity and to avoid judges perception that they are being demeaned by the expert, Redding & Murrie (2006) maintained that the best course of action was to use simple language when giving testimony to avoid confusing or embarrassing them with terminology they do not understand. Experts run a very high risk of upsetting judges to the point of them becoming biased against the testimony being presented. A mock study of jurors judging expert testimony conducted by Ivkovic & Hans (2003) found that jurors viewed expert testimony as more credible when they could understand its content and presented with clarity in lay language.

I found of equal importance to judges, willingness to draw firm conclusions and educational credentials of the experts. Legal experts exhort the importance of expert witnesses willingness to draw firm conclusions while testifying; otherwise, they are viewed as tentative and not believable, lacking conviction in what they are testifying to (Ivkovic & Hans, 2003). Duquette (1981) provided a framework for expert witnesses to follow when testifying that included the importance for them to remain calm during testimony, to use thoughtful responses in cross examination, to remain firm in drawing their conclusions and to restate the central conclusion whenever possible (Duquette, 1981, p. 333). Education was viewed by judges and jurors as an important extra legal factor to witness credibility in a study by Ivkovic & Hans (2003), who polled jurors regarding their impressions between experts and their credibility when contrasting their

credentials, with only a few of those jurors noting discrepancies. The findings also showed that education was not the only credibility factor that jurors considered, institutional affiliation, personal presentation, specialization, research, and professional activity were also considered to be important credibility factors. Experience and training were also considered important to the jurors and they did not dismiss the importance of the knowledge gained through professional experience (Ivkovic & Hans, 2003, p. 461-462). Cooper & Neuhaus (2000) found in their study of mock jurors that licensure and education influenced their perception of experts' presentation style and familiarity with a case.

Research Question 2b: Relationship of Age and Gender to Ratings of Type of Mental Health Expert Credibility Factor

I tested to see if a statistically significant relationship existed between age and gender across mental health expert credibility factors. I did find a statistically significant relationship between age alone of judges and age and gender of judges, and educational credentials. I found that younger female judges viewed educational credentials as an important factor for qualifying an expert to testify. Titcomb-Parrott, Neal, Wilson, & Brodsky, (2014) asserted that acquired knowledge was an important qualification for the testifying expert, especially since that knowledge had the ability to impact the lives of other people . In their study of mock jurors, they found that jurors were not necessarily impressed by knowledge as much as likability. I could not find any recent studies examining juvenile or domestic court judges decisions in which age and gender of judges had any influence.

Research Question 3a: Type of Testimony Admissibility Factor

The four factors I used in this study to measure testimony admissibility in ranking judge importance ratings (i.e. potential error rates, testing of theory, publications on the validity of the theory, and general acceptance of the theory in the scientific community) were implemented in the Daubert rule (1993) by the United States Supreme Court to aid trial judges in determining whether testimony was scientifically relevant and reliable when applied to the facts of a case (Lyons, 1997). For this research question in order to test the hypotheses, I examined mean rankings of judges' importance ratings on those four factors of expert credibility and found that judges ranked statistically significantly higher the credibility factor of general acceptance. The findings indicate that judges were more likely to admit testimony based upon sound scientific methods generally accept by the expert's scientific community than the other factors. Equally important to judges was testimony based upon tested theory.

General acceptance of expert testimony has been a factor for admissibility of testimony since the inception of the Frye Standard (1923). A later ruling, Rule 702 (1975), omitted the language, but the Daubert rule (1993) included it as part of the standard with the other factors listed in this research question (Lyons, 1997). When the Kuhmo test was accepted in 1999, it clarified to judges that all gatekeeper functions noted in Daubert also apply to the admittance of psychological or social frameworks testimony. The general acceptance clause continues to withstand the test over time (Fischer, 1995) and is the one credibility factor singled out by Oklahoma judges as the most important element for admitting expert witness testimony. Next ranked in

importance to judges was testimony based upon theory that is easily falsified or testable. The results from this study indicate that the juvenile and domestic court judges have become more familiar with the legal standards, perhaps, because the Daubert standard is the accepted legal rule for the state of Oklahoma. The Kumho standard, which was the standard that allowed judges to accept testimony related to psychological syndromes, child development, and personality development often illustrated in social frameworks testimony, was ranked lowest in importance.

Research Question 3b: Relationship of Age and Gender to Ratings of Type of Testimony Admissibility Factor

I used age and gender of judges to assess the presence of a relationship between testimony admissibility factors (i.e. potential error rates, tested theory, published theory, and general acceptance of the theory), and importance ratings of judges. From the findings, I found no statistically significant relationship between age and gender of judges, testimony admissibility, and the importance ratings of judges. These results could be associated with the judges' lack of understanding of how to apply these rules derived from scientific methodology to the evidence proffered to them.. In a 2001 survey conducted by Gatowski et al, to determine the level to which state court judges understood the standards of admissibility set forth by the Daubert rule, results indicated that the judges were lacking in an understanding of scientific methodology and found it difficult to understand the language associated with falsifiability or testability of a theory as well as error rates of a theory. Or, across age and gender of judges, they did not find that the admissibility factor was important to them.

Research Question 4a: Type of Termination of Parental Rights Factor

The threat of termination of a parent's rights may be enough motivation for a parent to reexamine their behaviors enough to become compliant with court orders in the best interest of their children. Regardless, the intent of the termination procedure is to protect the best interest of a child. This procedural mechanism is the strongest legal action taken to move an abandoned or abused children out of an unalterable situation that can evoke irreparable damage brought about by emotional, sexual, or physical harm to them. Although statutes vary from state to state, criteria that all states have in common for the termination process include chronic abuse and neglect, sexual abuse, physical abuse and violent crimes against a child, abandonment, substance abuse by parents, mental illness of the parent, and other egregious acts by the parent (Family Findlaw, 2014).

I investigated how judges ranked criteria that influenced termination of parental rights decisions. I found that judges ranked sexual abuse as the most important criteria for initiating a termination procedure followed equally by physical abuse, emotional abuse and neglect, and substance abuse by the parents. These results are in line with a 2009 study conducted by Ellis, Malm, & Bishop examining adoption recruitment and the accelerated time lines for termination of parental rights. Twenty judges from 18 states were asked in a telephone survey about their opinions regarding the challenges presented through the termination of parental rights process. Over 55% of the judges, whose tenure increased, developed a more favorable view toward granting termination of parental rights against those parents who refused to cooperate with or were inconsistent with

working and completing case goals. The overall goal was to seek permanency through adoption for children who were abandoned or whose family situation was irreparable (p. 9). Judges were asked what criteria they take into consideration when deciding termination cases and most judges decided termination based upon the parents meeting the statutory grounds such as child physical abuse, sexual abuse, child neglect, abandonment, failure to maintain contact with a child in care, mental illness, chronic chemical dependency, history of loss of parental rights, egregious criminal acts against a child including severe assault, murder, or manslaughter of a child, felony convictions of parents, and failure to provide support (Ellis et al., 2009, p. 4-5).

Research Question 4b: Relationship of Age and Gender to Ratings of Type of Termination of Parental Rights Factor

I investigated whether there was a relationship between age and gender and judges important ratings for criteria that influenced decision-making in termination of parental rights cases and found a statistically significant relationship between age and gender of judges. I found that younger female judges were more likely to rank the factor, integrity of the family, significantly higher than their older male counterparts when deciding cases of termination of parental rights. Although I did not find any studies that investigated the extra legal factors used in this study, I did find a study by Summers, Gatowski, & Dobbin (2011) who examined judicial decision-making in termination of parental rights cases using age and gender. Demographic variables of the judges were paired with the experience levels and expectancy-related case factors predicting judges' decision making, emotional factors, and cognitive style of the judges on perceptions of

risk in decisions to terminate parental rights. The findings indicated that gender, age, and parental status of judges influenced their perception of risk for returning a child to its parents (low risk) or terminating rights (high risk).

Research Question 5a: Type of Custody Case Factor

I investigated the criteria that judges use when deciding child custody issues and found that judges rated factors of child abuse as the most important determinant to their decision making. Physical abuse of the child and substance abuse by the parents were ranked highest followed by the psychological health of the parents and special needs of the child. Parent alienation with one parent disparaging against the other parent, a form of child emotional abuse was ranked high by judges, also. The best interest standard is a set of guidelines adhered to by most states and is relied upon by judges when deciding child custody cases.

Child advocates feared that the discretionary power given to judges as the gatekeeper, led to judicial bias in child custody outcomes in which the judge rules in favor of the abuser despite prior history of domestic violence or child abuse (Mills, 1999). Liss & Stahly (1993), Pagelow (1993) and Zorza (1995) maintained that there is a multitude of research on custody cases where judges discount allegations of domestic violence as exaggerated by the female, awarding custody of children to the abusive father. Advocates for children maintain that there is a direct relationship between domestic violence and child abuse. Over half of the cases reported with domestic violence occurring in the home, children were also physically abused by the male batterer (Edleson, 1996, 1997; Pagelow, 1990). However, contrary to the literature, I found in this

study that abuses of any type perpetrated on a child were important factors to judges when deciding custody cases.

Research Question 5b: Relationship of Age and Gender to Ratings of Type of Custody Case Factor

I found a statistically significant relationship between age and gender, child custody case factors, and importance ratings of judges deciding child custody cases. Child custody decisions made by younger female judges were statistically significantly influenced by the testimony of a child whereas the child custody decisions made by older male judges were statistically significantly influenced by parents who disparaged another parent to a child, and by parents who abused substances. A review of the literature on factors predicting court decisions in child custody cases, the majority were divorce custody issues. Although I found only a scant number of recent studies involving child custody decisions, none of them specifically sought to investigate age and gender of judges as determinants of relationships between case factors similar to those found in this study and decision making. Studies I found utilizing age and gender as predictors of relationships involved age and gender of parents, of perpetrators, and judges age and gender as predictors of relationships. A study by Raub, Carson, Cook, Wyshak, & Hauser (2013) examined family court clinic records provided by child protective services and histories of restraining orders against parents in order to identify factors that influenced decisions on custody and visitation rights. Factors such as parental emotional instability, antisocial behaviors, and income of father were used as predictors of how judges decided

custody. I found no studies that focused on age and gender as predictors for importance ratings of judges on the extra legal factors for child custody that I studied.

Limitations of the Study

There are several limitations of this study that merited discussion. Only Oklahoma District Court judges who handle juvenile and domestic court matters were surveyed for the study. They were a representative sample of all District Court judges from Oklahoma, therefore, I was able to make inferences about the findings but was not able to generalize the results to juvenile and domestic court judges from around the country. Increasing the geographic size of the sample to include juvenile and family court judges from different states who are members of the National Council of Juvenile and Family Court Judges would be representative of the preferences and opinions of all other judges throughout the country who handle juvenile and domestic court issues. Surveying juvenile and domestic court judges from a list of over 10,000 judges would provide a larger sample from which to successfully generalize the findings

Indian tribal judges were excluded from participating in the study to keep the sample size manageable (Van Wangenen, 1991). Juvenile and domestic cases brought before the tribal judge are similar to the cases heard by the District Court judges and data derived from their participation would have increased the size of the study sample and would have added invaluable information to the study findings.

Federal statute requires that each state establish best interest standards with child protection laws used by the juvenile and domestic court judges as a guideline to follow when deciding child custody cases. I assumed that the child protection laws from

Oklahoma are compatible with child protection laws based upon the best interest standard from all other states in the country and assumed that the interpretation of that standard was similar to the standard established for Oklahoma.

This survey research study is subject to similar weaknesses found in survey research in general, where the study participants collectively accept the survey questions at face value and purpose for participating without direct contact with the researcher making it difficult to determine the presence of a non-response bias in this study.

The reliability of the data collected from the survey could be affected by responder bias. I could not ensure that participants provided accurate data due to external variants such participant's available time or interest in participating, court dockets and schedules, or presence of stress at the time they took the survey. Participants may not be as open with their responses or feel compelled to answer the questions honestly because of concerns with anonymity or confidentiality despite my taking precautions to protect their confidences. They may be hesitant to answer the questions that they believe might be perceived as unfavorable to them.

The survey used for this study was constructed by a law student from an area law school with the help of a law professor and was tested for content validity over ten years ago; with the individual's permission, I summoned a panel of judge experts to assess content validity of the survey for use in this study and asked for their suggestions for recommended changes to question content and construction. Despite the content of the survey measuring factors involving cases that juvenile and domestic court judges adjudicate on a regular basis, the survey construction could affect validity of the data.

Errors in the data due to non-responses to survey questions reduced the sample size and those participants who did respond may have different attitudes about the questions adding to the problem of non-responder bias. Likert scale data may be affected by participants understanding or interpretation of the content matter of a question. Each response is based upon individual interpretation which is a risk for response bias.

Judge demographics were limited to basic inquiry about the background including age, gender, marital status, number of children, area of study, and number of years serving the judiciary. To develop a better understanding of the beliefs and attitudes of judges, additional demographic data would provide broader exposure to how beliefs, attitudes and opinions of judges are formulated, therefore, expanding acquired knowledge about them that could impact data findings. Past studies have revealed that categorical and background information of judges impacted how they decided cases. Beiner (2011) cited a study that examined data regarding voting patterns of appellate judges on racial and sex discrimination cases and found that judges' background's influenced their decisions. Race, gender, and political party of outgoing U.S. president were found to have influenced the manner in which the judges decided those cases.

Recommendations for Further Research

While conducting this study, I was able to identify several areas in which further research could improve the outcome of the study findings. The major premise for the study was to acquire additional knowledge about the role of the mental health expert and mental health expert testimony in the courtroom. I wanted to know what judges thought about the expert and expert testimony and then I sought to discern what extra legal

factors that juvenile and domestic court judges found to be most helpful to them when deciding in the best interest of a child in child abuse custody cases.

The results of this study indicated that mental health expert testimony and mental health experts as a group were not given equal consideration by the judge. Because each mental health expert has the type of education, training, experience, and knowledge about human behaviors there appear to be misconceptions about what role they play in educating the judge. This study identified which of the experts were viewed as most credible but the study did not seek to answer why. PhD psychologists and psychiatrists were ranked more credible than licensed professional counselors and licensed clinical social workers and prior research has not clarified as to why. Further research is needed to clarify with judges why there are differences in the credibility level between the experts. Therefore, in order to assist mental health experts to improve upon their courtroom behaviors a, this question requires an answer. Additional research is needed to identify specific negative and positive characteristics of each expert type that judges believe are relevant to their credibility and why. Having this type of information would be invaluable for curriculum development for training programs to help experts improve their credibility when testifying.

There is a paucity of training programs that offer degrees in forensic mental health. This study helped me to isolate extra legal factors of concern to judges that could be utilized to begin developing a core curriculum for education and training of mental health experts in order to help legitimize their profession. Unfortunately, judges continue to view the expert as a “hired gun”, selling out to the highest bidder for their services

(Mossman, 1999). Mental health experts have had difficulty articulating to the judge and those who do often do so without using ethics as a guideline. Therefore, additional research is necessary to identify additional factors regarding application of ethical standards to expert testimony. Additional research is needed for developing courses to teach experts what their role is in the courtroom and how to effectively communicate the scientific research behind the theories that guide expert testimony.

Recommendations for Future Action

Developing an intensive forensic training model for undergraduate degree programs would help to enhance the types of training and education needed for increased knowledge of the expert as well as appropriate presentation of their expertise to judges. An effective intensive model would require the expert in training to complete internships in both fields of law and mental health as part of the process to gain introspection about the competing philosophies. Participation in laboratory mock trials would assist the expert in developing insights about appropriate courtroom behaviors when testifying on cross examination. Judges have difficulty understanding the scientific methodology behind the principles of research that validate a theory used to explain child development, the psychology behind human behavior and personality development, and the forensic techniques used to evaluate individuals who present to court (Gatowski, et. al, 2001; Sales & Shuman, 1999). According to the literature, mental health experts have had difficulty clarifying their role and presenting their knowledge in a relevant, reliable, and credible manner (Sales & Shuman, 1999). It is important that mental health expert professional organizations collectively develop a public relations policy to educate judges

on the type of expertise that each expert brings to the courtroom so that judges do not blur the boundaries in their confusion about what each expert is trained to do.

Judges, as the gatekeeper, make the decisions that have the capacity to impact the lives of many. Studies have provided mixed results about how demographic information of judges influence how they interpret the evidence presented to them when deciding cases (Beiner, 2011). Understanding how judges form their opinions, or any bias, is necessary to understanding the types of decisions that they make. Only a few studies have examined judicial demeanor and attitudes (National Institute of Justice, 2009). In future research utilizing the survey I used for this study, it would be important to expand judge demographics to include ethnicity, religious preferences, political preferences and whether they identify themselves as a conservative, moderate, liberal, or none of the above, cultural interests, along with professional experience, age, gender, marital status, number of children, previous training, and educational background to provide a broader spectrum of information about judges that helps to mold their thinking regarding how they perceive the information brought before them in testimony by the mental health expert on child abuse custody.

Implications for Social Change

Each year, there are a record number of children placed into protective custody by the juvenile court system under the care of social services as a result of reported incidences of child abuse and domestic violence. Many of the reports are made by medical professionals and legal authorities because of the number of abuse and neglect

fatalities being recorded in hospital emergency rooms (Downs, Costin, & McFadden, 1996).

In juvenile court, a custody determination is made to decide if abused children remain in protective care or are returned to the home where the perpetrator resides. Juvenile and domestic court judges are the gatekeeper of their court with the responsibility to examine all of the testimony presented to them in order to render fair and unbiased decisions on behalf of both children and their families. Those decisions have the capacity to affect the lives of abused children and their family by either reunifying children with their family or terminating parent rights. Mental health experts provide much of the testimony that judges rely on to make their decisions. The sole purpose of the mental health expert is to educate judges with the type of information not readily available to them. The failure of expert witnesses to provide juvenile or domestic court judges with relevant and reliable testimony plays a significant role in the type of decision the judge will make. In cases where an abused child is returned to the home of the abuser, ramifications for the abused child are wide ranging. Renewed emotional and physical trauma, developmental delays, psychological disorders, attachment issues, antisocial behavior in which the abused becomes the abuser, exploitive behavior, substance abuse and criminal activity, and suicidal or homicidal behavior are a few potential effects (Stiles, 2002; Stoeber, 2014).

The implications for social change were reflected in the statistically significant findings of my study and give credence to the importance of conducting additional research. Understanding what extralegal factors influence juvenile or domestic court

judges decisions provided in expert testimony by mental health experts, and the manner in which mental health experts prepare themselves to present mental health testimony that is reliable and relevant to a case determines whether abused children remain safe in protective care or are returned to abusive situations. Because I was unable to find any studies less than 5 years old investigating the extralegal factors used to study judge decision making, this study helped to bridge the gap in the literature regarding the type of influence that extralegal factors related to mental health experts and their testimony had on judges decision making in child abuse custody cases. Studies have shown that judges have little trust in the relevance and reliability of the social science testimony given as opinion by the expert in child abuse custody cases. Fradella et al. (2003) investigated the reasons behind judges distrust of social science testimony and found that judges believed that experts lacked objectivity and were influenced by sociopolitical agendas, that their deterministic view of human behavior contradicts the legal systems view of free will, and a distrust scientific research as the basis for social science evidence (Fradella et al., 2003, p. 165-168). Ceci & Hembroke (1998) reflected on the need for the professional scientific community to chart a direction encompassing both legal and ethical standards for the use of expert witness testimony. At the same time, the authors see the need for incorporating scientific values to increase viability and authenticity when admissibility of expert witness testimony is in question. This is based on several hundred years of case law and legal precedent having molded expectations leading to the establishment of exculpatory rules, giving the courts a comparatively clear understanding of what kinds of expert witness testimony is relevant or acceptable to judges.

Identifying specific factors that influenced judges decisions related to testimony provided by mental health experts in child abuse custody cases was the first step toward seeking to improve the credibility of the expert. The next step is to develop curriculum modules for educators to train mental health experts in the proper use of professional court room decorum, understanding ethical guidelines for presenting mental health testimony, the use of ethical techniques for presenting reliable and relevant testimony, and to assertively prevail on cross examination. The study provided me with knowledge about what influences judges to make their decisions. Replicating this study would tell us why the extralegal factors were important to judges when making their decisions in child custody cases involving child abuse and domestic violence. Determining what shaped judges belief systems by adding additional demographic and background characteristics to the investigation could answer this question. Having this knowledge will add additional leverage to how experts prepare for testifying in cases where the protection and safety of a child is inherent, or the reunification of the family is in the best interest of a child.

Conclusion

The purpose for conducting this study was to investigate types of extralegal factors regarding mental health expert testimony, the mental health expert, and case factors that were ranked most important to judges deciding child custody cases. Studies have shown that the judges dislike mental health experts for different reasons. Experts who develop a reputation for testifying as ‘hired guns’ make it difficult for mental health experts to maintain credibility with judges as do unprepared mental health experts or

experts who testify with irrelevant and unreliable information (Mossman, 1999, p. 414-416). If mental health experts are unprepared to provide accurate information or are unprepared to meet the challenge of a cross examination, they lose credibility.

The findings generated statistically significant results on the type of extralegal factors that judges found important to their decision making. Judges ranked PhD psychologists and psychiatrists higher than the other experts as more credible witnesses. Judges ranked testimony generally accepted within the field of the expert as the most credible testimony and ranked the qualifications of experts by their ability to relay technical information in lay terms in language understood by the judge, and experts who were firm in drawing conclusions about their evidence as more credible. Education was another important factor that determined whether a judge viewed mental health experts as credible witnesses. In termination of parental rights cases, judges viewed all forms of abuse to a child, substance abuse by the parents, and domestic violence as primary factors influencing their decisions to terminate rights. When judges examined case factors for deciding custody, judges ranked sexual and physical abuse of the child and substance abuse of the parents as the most influential determination factors. Judges took into account the needs of the child and whether one parent was disparaging the other parent to the child as an important factor when deciding custody of cases. Age and gender of judges also were significant. Female judges were more apt to listen to the testimony of children when deciding factors of a case while male judges were influenced by a disparaging parent and by parents who abused substances. Female judges were impressed by the educational credentials when qualifying an expert to testify and were more

supportive of maintaining the integrity of the family when deciding termination issues in child custody cases.

Summary

Child abuse and domestic violence share a common thread in that more than half of the cases reported where domestic violence is present in the home, children are also being physically assaulted. As a serious problem in this country, many abused children are taken into protective custody by the social services system and find themselves along with their family involved in the court process. Judges have been given discretionary powers to decide the future of these children and some of those decisions lead to traumatic outcomes. Judges have the power to make decisions to reunify a family or terminate their rights, change case goals to adoption, or return the child back into a dangerous situation. Mental health experts are called upon by attorneys, prosecutors, and judges to educate the judge about child abuse custody matters. The testimony they present to the judges must be relevant and reliable in order for judges to view it as credible. Mental health experts who arrive to court unprepared to provide relevant and reliable testimony runs the risk of upsetting the judge. Judges are known to exhibit hostility toward the mental health expert based upon the type of testimony they present to them. The hostility has been associated with expert credibility. Studies have concluded that some judges view the mental health expert as a “hired gun”, a “whore” a “prostitute” or a “clinician of ill repute”, implying that their testimony was for sale to the highest bidder. Judges made a distinction between expert types for presenting unreliable

testimony by rating the psychiatrist as least credible (Mossman, 1999, p. 414-416). These results were contrary to the finding in my study.

Additional research is warranted in the area of judges' decision making to build upon the findings of this study. Understanding how and why judges form the kind of attitudes and opinions that mold their decision making process is relevant to the type of preparation needed by the mental health expert to testify reliably in child custody cases. This study answered questions regarding what extralegal factors were important to judges. Future studies need to answer why these factors are important to judges by investigating more broadly, how their backgrounds impact their attitudes that mold their decisions.

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Appendix A: Prenotification Letter

Marilyn J. Nolan *M.S.* *forensic consultant*
fellow/American College of Forensic Examiner's International
diplomate/American Board of Forensic Counselors

Your Honor:

A few days from now, you will receive a short survey asking for your opinions on a variety of topics important to child abuse custody cases heard in juvenile and domestic court for a dissertation study at Walden University. Your opinions are very important to this study and may be helpful to forensic educators developing core curricula needed to teach experts how to present effective and credible courtroom testimony. Your responses to the survey will be kept confidential and no identifiers related to you will be included in the research data. I will be the only researcher handling survey data.

In order to gain an accurate picture of how important mental health expert testimony is to decisions made in these cases, it is important for you to take part in the survey. A low response rate will make these results less valid. I will be most grateful for you taking approximately 10 minutes to fill out the survey and returning it as soon as possible.

Your participation is voluntary and all information you provide will be kept strictly confidential. The research project has been reviewed and approved by the Walden University Institutional Review Board and if you have any questions regarding your rights as a participant in this study, please feel free to contact the IRB at irb@waldenu.edu. If you have questions or concerns about the study, please feel free to contact me at 1 417 483 1228 or at Marilyn.Nolan@waldenu.edu, or my dissertation Chairperson, William Barkley, PhD at William.Barkley@waldenu.edu.

Thank you in advance for your help.

Sincerely,

Marilyn J. Nolan MS

1515 West Tenth Street Suite E
P.O. Box 8217
Joplin, Missouri 64801
417 782 7700 (fax) 417 782 6760

Appendix B: Cover Letter

Marilyn J. Nolan M.S. forensic consultant
fellow/American College of Forensic Examiner's International
diplomate/American Board of Forensic Counselors

Your Honor:

My name is Marilyn Nolan and I am a doctoral student seeking a degree in Human Services with a specialization in Forensic Mental Health from the College of Social and Behavioral Science at Walden University. My dissertation topic is on the impact of mental health expert testimony on judges' decision making in child abuse custody cases. The purpose of the enclosed survey is to gather information from you as the expert about issues that you consider important in your decision making in child abuse custody cases. Your opinions are vital to the success of this study which will be used to advance training curricula to educate forensic mental health experts on how to provide credible testimony to the court. You were selected for participation because of your expertise regarding what makes testimony reliable and relevant to juvenile and domestic court. This research project is of interest to the **American College of Forensic Examiner's Institute (ACFEI)**, which encouraged this study; however, **ACFEI** is not involved in any aspect of this research project nor is it a sponsor for this study. It will not have access to your individual responses which I will hold in strict confidence.

I will mail a summary of the study to judges who complete and return the survey. Your participation is essential to generating valid data and I am grateful for your help. Individual survey responses will remain confidential and will not be attributed to any judge participating in the study. This study has been reviewed and approved by the Walden Institutional Review Board, IRB approval # 07-23-12-0012293, and if you have questions about your rights as a participant, you may contact Walden University IRB at irb@waldenu.edu. If you have other concerns related to the study, you may contact me at Marilyn.Nolan@waldenu.edu or my dissertation Chairperson, William Barkley, PhD, at William.Barkley@waldenu.edu. I thank you in advance for your time and help with this important study.

Sincerely,

Marilyn J. Nolan MS

1515 West Tenth Street Suite E
P.O. Box 8217
Joplin, Missouri 64801
417 782 7700 (fax) 417 782 6760

Appendix C: Informed Consent

Marilyn J. Nolan, Doctoral Student
College of Social and Behavioral Science
Department of Human Services
Walden University

Informed Consent

INFORMED CONSENT for the study: “Judges’ Ratings of Extra Legal Factors Important to Decision Making in Child Abuse Custody Cases”

This form is part of a process called “informed consent” to allow you to understand this study before deciding whether to take part. My name is Marilyn J. Nolan and I am a doctoral student in the College of Social and Behavioral Science at Walden University. You have been selected to participate in this study because of your important role as judge of the juvenile or domestic court and you have the responsibility of deciding cases that impact the lives of every individual who enters your courtroom. You must rely upon the testimony of expert witnesses to help you make those decisions and that testimony must be credible for you to make equitable decisions.

Background Information:

The purpose of this research is to find out how juvenile or domestic court judges rate the credibility of mental health expert testimony from the various types of mental health experts. Additionally, it seeks to find out what criteria judges rely upon when making their decisions.

Procedures:

If you agree to participate in this research, you will be asked to complete a short survey that will take you approximately 10 minutes to complete and return in a postage-paid return envelope. You will also be asked to participate in a second survey to be mailed in a few weeks following the first mailing by placing a checkmark at the bottom of the original survey. It, too, will take you approximately 10 minutes to complete and return in the enclosed postage-paid return envelope.

Voluntary Nature of the Study:

Your participation in this study is voluntary. If you choose to participate, you will be asked to complete the enclosed survey and return it in the stamped return envelope. By doing so, this will be considered your consent to participate in this important research project. It is not necessary that you include this consent form when returning the completed survey. You may keep this document for your records.

Risks and Benefits of Being in the Study:

The risks of your involvement in this study are minimal. The benefits of this study include providing input to forensic educators so that they are able to develop core curricula for the purpose of training expert witnesses to present credible testimony in court that effectively assists judges to make equitable decisions.

Compensation:

There will be no form of compensation for this study. Participation is voluntary.

Confidentiality:

Any information that you provide to me from the enclosed survey will be kept confidential so that you will never be identified in the research data. All completed surveys will be tracked by an identification number only and stored in a secure office area. The connection between your ID number and your name will be stored separately from the survey, also, in a secure office area, and then destroyed when the follow-up contacts are completed. No other researcher will have privilege to your information and there will be no way to connect your name to any of the completed surveys. There will not be any reference to you or your court from any of the responses that may be used in any presentation or publication.

Contacts or Questions:

This form is for you to keep in your records. If you have any questions in the future, you may contact me by email Marilyn.Nolan@waldenu.edu or the dissertation Chairperson, Dr. William Barkley at William.Barkley@waldenu.edu. This study has been reviewed and approved of by the Walden University Institutional Review Board. If you would have questions regarding your rights as a participant, you may contact the Walden University IRB at irb@waldenu.edu to have your concerns answered.

Statement of Consent by the Participant:

I have read the information presented in this consent document. I understand the purpose of the study and what my involvement would be if I made the decision to participate. I am agreeing to the terms presented and am giving my informed consent to participate by returning the completed survey in the postage-paid envelope to Marilyn J. Nolan, a doctoral student at Walden University. I also understand that I am to keep this document for my records.

Appendix D: Reminder Letter to Judges

Marilyn J. Nolan M.S. forensic consultant
fellow/American College of Forensic Examiner's International
diplomat/American Board of Forensic Counselors

Your Honor:

I recently mailed to you a short survey to complete and return in a postage-paid envelope for a dissertation study at Walden University, asking for your views on a variety of topics regarding expert witness testimony that you believe to be most helpful in making decisions in child abuse custody cases. Your opinions will provide valuable insights to forensic educators in the development of core curricula to teach mental health experts the appropriate way to present credible testimony to the court. It is important for your opinions to be included.

If you have completed and returned the survey, please accept my thanks. If you have not yet found the time to do so in your hectic schedule, I would be very grateful if you would complete and return the survey in the next few days. As a convenience, I have enclosed a copy of the short survey with a postage-paid return envelope and would appreciate you taking 10 minutes to fill it out.

Again, your response is critical to the success of this study. If you have any questions about this study, please contact me at Marilyn.Nolan@waldenu.edu, or my dissertation Chairperson, Dr. William Barkley at William.Barkley@waldenu.edu.

Sincerely,

Marilyn J. Nolan MS

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P.O. Box 8217
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Appendix E: Survey Questionnaire

**JUDGES QUESTIONNAIRE REGARDING EXPERT TESTIMONY IN
JUVENILE/DOMESTIC COURT CASES**

1. Judge Demographics:
- How many years have you served as a judge? _____
 - How many total years have you been a judge in domestic court? _____
 - How many total years have you been a judge in juvenile court? _____
 - What was your undergraduate major? _____
 - Male _____ Female _____
 - Age _____
 - Marital status: Married _____ Single _____ Divorced _____
 - Number of children _____
2. What percent of your case load is devoted to the following areas? Enter values that total 100%.
- _____ Child custody
- _____ Child emotional abuse
- _____ Child physical abuse
- _____ Child sexual abuse
- _____ Child neglect/deprived child actions
- _____ Domestic violence
- _____ Termination of parental rights
- _____ Visitation rights
3. In the past year, how many times have mental health experts testified in your court room in the following types of cases?
- _____ Child custody
- _____ Child emotional abuse
- _____ Child physical abuse
- _____ Child neglect/deprived child actions
- _____ Child sexual abuse
- _____ Domestic violence
- _____ Termination of parental rights
- _____ Visitation rights
4. Rate the following characteristics regarding credibility in evaluating mental health experts on a scale of 0 to 10 with 0= No Importance and 10=Extreme Importance.
- _____ Ability to communicate technical information in lay terms
- _____ Educational credentials
- _____ Physical appearance
- _____ Physical demeanor/presentation
- _____ Publications in professional journals
- _____ Willingness to draw firm conclusions

5. Check how many training experiences you have had in the following areas:

- Child development
- Child emotional abuse
- Child neglect/deprived child actions
- Child physical abuse
- Child sexual abuse
- Domestic violence
- Effects of divorce/custody battles on children
- Psychological and/or behavioral health of children
- Psychological evaluations/assessments
- Psychological health of parents

6. Prior to entering the legal profession, were you involved in any capacity with juvenile matters and/or domestic violence?

- Yes, please describe _____
- No _____

7. Rate the type of training you think would be beneficial for juvenile/domestic court judges on a scale of 0 to 10 with 0=No Importance and 10=Extreme Importance

- Child development
- Child neglect/deprived child actions
- Child physical abuse
- Child sexual abuse
- Domestic violence
- Effects of divorce/custody battles on children
- Psychological and/or behavioral health of children
- Psychological evaluations/assessments
- Psychological health of parents

8. In deciding issues of child custody, rate the importance of each of the following criteria when making your decision on a scale of 0 to 10 with 0=No Importance to 10=Extreme Importance

- Age of child
- Child physical abuse
- Child's preference for one parent over the other
- Child's testimony
- Difference in parenting styles
- Difference in parenting skill levels
- Impact of expert mental health testimony
- One parent actively disparaging the other parent to the child
- Psychological health of both parents
- Special needs of the child
- Substance/alcohol use by parents

9. In deciding issues of termination of parental rights, rate the importance of each of the following when making your decision on a scale of 0 to 10 with 0=No Importance and 10=Extreme Importance

- Child emotional abuse and neglect
- Child physical abuse
- Child sexual abuse
- Fundamental rights of parents
- Maintaining the integrity of the family
- Psychological health of the parents
- Separation of siblings
- Substance/alcohol abuse by the parents

10. In deciding whether to admit the testimony of a mental health expert based upon the standards of evidence, please rate the importance of each of the following factors on a scale of 0 to 10 with 0=No Importance and 10= Extreme Importance.

- The potential error rates of psychological theory are available
- The psychological theory/test has been generally accepted in the scientific community
- The psychological theory/test has been subjected to testing
- The validity of the psychological theory/test has been published in a peer related journal

11. Please rate the importance of the following mental health experts providing testimony in juvenile/domestic court cases on a scale of 0 to 10 with 0=No Importance and 10=Extreme Importance

- Clinical Social Worker
- Licensed Professional Counselor
- Psychiatrist
- Psychologist (Ph D)

12. When deciding admissibility of mental health testimony in juvenile/domestic court cases, which of the following standards of admissibility do you find most useful?

- Daubert v. Merrill Dow Criteria
- Frye v. United States Criteria
- Kumho Tire Criteria
- All
- No preference