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Family and Juvenile Court Judges and the Best Interests of the Child: Current Practices, Procedures, and Recommendations

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Current Practices, Procedures, and Recommendations

Jodie Comer Oshana, PhD

University of Connecticut, 2017

Children are involved in the legal system in numerous ways, most often in the child welfare system as victims of abuse or neglect or in the family court arena entangled in divorce and custody proceedings. These courts are guided by “the best interests of the child” standard, which over the last several decades has evolved as the prevailing doctrine impacting the outcome of legal cases involving children in the United States as well as internationally. Generally, the best interests of the child standard refers to the idea that the outcome of the legal action relative to the child should be the outcome that is best for that particular child. However, despite its prevalence, neither the courts nor researchers have yet to develop a comprehensive and uniform definition or method of application of this key legal tenet. Additionally, a gap in the literature exists in that judges are rarely studied directly, despite the high level of judicial discretion that exists in almost all cases involving children. This dissertation addresses these gaps in the literature by studying judges directly regarding the best interests of the child standard. Data collected from 25 qualitative interviews of family and juvenile court judges in one state revealed five emergent themes: the lack of related background in family and juvenile issues among the judges, the adequacy of a broadly defined best interest of the child standard, the uniformity of the most important factors in a best interests of the child analysis as identified by the judges, the varied levels of confidence among the judges in doing best interests of the child analyses, and the varied reliance on Guardians *ad Litem*—the professionals appointed by the court to represent the child in a given case. Findings from this study support numerous recommendations for policy

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reform, including additional training for judges in child development and family studies, the development of a judicial mentoring program, and the development of an empirically supported hierarchy of factors to consider in a best interest of the child analysis.

Family and Juvenile Court Judges and the Best Interests of the Child:
Current Practices, Procedures, and Recommendations

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i

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ii

APPROVAL PAGE

Doctor of Philosophy Dissertation

Family and Juvenile Court Judges and the Best Interests of the Child:

Current Practices, Procedures, and Recommendations

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Table of Contents

Approval Page	iii
Acknowledgments	iv
Introduction	1
Literature Review	4
Method	23
Research Questions	30
Results	30
Discussion	45
References	63
Appendix A: Initial Letter to Participants.....	73
Appendix B: Interview Topics.....	74
Appendix C: Consent Form for Participation.....	75
Appendix D: Interview Guide.....	78
Appendix E: List of Codes.....	81
Appendix F: Proposed Hierarchy of Best Interest Factors	82

Chapter 1: Introduction

The purpose of the current study is to explore the unique perceptions of family and juvenile court judges in one state regarding the utilization of the best interests of the child standard, the perceived strengths and weaknesses of the court system, and the reliance on Guardians *ad Litem*-- the professionals that are appointed by the courts to represent children. Prior research has suggested that the best interests of the child standard is ill-defined (Warshak, 2007), and that there are differing interpretations regarding the role of Guardians *ad Litem* in family and juvenile court cases (Hastings, 2004). Further, there have been very few studies conducted surveying judges directly on their perceptions of any aspect of family or juvenile dependency court, and no prior studies conducted investigating judges directly regarding the best interests of the child standard or the use of Guardians *ad Litem* in custody cases. The current study increases our understanding of how judges define, interpret, and implement the best interest of the child standard, as well as how much reliance there is on Guardians *ad Litem* in family and juvenile court cases. This knowledge contributes to the understanding of an understudied population on topics that are crucial to ensuring the needs and interests of children are protected in the legal system.

Background

Children are involved in the legal system in numerous ways, most often in the child welfare system as victims of abuse or neglect or in the family court arena entangled in divorce and custody proceedings. These children are vulnerable and deserve a court system that follows policies and procedures guided by empirical support. However, when reviewing the literature relating to children involved with the family or juvenile dependence courts, numerous concerns are highlighted. First, the judges of such cases are rarely studied directly. Family court judges

address child custody and visitation issues between parents/guardians who initiate court action because of their lack of ability to agree on such issues. Juvenile dependency court judges also address issues of child custody and placement (among other things), however such court action is initiated by the state as a result of abuse or neglect allegations. In both the family and juvenile court arenas, the judges have a high level of judicial discretion in the outcomes of the cases (Warshak, 2007). Given this level of judicial discretion, studying the perceptions of the judges directly is crucial to understand the court systems and make recommendations for meaningful future policy reform. Further, beyond the population surveyed, there are additional gaps in the literature that are concerning. Of particular concern is the lack of definition of the primary legal doctrine— the Best Interests of the Child— guiding the judges in family and juvenile dependency cases, the lack of professional clarity regarding the representation of children by a Guardians *ad Litem*, and the lack of identified strengths and weaknesses of the court systems.

Significance of the Study

As identified above, there is a gap in the child welfare literature as it relates to the perceptions and practices of the judges in family and juvenile courts. The current study begins to fill that substantial gap regarding this understudied population of family and juvenile court judges, gaining insight into the current practices and procedures being utilized. More specifically, the judges' practices and procedures were investigated as they relate to the best interests of the child standard, the use of Guardians *ad Litem*, and the perceived strengths and weaknesses of the current court systems. Additionally, the study allowed for a unique comparison of family court judges vs. juvenile dependency court judges. This comparison is interesting as it provides insight into the similarities and differences between the two groups of judges relative to how the best interest of the child standard is viewed and implemented, and how

Guardians *ad Litem* are viewed and utilized. Further, the comparison also provides insight into the differences between the two groups of judges in terms of balancing of interests of the child with the interests of the state and with the interests of parents/family. With the newly gained insight, recommendations are made for policy reform in hopes of improving the court systems for the vulnerable children they serve.

Chapter 2: Literature Review

Children are involved in the legal system in numerous ways, most often in the child welfare system, as victims of abuse or neglect, or in the family court arena, entangled in divorce or custody proceedings. The judges in such cases are charged with exercising the states' *parens patriae* power (Allen, 2014), which directs that courts must determine who should have custody of children and under what circumstances and conditions (Emery, Rowen, & Dinescu, 2014). In almost all jurisdictions, the exercising of said power is guided by "the best interests of the child" standard, which over the last several decades has evolved as the prevailing doctrine impacting the outcome of legal cases involving children in the United States as well as internationally. Generally, the best interests of the child standard refers to the idea that the outcome of the legal action relative to the child should be the outcome that is best for that particular child (Katz, 2014). It is intended to ensure that the focus remains on the individual child and his/her individual needs (Harmer & Goodman-Delahunty, 2014). However, despite its prevalence, neither the courts nor researchers have yet to develop a comprehensive and uniform definition or method of application of this key legal tenet.

History of Legal Standards in Child Well-Being Cases

Prior to the nineteenth century, children were considered the property of their fathers under the legal doctrine of *parental famillus* (Grisso, 1986). Fathers had legal responsibility to support, educate, and protect their children, both during marriage and after divorce. Fathers also had complete and sole discretion in terms of where the child(ren) lived during marriage and after divorce (Gould & Martindale, 2007). It wasn't until towards the end of the nineteenth century and the introduction of the "tender years doctrine" that children's interests were even marginally considered by courts.

The tender years doctrine, which has been noted to be an early variant of the best interests of the child standard (Krauss & Sales, 2000), entailed the presumption that the mother was best suited to care for the needs of the children, and therefore, mothers were deemed by courts to be the appropriate caretaker for their young children (Klaff, 1982). This presumption was a rebuttable presumption, meaning it determines the legal decision unless the opposing party can provide evidence to overcome the presumption. Therefore, a father could only gain custody of his children under the tender years doctrine if he could provide evidence and prove to the court that the mother was an unfit parent (Krauss & Sales, 2000). The tender years doctrine was the prevailing legal doctrine impacting the outcome of cases involving children until the 1970s, at which point the doctrine faced and failed significant constitutional challenges. Specifically, courts began to order that rules that were solely gender-based, such as the tender years doctrine, were unconstitutional as they violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution (e.g., *Schlesinger v. Ballard*, 1975; *Stanley v. Illinois*, 1972). Additionally, the growing awareness that gender does not exclusively predict parenting capacity and ability led to the demise of the tender years doctrine (Sales, Shuman, & O'Connor, 1994). Courts then moved from the gender-based tender years doctrine to the gender-neutral standard of the best interests of the child. By 1983, 43 states had adopted legislation incorporating the best interests of the child standard, and by the end of the century all 50 states had done so.

Although the best interests of the child standard is currently the most widely used legal doctrine impacting children, there are two other proposed legal standards that, despite not being widely accepted, are worth noting. First, during the years following the demise of the tender years doctrine, the “psychological parent rule” emerged. The psychological parent rule, as proposed by Goldstein, Freud, and Solnit (1973), asserted that the parent who provided the child

with emotional and environmental stability should be deemed the “psychological parent” and should be entitled to exclusive custody. Further, it was suggested that contact with the non-psychological parent should be limited or non-existent. Not surprisingly, this standard was not widely accepted by the courts and, in fact, has been explicitly contradicted by empirical literature (e.g., Amato & Keith, 1991; Kline, Tschann, Johnston, & Wallerstein, 1989). However, the notion of the psychological parent remains one important factor when considering the best interests of the child.

The second noteworthy proposed standard, referred to as the “approximation rule,” emerged primarily in response to concerns and critiques of the best interest of the child standard (Warshak, 2007). The approximation rule asserts that the court should allocate parental responsibilities so that the proportion of time the child spends with each parent post-divorce (or post-separation, for children of unmarried parents) approximates the proportion of time spent with each parent prior to the divorce/separation. Proponents of this standard believe its simplicity will aid the court process and reduce conflict; however, this standard has not in fact been widely accepted, as it explicitly excludes numerous factors that are relevant to the child’s interests (Warshak, 2007). Additionally, the empirical evidence does not support many of the assumptions that are embedded in the standard, such as that parents’ time available for the children will be the same pre- and post-separation (Kelly, 1994), and that the roles within the family will remain constant from pre- to post-separation (Braver & O’Connell, 1998). Even though not widely accepted as a legal standard, just as is the notion of the psychological parent, the notion of the history of the care taking is an important factor when considering best interests of the child standard.

Best Interests of the Child Standard Defined

The concept of the best interests of the child has become widely accepted and utilized in the United States as well as internationally as the standard when addressing legal issues involving children. Judges in juvenile and family courts are guided by the best interest of the child standard when making decisions about a child's custody or placement, as are custody evaluators and guardians *ad litem* that may be appointed to any case involving children (Goldstein, Solnit, Goldstein, & Freud, 1996). There is no doubt the best interests of the child standard is more advanced and more appropriate than the previously utilized parent-centered and gender-biased legal standards. However, despite the heavy reliance on this standard, case law and legal statutes have failed to adequately define the standard with any level of utility, allowing far too much judicial discretion (Warshak, 2007). This level of judicial discretion highlights the need to directly study judges regarding their perceptions and implementation of the best interest of the child standard.

The lack of definition of the best interest standard in the case law and legal statutes is two-fold. First, there is a lack of meaningful criteria or factors that should be considered when determining what might be in the best interest of a child. The case law or statutes that do address the best interest standard typically list only global criteria with no specific operationalization, and fail to give guidance as to how the criteria might be evaluated differently for different children and families, or how the professionals involved should go about obtaining information about such criteria (Goldstein et al., 1996; Jameson, Ehrenberg, & Hunter, 1997). Second, there is a lack of guidance as to what relative weight said criteria or factors should have when determining what might be in the best interest of a child (Harmer & Goodman-Delahunty, 2014). In fact, in each jurisdiction, the final outcome of cases involving children is made by unregulated

judicial weighing of that jurisdiction's particular statutory criteria (Grisso, 1986; Krauss & Sales, 2000). Notably, it has been asserted that due to said lack of definition and direction, the best interests standard is just as likely to exacerbate conflict as it is to facilitate genuinely appropriate and selfless decisions on behalf of children (Bartlett, 2002; Jellum, 2004). This ambiguity surrounding the best interests standard has created tension amongst the professionals working in the legal arena with children (Kushner, 2006); as a result, it is crucial that an appropriately and empirically based definition be developed for implementation across all jurisdictions.

Empirical Studies on Best Interests of the Child

The majority of research investigating the best interests of the child standard has been done in the context of custody evaluations and analyses performed for the court by psychologists (e.g., Brandt, Dawes, Africa, & Swartz, 2004; Jameson et al., 1997). This discovery is surprising, considering the fact that significantly more best interests analyses are conducted by Guardians *ad Litem*-- the professionals appointed by the court to represent a child in a given case-- due to their required appointment in all child abuse/neglect cases (Child Abuse and Prevention Treatment Act, 1975) and the high rate of utilization of Guardians *ad Litem* by family courts in contested custody cases. Although a limited number of studies have been conducted investigating the opinions or practices of the judges involved in the cases (e.g., Artis, 2004; Reidy, Silver, & Carlson, 1989), it is also surprising that more of the literature is not focused on this population, as every single case utilizing the best interests of the child standard has a judge that is making the final determination.

Regardless of the population studied, the best interests research primarily focuses on a more general overview of the professional's normative practices regarding the best interests of the child standard and which factors are considered as part of the best interest analysis.

Additionally, studies that investigate the relative weight of such factors are scarce in the literature, as are studies that go beyond the description of the best interests of the child standard to make recommendations for improved measure or applicability of the standard.

Typical Factors/Considerations of Best Interests Standard

The Uniform Marriage and Divorce Act (UMDA; 1973/1975), despite only being adopted in part and by only a handful of states (Levy, 1991), is a useful starting point in terms of insight into some factors that may be considered as part of a best interest of the child analysis. The UMDA outlines the following factors that should be taken into account in custody decisions: (1) the wishes of the child's parents with respect to custody, (2) the wishes of the child as to his/her custody, (3) the interaction and interrelationship of the child with his or her parents, his or her siblings, and any other person who may significantly affect the child's best interest, (4) the child's adjustment to home, school, and community, and (5) the mental and physical health of all individuals involved (Krauss & Sales, 2000). The UMDA does not, however, specify how much weight should be given to any of the aforementioned factors of best interests.

Beyond the factors outlined in the UMDA, many individual jurisdictions have added a number of other factors through individual state child custody statutes or case law (Ackerman & Ackerman, 1997) including but not limited to the identification of the psychological parent, the quality of the relationships between the parents and the child, the parenting skills of the parents, the ability of the parents to provide for the physical and emotional needs of the child, the mental health status of the parents, the presence of any substance abuse by either parent, the level of conflict between the parents, and the ability to provide continuity in the environment of the child (see Table 1, for a summary of 60 factors that have been considered as part of a best interests analysis, as reported by Jameson et al., 1997). As explained below, many of these factors are

supported by relevant empirical evidence which is crucial to consider when determining the best interests of a child.

Table 1

Top 60 Best Interests Criteria Rated as Being Most Important When Making Child Custody or Access Recommendations (Jameson et al., 1997)

-
1. Sexual abuse of the child by a parent
 2. Physical abuse of the child by a parent
 3. Child's views and preferences when child is 15 years or older
 4. The emotional needs of the child
 5. Each parent's ability to understand his or her child's needs and separate them from his or her own needs
 6. Each parent's ability to provide safe physical environment for child
 7. Overall quality of each parent's relationship with the child
 8. Child's views and preferences when the child is 12 to 14 years old
 9. Physical violence in the parents' relationship
 10. Each parent's current alcohol or drug use
 11. Each parent's psychological adjustment
 12. Each parent's ability to accommodate child's health needs
 13. Each parent's affection for the child
 14. Each parent's willingness to allow child contact with other parent
 15. Any fears the child has about current family situation
 16. The level of conflict between the parents
 17. The child's affection for each parent
 18. Child's views and preferences when child is 9 to 11 years old
 19. Physical handicaps or special needs of child
 20. Child's perception of his or her relationships with other family members
 21. Child's need to be with "psychological parent"
 22. Each parent's feelings of responsibility for the child
 23. Each parent's parenting style, including discipline practices and beliefs
 24. Child's need for relationships with brothers and sisters
 25. Parents' ability to cooperate with each other on parenting matters
 26. Willingness to share parenting responsibility after separation
 27. Child's views and preferences when child is 6 to 8 years old
 28. The child's desire to see grandparents and extended family
 29. Each parent's history of alcohol or drug abuse
 30. Each parent's ability to provide access to appropriate education
 31. The intellectual needs of the child
 32. Each parent's ability to maintain child's daily routine
 33. Extent of parent-child contact before separation
 34. The academic needs of the child
 35. Extent to which parents' new partners may contribute to parenting

36. Each parent's ability to maintain and encourage the child's interests and activities
 37. A parent's psychiatric history
 38. Each parent's capacity to contribute to child's moral development
 39. Each parent's willingness to provide contact with extended family
 40. The child's interest and preferred activities
 41. Parents' history of sharing parenting responsibilities
 42. The child's desire to see his or her friends
 43. A parent's childhood history of sexual abuse
 44. Parental pressure on the child to "choose" one parent
 45. Each parent's preferences for possible shared parenting plans
 46. The child's daily routine
 47. Child's views and preferences when child is 0 to 5 years old
 48. Each parent's access to support from family and friends
 49. Each parent's ability to provide access to other children of same age
 50. Extent of parent-child contact during separation
 51. Each parent's ability to provide the child with access to stable community involvement
 52. Each parent's ability to provide a "family environment"
 53. Each parent's understanding of child development
 54. A parent's childhood history of physical abuse
 55. Keeping a young child and mother together
 56. Each parent's financial sufficiency
 57. Each parent's sexual orientation
 58. Extent to which each parent is responsible for the marriage breaking down
 59. Keeping a parent and child of the same sex together
 60. Each parent's religious orientation
-

The work of Jameson et al. (1997) is unique and particularly useful in that they considered the best interests standard analysis in a way that is grounded in family systems theory. Family systems theory views the family as a dynamic system with interacting parts (Brooks, 1996), and the system must be understood as a whole. Jameson et al. (1997) are certainly not the first scholars to suggest that legal processes must be understood from a family systems theory perspective (Garber, 2010). That credit, in fact, belongs to the emerging field of therapeutic jurisprudence (see Winick & Waxler, 2003, for an overview). However, the work of Jameson et al. (1997) was the first to conceptualize the best interests of the child factors into three different categories derived from family systems theory: a structural-relational assessment (i.e., parent-parent relations and parent-child relations), a developmental assessment of the child,

and a functional assessment of the parents. With this conceptualization as a starting point, professionals tasked with applying the best interests of the child standard can better consider relevant empirical findings and their applicability to child well-being cases. Other researchers subsequently have identified similar factors as the crucial considerations in a best interests of the child analysis. For example, Klass and Peros (2014) identified the following factors as essential for each best interest of the child analysis: disposition of a parent to give care to a child, bond between child and parent, permanence of a family unit, moral fitness of a parent, time-sharing and bond promotion for the other parent, mental and physical health of the parent, school/education of the child, and preferences of the child. Despite the fact that every jurisdiction has their own specific list of factors/criteria for consideration, it seems the aforementioned criteria are likely to be the main considerations across all jurisdictions.

Empirical Findings Relative to Best Interests of the Child Factors/Considerations

A brief summary highlighting and summarizing the most important empirical findings is presented for the four most widely cited best interests of the child considerations: child's wishes, parental characteristics, parental conflict, and quality of parent-child relationship. Additionally, although less often investigated in the realm of the best interests of the child standard, empirical findings regarding the impact of the legal process are presented. Said empirical findings and implications for impact on a child's development and adjustment are then used in conjunction with the findings of the current study to develop a hierarchy of the best interests of the child factors regarding the relative weight that courts should place on each factor when making determinations about children (see Appendix F).

Child's wishes. Historically, the views or wishes of children were not taken into account when determining any child outcomes of legal cases (Larson & McGill, 2010). However, with

the development of the best interests of the child standard, states have implemented varied interpretations of how much, if any, weight should be given to children's views as part of the best interests of the child equation (Crosby-Currie, 1996). For example, some states require that the child's wishes be presented to the court, some states have no such requirement, and other states have presumptions about ages above which a child is presumed to be capable of expressing an intelligent decision (Larson & McGill, 2010). The empirical research reveals that the views/wishes of a child is one factor that is most often considered by professionals evaluating what is in the best interests of children (Ackerman & Pritzl, 2011). Significant research concludes that the wishes of older children rank higher in terms of importance and influence than the wishes of younger children (Ackerman & Ackerman, 1997; Ackerman & Pritzl, 2011; Gourley & Stolberg, 2000). However, some research suggests that although the child's wishes will almost always be investigated as part of a best interests of the child analysis, the wishes of children 15 years of age and under are currently considered either unimportant or only marginally important (Ackerman & Ackerman, 1997; Ackerman & Pritzl, 2011). Researchers appear to agree that the wishes of a 16- or 17-year-old should be accorded nearly dispositive weight (Larson & McGill, 2010). Therefore, it is clear that children's wishes should always be a component in a best interests of the child analysis, and increasing weight should be given to the children's wishes as a function of their age.

Parental Characteristics. There are numerous characteristics of the parents that need to be considered when making a best interest of the child determination. Most importantly and most often cited in the research are the parenting styles/skills and the parental functioning/impairment.

Parenting Styles/Skills. One of the best predictors of children's psychological functioning both in marriage and post marriage is the psychological adjustment of the parents as well as the quality of the parenting. The characteristics of warmth, emotional support, adequate monitoring, disciplining authoritatively, and age-appropriate expectations are all considered to be protective factors for children to help moderate any risk associated with the divorce, separation, or conflict of their parents (Amato, 2000; Hetherington, 1999; Kelly & Emery, 2003; Yeung, Cheung, Kwok, & Leung, 2016). However, for families involved in child well-being cases, it is extremely likely that there will be a focus on some aspect of poor parenting. There are two predominant foci found in the research relative to poor parenting skills as they relate to child outcomes: parental rejection and a parent's child-management style.

Parental rejection refers to emotional negativity and withdrawal in interactions (Davies & Cummings, 1994). Said parental rejection is linked with a host of negative outcomes for children (Miranda, Affuso, Esposito, & Bacchini, 2016), including reduced activity, passivity, low self-esteem, lack of self-control, and reduced social competence (Hetherington et al., 1992). Additional negative outcomes may include depression, externalizing behaviors, and school failure (Khaleque & Rohner, 2012). Problems with child-management refers to the practices employed by the parent to discipline, guide, and control his/her children. Parental involvement plays a crucial role in the self-control and development of children (Williams & Smalls, 2015). A lack of (or minimal) parental supervision and discipline is associated with increased child aggression and delinquency, and similarly, too strict discipline is also associated with child aggression and delinquency (Loeber & Dishion, 1984). From a positive child outcomes perspective, appropriate supervision and discipline leads to better academic performance

(Deslandes, Royer, Turcotte, & Bertrand, 1997; Maccoby, Buchanan, Mnookin, & Dornbusch, 1993).

A significant limitation to the applicability of the research regarding parenting abilities is that although it is generally acknowledged that the skills and abilities of the parents of the child are of utmost importance in the numerous aforementioned ways, there is considerable disagreement in terms of what constitutes effective or appropriate parenting (Grisso, 1986). Even though the research findings are clear, what one professional might consider “emotional negativity” or “strict discipline” might be substantially different from the views of another professional. Despite this limitation, given the potential negative outcomes for children, when considering the best interests of children it is imperative to consider the parent’s warmth or rejection towards the child, as well as the supervision and discipline techniques utilized by each parent.

Parent Functioning/Impairment. Beyond the parenting impairments relative to the parent-child interaction, there can also be parental impairments if there are any substance abuse issues present or any untreated mental health issues present. Parental mental health issues and substance involvement occur frequently in families involved in child well-being cases, often resulting in child problem behaviors (Zebrak & Green, 2014). Therefore, it is important to investigate what specific impacts this might have on the children of these parents.

Regarding substance abuse, the associations between parental substance abuse and negative child outcomes are well established (Osborne & Berger, 2009). Children whose parents abuse substances have a higher risk of insecure attachments (Das Eiden, Edwards, & Leonard, 2002), which has numerous negative impacts on the child’s future development, including higher risk of poor emotional and behavioral development (Stanger, Dumenci, Kamon, & Burstein,

2004). However, some researchers argue that it is not the substance abuse *per se* that contributes to the higher risk of the negative child outcomes, but it is the antecedent characteristics of the parents who abuse substances that is responsible for said association (Clark, Cornelious, Wood, & Vanyukov, 2004). Regardless of the causation of such association (if one could even be determined), the fact that substance abuse is associated with such negative outcomes for children deems it a significant factor to be considered in a best interests of the child analysis. Further, given the fact that antecedent characteristics of the parents likely do play a role, it is important to look at the family globally including the history and current circumstances and stressors of the parents. Additionally, given the safety risks for children that can be present with parental substance abuse, this factor should be weighted heavily in the best interests of the child analysis.

Regarding mental health issues, studies have suggested that a parent's mental health issues such as anxiety, depression or personality disorder are often positively correlated with his/her child's poor adjustment post-separation (e.g., Kline et al., 1989). Specifically, children living with parents with untreated mental health issues are at risk for increased impairments in the emotional, social, and academic realms (Hetherington, 1999). However, there have been studies that did not in fact find such a correlation (e.g., Bricklin & Elliot, 1995), and a parent's mental health diagnosis does not automatically predict how that mental health issue will impact or affect parenting (Rouf, 2014). Therefore, although clearly the parent's mental health status should be one consideration when assessing the best interest of a child, it should not be a primary factor as the empirical literature does not support it necessarily being a factor that has a significant impact on the child. However, if a mental health issue poses a safety risk for the child or impacts other areas of investigation such as level of parental conflict, greater weight should be given to this factor.

Parental Conflict. A high degree of conflict between parents has been proven to be one of the greatest threats to a child's post-separation adjustment (Davies & Cummings, 1994; Hetherington, Bridges, & Insabella, 1998). In fact, the negative outcomes for children often associated with divorce have shown to be more strongly correlated with the conflict that precedes and follows the divorce rather than with the divorce/separation itself (Emery, 1999). High conflict is even more likely to be destructive for children when the parents express their anger to the children, or are verbally or physically aggressive in the presence of the children (Johnston, 1994). The effects of said conflict include increased internalizing and externalizing problems in children, decreased academic performance, and decreased quality of social relationships (Emery, 1999). Furthermore, parental conflict may undermine the quality of parenting and the parent-child relationships (Stallman & Ohan, 2016), potentially exposing the children to the aforementioned associated risks. Parental conflict is also closely linked with parental mental health issues, substance abuse, and negligent parenting, each of which can have more detrimental effects on children than the conflict itself (Nielsen, 2017).

Despite the vast number of potential negative outcomes of parental conflict, the effects of the parental conflict on the children are highly dependent on the form of expression of the conflict, the resolution of the conflict, and the context of the conflict (Davies & Cummings, 1994). Therefore, it is crucial to consider not only the presence of conflict but each parent's ability and willingness to resolve the conflict. Further, it must be understood that pre-divorce conflict is not always a good predictor of the amount of post-divorce conflict (Booth & Amato, 2001). Therefore, when considering what arrangement is in the best interests of the child moving forward, the amount of current interparental conflict needs to be considered with the

understanding that the conflict may possibly either increase or decrease post-divorce, contingent upon other patterns and dynamics of the family.

Domestic Violence. When the level of interparental conflict intensifies, it can often rise to the level of domestic violence (Allen, 2014). Domestic violence has a significant impact on a child's adjustment (see Kelly & Johnson, 2008, for a review). Parents who engage in domestic violence towards the other parent are creating an environment that is associated with poor post-separation adjustment for their children (Amato & Keith, 1991), particularly if the child feels caught in the middle of the conflict (Bricklin & Elliot, 1995). Clearly, if domestic violence is present, this presents a safety concern not only for the direct victim of the violence but also for the children, and as such, this is a crucial consideration for any best interests of the child analysis.

Quality of Parent-Child Relationships. The quality of the parent-child relationship has been investigated in the context of how it pertains to the best interests of a child. The literature reveals the following factors as important to ensuring children's positive adjustment following the separation of their parents: a perceived (by the child) closeness to the custodial parent, low level of conflict between the child and each of the parents, an organized household with the custodial parent, and consistent expectations from each parent (Maccoby et al., 1993).

As previously noted, intense marital conflict has negative effects on children's adjustment, however said negative effects are substantially mediated through significant problems in the parenting of both mothers and fathers (Kelly & Emery, 2003). Mothers in high-conflict relationships tend to be less warm, more rejecting, and use harsher discipline with their children. Additionally, fathers in high-conflict relationships tend to engage in more intrusive interactions with their children (Cummings & Davies, 1994; Krishnakumar & Buehler, 2000).

These outcomes can have an impact on the attachments present between the child and parent, which of course has numerous implications for future adjustment and development.

Additionally, the parent-child relationship influences a child's internal working model which could in turn place the child at risk for subsequent mental health problems (Bradford, Burningham, Sandberg, & Johnson, 2016). As a result, the quality of the parent-child relationships must always be closely examined in any best interests of the child analysis.

Guardians ad Litem

In both the family court and the juvenile dependency court children often receive legal representation. This representation is often provided by a Guardian *ad Litem* (guardian “for the proceeding”), a professional who provides independent representation to children, generally by conducting an investigation and making a recommendation to the court regarding the best interests of the child. However, the specifics regarding who may act as a Guardian *ad Litem*, the role and responsibilities of a Guardian *ad Litem*, when an attorney vs non-attorney is more appropriately appointed as Guardian *ad Litem*, and the degree to which judges do/should rely on Guardians *ad Litem* remains unclear.

Guardians *ad Litem* have been increasingly involved in the representation of children in the legal system since the enactment of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974 (Haralambie & Nysse-Carris, 2002). CAPTA requires the appointment of a Guardian *ad Litem* in every dependency (abuse and neglect) case. Although the law requires such an appointment in abuse and neglect proceedings, it fails to specify who should and can serve as the Guardian *ad Litem*, as well as fails to determine the specific roles and responsibilities of a Guardian *ad Litem*. Further, in custody-related proceedings in the family court, the representation of children is not mandated by any rule of law, and state statutes that do address

the issue are usually similarly unclear or not well implemented. Absent mandated specifications and requirements, states are left to individually interpret and implement their limited guidance, resulting in wide variation in states' requirements for Guardians *ad Litem*. Different states have different guidelines and models for Guardians *ad Litem*, including some models that require Guardians *ad Litem* to be attorneys, some that allow Guardians *ad Litem* to be volunteers, and some that use paid staff as Guardians *ad Litem* (Karatekin, Gehrman, & Lawler, 2014). Additionally, states vary in whether the Guardian *ad Litem*'s role is only to represent the best interests of the child or if they are also mandated to represent the child's wishes (Duquette & Darwall, 2012). These variations in state requirements reflect the states' differing interpretations of the functions of a Guardian *ad Litem* (Hastings, 2004), highlighting the need for empirically supported uniform standards and requirements for all Guardians *ad Litem* that can be implemented nationally.

Previous empirical literature regarding Guardians *ad Litem* has focused primarily on two specific aspects of Guardians *ad Litem*: the roles and the responsibilities. Studies of the roles of Guardians *ad Litem* present mixed findings, although the most recent studies have concluded that Guardians *ad Litem* do represent the "best interest" of the child (e.g., Bilson & White, 2005). Studies investigating the specific responsibilities of the Guardian *ad Litem* highlight numerous and varying responsibilities, including finding facts, being a legal representative, monitoring cases, mediating, providing information to all parties, linking the child and family to appropriate resources, interviewing all relevant people involved in the case, advocating the child's wishes, advocating for the best interest of the child, enhancing the parent-child relationship, and preparing a comprehensive report for the court (Bourton & McCausland, 2001; Halikias, 1994; Haralambie, 1997; Harhut, 2000). However, these duties always are described in a broad context

as capacities in which a Guardian *ad Litem* may function, yet never mentioned as strict requirements. It is evident that the role and responsibilities of a Guardian *ad Litem* are not sufficiently defined in the literature. Additionally lacking from the literature are any studies investigating how judges view, appoint, utilize, or rely on Guardians *ad Litem* during family or juvenile dependency court cases. Given that judges make the decisions in every case regarding whether or not a Guardian *ad Litem* will be appointed, whether the Guardian *ad Litem* will be an attorney or a non-attorney, and how much deference will be given to the Guardian *ad Litem*'s recommendations, the population of judges is particularly crucial to study.

Research Focusing on Family or Dependency Court Judges

Most literature focusing on judicial decision making entails collecting information on the disposition of cases as opposed to directly surveying the individual judges (e.g., Sorensen et al., 1997). There have been very few studies conducted surveying judges directly on their perceptions of any aspect of family or juvenile dependency court. Of the studies that have surveyed judges directly, the majority are focused on psychological custody evaluations (e.g., Ackerman & Steffen, 2001). One study surveyed judges directly regarding the impact of a parent's sexual orientation on a child custody outcome (Raley, Fisher, Halder, & Shanmugan, 2013). In this quantitative study, judges in eight different states were given a brief survey regarding their views about parental homosexuality/bisexuality as it relates to child custody. The authors concluded that the judges displayed a wide range of understanding of the current literature on homosexuality/bisexuality and child custody, and suggested that there should be a focus on educating the courts on the current body of literature. Although not directly investigating the best interests of the child standard, this study proves to be a good example of how investigating judges directly can lead to awareness of any deficiencies in the court's

understanding or knowledge of important issues affecting the children and families involved in the court system.

Naughton, O'Donnell, Greenwood, and Muldoon (2015) studied family court judges directly through qualitative interviews regarding their constructions of the best interest of the child standard in custody cases, however the study focused specifically on domestic violence contexts and was conducted in Ireland. Therefore, the study has limited relevance to the current proposed study. Another study investigated family court judges directly through qualitative interviews, however the interviews were focused on judicial settlement-seeking practices and did not investigate anything related to the best interests of the child standard (Semple, 2012). Undoubtedly there is a need for studies directly studying family or juvenile dependency court judges specifically relating to the best interests of the child standard, Guardians *ad Litem*, and the strengths and weakness of the court system.

Given the lack of literature investigating the target population, the current study was exploratory. The study sought to examine family and juvenile court judges in one state regarding their perceptions of the court system, primarily regarding the implementation of the best interests of the child standard, the use of and deference to Guardians *ad Litem*, and the perceived strengths and weaknesses of the court system.

Chapter 3: Method

The current study explored the perceptions of family and juvenile court judges in one state regarding the utilization of the best interests of the child standard, the use of Guardians *ad Litem*, and the perceived strengths and weakness of the court system. The study utilized a phenomenological qualitative design. A phenomenological approach focuses on the meaning of the lived experiences for a group of individuals concerning a particular concept or phenomenon (Creswell, 1998), making it an appropriate approach for the population studied. Although this approach sacrifices uniformity of questioning, it yields the development of fuller, richer data (Weiss, 1994). The current study also incorporated a psychological approach, which finds individual experiences (as opposed to group experiences) central (Creswell, 1998). From the individual experiences of the judges the more general and universal meanings were derived. In the sections below, the qualitative methodology employed is discussed, including a description of the participants, the data collection procedures, the data analysis procedures, the ethical treatment of human subjects, as well as the strengths and limitations to the methodology.

Participants

The sample for the study was selected from the population of all family court judges and juvenile dependency court judges in one state in the United States (hereafter referred to as State X), which will not be named to protect the anonymity of the participants. Interviews were conducted with 25 judges. Inclusion criteria for the sample were that each participant had to be currently sitting in a family court or juvenile dependency court in State X, or must have presided over a family or juvenile dependency court in State X within the last two years. The sample was obtained using only currently sitting family/juvenile court judges, and therefore previous

family/juvenile court judges did not need to be utilized. Sex, ethnicity, and age were not considerations in selecting the sample.

Description of Sample. Interviews were conducted with 13 family court judges and 12 juvenile court judges, for a total of 25 participants. Sixty percent of the sample ($n=15$) was male, and 40% of the sample ($n=10$) was female. The age of the participants ranged from 47 to 75 years of age, with a mean age of 61 years. As displayed in Table 2, 80% of the sample ($n=20$) identified as White, 12% of the sample ($n=3$) identified as Black or African American, and 8% of the sample ($n=2$) identified as of Hispanic Origin. Out of the family court judges in the sample ($n=13$; see Table 3), 77% were male and 23% were female, with 85% ($n=11$) identifying as White and 15% ($n=2$) identifying as of Hispanic Origin. Out of the juvenile court judges in the sample ($n=12$; see Table 4), 42% were male and 58% were female, with 75% ($n=9$) identifying as White and 25% ($n=3$) identifying as Black or African American.

Table 2

Sex and Race/Ethnicity of Total Sample

	Male	Female	Total
White	11	9	20
Black	2	1	3
Hispanic	2	0	2
Total	15	10	25

Table 3

Sex and Race/Ethnicity of Family Court Judges

	Male	Female	Total
White	8	3	11
Black	0	0	0
Hispanic	2	0	2
Total	10	3	13

Table 4

Sex and Race/Ethnicity of Juvenile Court Judges

	Male	Female	Total
White	3	6	9
Black	2	1	3
Hispanic	0	0	0
Total	5	7	12

Procedures

The sampling method for the study aimed to select information-rich cases for in-depth study, and started with a few known participants and subsequent recommendations for other useful participants. Therefore, the sampling method is considered purposeful snowball sampling (Martella, Nelson, & Marchand-Martella, 1999). Specifically, the Head Judge of Family Courts in State X and the Head Judge of Juvenile Courts in State X were the first judges to be invited to

participate in the study. Those two judges were then asked to suggest other judges for participation, and at the conclusion of each subsequent interview the judges were asked to recommend other judges for participation. This process continued until 25 judges had participated. In total 27 judges were contacted to participate. It is of note that only two judges that were invited to participate in the study responded that they did not wish to participate.

The procedures for the interviews for the two known judges, the Head Judges of the Family Courts and of the Juvenile Courts, as well as all subsequent participants was as follows: An initial letter was mailed (Appendix A), serving as an invitation to participate in the study. One to two weeks later, a phone call was made to those who received the letter inquiring as to the judge's willingness to participate in an interview. The participants were given the option to participate in the interview either in-person or on the telephone. All participants elected for in-person interviews. For those indicating a willingness to participate, materials were immediately mailed or emailed (depending on participant's preference). Materials mailed or emailed included a letter highlighting the main topics/questions to be covered in the interview (Appendix B) and a copy of the consent form (Appendix C). On the day of the interview, a signed consent was collected from the participant before the interview began.

All interviews were conducted by the student researcher, who has a law degree and a background in family and juvenile law. The length of the interviews ranged from 31 minutes to 122 minutes, with an average length of 58 minutes. To conduct the interviews, each participant was first asked basic demographic information, including age, education level, etc. Beyond the demographic information, an interview guide was developed to cover the basic concepts and ideas to be discussed (Appendix D) to investigate the research questions. However, the interview guide served only as a guide and not a specific structure to follow, allowing for the

data collection process to be flexible, reciprocal, and in-depth. These intensive interviews were chosen as the data collection method due to their ability to elicit from the interviewee rich, detailed responses which are appropriate for qualitative analysis (Lofland & Lofland, 1995). All interviews were audiotaped and subsequently transcribed by the student researcher. All of the hard copies of the audio recordings were kept in a secure, locked location with access limited to only the student researcher. All of the transcriptions were stored on a locked computer, with access limited to only the student researcher, and they were backed up on an external drive, again with access limited to only the student researcher.

Data Analysis

The primary goal of data analysis for the current study was to understand the experiences and perceptions of family and juvenile court judges relative to the best interest of the child standard, the use of Guardians *ad Litem*, and the perceived strengths and weaknesses of the court system. An inductive approach was taken to analyze the data; that is, concepts were derived from the data. An issue-focused analysis was used, which, as described by Weiss (1994), is concerned with what can be learned about specific issues from any and all participants. The four main analytical processes used were coding, sorting, local integration, and inclusive integration.

As previously mentioned, the interviews were recorded and subsequently transcribed. The transcripts of the interviews were inputted into the qualitative coding program Dedoose to organize, condense, and view the data as well as to assist with coding the data. The data were coded in order to link what participants said in interviews to different categories and concepts. To code the data, open coding was first employed. This organizes the data into broad topic categories. Transcripts were reviewed for major ideas or concepts that emerged. A number of points of coding were determined (See Appendix E), such as “best interests definition” or

“strengths of system.” All codes were inputted into the Dedoose software, and then sections of each of the transcripts from all of the interviews were labeled throughout with the corresponding related codes. To sort the data, Dedoose was used to organize the data from multiple participants into homogeneous categories for all of the different codes. Following the sorting of the data, local integration was achieved. Local integration entails summarizing data on each code and stating a believed meaning from the data (Weiss, 1994). Finally, to bring coherence and meaning to all of the data and codes, a process of inclusive integration was employed. Inclusive integration identifies the major overarching themes and concepts that emerge from the data (Weiss, 1994).

Ethical Treatment of Human Subjects

The current study utilized human subjects; however, the risks that existed for the participants were minimal. Due to the fact that the methodology consisted of only background data questions and an interview concerning a professional in his or her professional capacity, there were no major risks. However, regardless of the low level of risk to participants, several strategies were used to ensure the confidentiality of the participants’ identities and to minimize any potential risk or harm. Consent forms (See Appendix C) were obtained from each interviewee prior to beginning the interview. A thorough description of the purpose, procedures, and intended use of the study was also provided to all participants verbally. After the interviews were recorded, the digital voice file containing the interview was transcribed as soon as possible (within a few days) by the student researcher and the tape or digital voice file was erased following successful transcription of the data. The only remaining records of the data were the transcriptions which contained no identifying information about the interviewees.

Human Subject Committee approval was obtained from the University of Connecticut in May 2017.

Chapter 4: Results

As previously noted, the current study explored family and juvenile court judges' perceptions of the court system, primarily regarding the best interests of the child standard, the use of Guardians *ad Litem*, and the strengths and weaknesses of the system. In this exploration, the analysis sought to answer the following research questions: (1) How do family and juvenile court judges understand, perceive, and implement the best interest of the child standard?; (2) How do family and juvenile court judges utilize Guardians *ad Litem*?; and (3) What are the strengths and weakness of the current court system as identified by family or juvenile court judges? In-depth discussion occurred investigating each of the research questions as well as investigating the education, training, and experience of each of the judges. Five themes emerged from the data. Below is a general overview of the data collected relating to the education, training, and experience of the judges followed by a specific and detailed discussion of each of the five themes that emerged from the data.

Education, Training, and Experience of the Judges

All of the participants had a minimum education that included a bachelor's degree and a juris doctorate. Beyond that, the education, experience, and training of the judges varied widely among the participants.

Education. To be a judge in State X, a bachelor's degree and juris doctorate are required. Therefore, all of the participants had this level of education. Most participants (80%; $n=20$) received their undergraduate degree in something unrelated to family or juvenile law, such as History, English, Philosophy, Political Science, Nursing, and Journalism. Few of the participants (only 20%; $n=5$) had degrees in fields that are related to family or juvenile law. Those related fields included Psychology ($n=3$), Social Work ($n=1$), and Sociology ($n=1$). Additionally, 20%

($n=5$) of the participants also had a Masters degree; however, only two were in fields related to family or juvenile law (Social Work and Education).

Training. Beyond the formal education of the participants, all of the participants participated in the trainings for judges provided by the State Judicial Branch. The State Judicial Branch provides, as noted by one participant: “I want to say on average at least three to five trainings a year through the branch, because one in June, one in the fall, usually something else thrown in. The one in June we have to go to four courses.” Another participant further elaborated:

We have a Judicial Institute once a year, which is two days of training in our specialty. It’s pretty much mandatory. Every once in a while you have to stay behind and do arraignments. And then we have fall training, which is usually a half-day or a day, and spring training, which is a half-day or a day. And then the branch offers—what do you call it? Occasional training. We can go if we want, or not.

The most significant training offered to the judges in State X is the Judicial Institute training. As one participant noted:

The Judges Institute is two days, and that’s all judges come together. And it’s two days. It’s broken up into plenary sessions, and then breakout sessions on topics that are going to be specific to, more specific to one or more disciplines than the others. So, in juvenile we presented two specific, specifically targeted juvenile court topics. And they do the same for family judges.

The annual Judges Institute covers numerous and varying topics related to family and juvenile law, including domestic violence, addiction issues, adolescent brain development, childhood trauma, etc. The other trainings offered by the Judicial Branch throughout the year seem to be more focused on evidentiary issues and reviews of important and recent case law.

The majority of the participants had no or only minimal training beyond what was provided by the Judicial Branch. In fact, only 20% ($n=5$) of the participants identified any additional training beyond what is provided by the State Judicial Branch. Those participants that

did have additional training sought out such trainings on their own, which were voluntary and included mediation trainings and trainings provided by the Association of Family and Conciliation Courts.

Experience. Beyond the educational background and the training of the judges, the range of experience among the participants was wide. There was a wide range both in terms of experience as a family or juvenile court judge, and also in terms of previous experience as a practicing lawyer in either family law or juvenile law.

Experience as a Judge. Among the total sample, the number of years of experience as a judge ranged from 2 years to 24 years. The mean years of experience as a judge among the total sample was 12.32 years.

Among the family court judges that participated ($n=13$), the range of number of years of experience as a judge was 2 years to 21 years, with a mean of 9.69 years. The mean years of experience specifically as a family court judge was 7.38 years, with a range of 1 year to 14 years.

Among the juvenile court judges that participated ($n=12$), the range of number of years of experience as a judge was 8 years to 24 years, with a mean of 15.17 years. The mean years of experience specifically as a juvenile court judge was 9.12 years, with a range of 2 years to 21 years.

Experience as a Family or Juvenile Lawyer. Prior to becoming judges, all of the participants had experience practicing law. However, this experience varied significantly among the participants. The mean number of years practicing law among the total sample was 22.12 years, with a range of 12 years to 35 years.

Among the family court judge participants, 62% ($n=8$) had prior experience practicing family law as a lawyer, and 46% ($n=6$) had experience practicing juvenile law as a lawyer.

However, 38% ($n=5$) had no prior experience practicing family law as an attorney, and 31% ($n=4$) of the family court judge participants had no prior experience as either a lawyer practicing family law or as a lawyer practicing juvenile law.

Among the juvenile court judge participants, only 17% ($n=2$) had prior experience practicing juvenile law as a lawyer, while 33% ($n=4$) had prior experience practicing family law as a lawyer. Eighty-three percent ($n=10$) had no prior experience practicing juvenile law as a lawyer, and 58% ($n=7$) of the juvenile court judge participants had no prior experience as either a lawyer practicing juvenile law or as a lawyer practicing family law.

Emergent Themes

Through the process of inclusive integration (Weiss, 1994), five major overarching themes emerged from the data: (1) the lack of related background in family and juvenile issues, (2) the perceived adequacy of the broadly defined best interests standard, (3) the uniformity of the most important factors in a best interests of the child analysis, (4) the varied confidence levels of the judges in performing a best interests of the child analysis, and (5) the heightened importance of Guardians *ad Litem* in the family court setting.

Theme #1: Lack of Related Background in Family and Juvenile Issues

It is clear from the data that the family and juvenile court judges in State X are lacking in terms of related education and experience prior to becoming a judge, as well as lacking sufficient training in family and juvenile law once being appointed to the bench.

As noted previously, the majority of the participants had little to no related experience prior to being assigned to a family or juvenile court. There was certainly a range of prior experiences among the participants, however the complete lack of prior experience for some of the participants was alarming. One family court judge noted:

I said when this [family court] assignment came up, I said, “Well, I have a family, but that’s all.” That’s all I bring to this. I have no background whatsoever, professionally or otherwise, in dealing with these kinds of issues. So I really need the help of Family Services and the GALs.

Similarly, another family court judge commented on his lack of prior experience:

I had no experience before getting my family court assignment, and I mean none. I never practiced a day of family law or juvenile law in my life. I never had any trainings or any courses at all. I got the bench book and an afternoon with an experienced family judge to explain the ropes to me. That was it.

Alarmingly, this was not a unique experience, as another participant noted almost the same scenario after being assigned to the family court:

I didn’t have any training. A couple of judges gave me scripts, just so I wouldn’t be stumbling over myself when I first got on the bench.

Almost all of the participants noted that it would be helpful to have additional training upon assignment to the family court or juvenile court. There are currently several trainings offered through the Judicial Branch, however it does not seem it is sufficient. One participant commented:

I think that first there should be some more formal training for new family or juvenile court judges. We go through judges’ school when we first become a judge for three weeks, four weeks, whatever it is. There’s the information about your retirement and how to turn on your computer, and stuff like that, but all of the legal stuff is criminal, because everyone’s going to start off doing criminal. But I don’t remember there being much, if anything, about family or juvenile law.

It is clear that additional measures need to be taken to ensure that the judges who are sitting in the family court and the juvenile court have a sufficient baseline of knowledge of the crucial issues that the families in family and juvenile court are facing.

Theme #2: Adequacy of a Broadly Defined Best Interests of the Child Standard

As noted in the literature, the best interests of the child standard is not well defined. The overwhelming majority of the participants agreed that the definition was vague; however, the majority of the participants also believed that the current level of definition of the standard is adequate and appropriate. The data also reveal that there is no guidance regarding the weighing of different factors that are present in any particular case.

Broad yet adequate definition. All participants acknowledged that the current definition of the best interests of the child standard is broad. Despite this acknowledgment by all participants that the best interests of the child standard is broadly defined, 84% ($n=21$) of the participants felt that the best interests of the child standard is in fact *adequately* defined. Many participants pointed to different factors that are outlined by statute as possible considerations, but beyond that there was not an identifiable specific definition of the standard. When asked if the best interests of the child standard was adequately defined, one family court judge responded:

Adequately defined? That's a very complex question, because—and the simple answer is yes. But I acknowledge that it is necessarily vague and nebulous, because children are unique, and their circumstances are unique because they're different individuals; they're born to different families and different individuals, and the permutations of all of those variables are practically infinite. So, the best interests standard has to be broad, it has to be flexible enough to encompass all of these different possibilities and circumstances. So again, simple answer is, yes.

Several participants felt strongly about not having a more precisely defined best interests of the child standard. One participant noted:

I don't want it further refined and defined because it would take discretion, necessary discretion, away from the people who have to exercise that discretion.

Similarly, another participant commented on a perceived danger of defining the standard to a greater level of specificity:

I think that's maybe a loaded question, because if you ask me to define it I would say the standard is considering the child's safety, welfare, and health. And I think that's really broad, so maybe it's not well-defined, but then I think there would be a danger in defining it more, because defining it more means limiting what you're considering. You just see so many unique cases, or so many different cases, where those three elements involve sort of different things. I don't know how you would define it more, I guess is what I would say. I think it's sort of a safe range, safety, health, and welfare, and wellbeing of the child. I think that's a safe range to give a judge probably the discretion to argue that they're doing this for this reason, and it falls into sort of one of those things, the safety of the child. I don't know. I think there would be a great danger in defining it any more.

No Guidance on Weighing Factors. Beyond the broad definition of the best interests of the child standard, one must consider how the multitude of factors in the analysis will be balanced against each other. As noted in the literature, there is a lack of guidance as to what relative weight the criteria or factors should have when determining what might be in the best interest of a child (Harmer & Goodman-Delahunty, 2014). In fact, the literature contends that the final outcome of cases involving children is typically made by unregulated judicial weighing of that jurisdiction's particular statutory criteria (Grisso, 1986; Krauss & Sales, 2000). This was found to be true in the present study, as all of the participants explained that they used their own discretion for how to weigh different criteria, and that it was simply done on a case by case basis. One participant explained:

I don't think in our job that we want to be told, "You give 50 percent here; you give ten percent here. This is less important; this is more important." What it says is these are all of the factors you have to consider. Use your best judgement and apply them to the facts, and then come to a conclusion. So if I was asked, do you, "How much weight did you give to this versus that?" I give weight to all of the factors, and consideration to all of the factors, and then come to a conclusion on a case by case basis.

As another judge noted regarding the weighing of different factors in a best interests of the child analysis:

I don't know if I give more weight to any one factor over another. I think I take it as a whole, and look at it from the point of view of taking all of these things into consideration with what I think is best for the child. So do I give more weight to housing

than harm presented? Or to a child's mental health? A child in a good home could be mentally abused. So I think you have to kind of look at everything from a holistic point of view, and determine what you think is best.

None of the participants responded with any indication that there was any sort of guidance on how to weight different factors in a best interest of the child analysis. There is a vast amount of judicial discretion in not only how the best interest of the child standard is defined and what criteria are considered in the analysis, but also in how the different criteria will be weighed against other factors and criteria.

Theme #3: Uniformity of Most Important Factors in Best Interests of the Child Analysis

Despite the broad definition of the best interests of the child standard and the individualized manner in which all of the judges weigh the different criteria of the standard, there was consistency among the responses from all of the judges in terms of the most important factors that will be considered in the analysis. All of the participants noted physical safety as one of, if not the most important factors. Additionally, common responses regarding the most important factors in a best interests of the child analysis included emotional safety of the child, health of the child, psychological well-being of the child, the basic needs of the child being met, the relationships between the child and the caregivers, and permanency. For example, when discussing what factors are the most important in a best interests of the child analysis, one judge explained:

A child's safety is essential. If a child's not safe in a safe setting, that's not in the child's best interests. The child has to have basic material needs met. And then you'd look at more intangible aspects that go to each child's ability to grow up, physically, emotionally, and psychologically healthy so that they can be a productive, fulfilled, contributing member of society.

Another judge had a similar response when asked what factors are the most important when doing a best interests of the child analysis:

I mean, obviously, when you look at the mandate of child protection, there's three overarching goals that we strive for in every single case. It's the safety of the child, and it's the finding permanency for the child, and obtaining the optimal overwhelming well-being of the child. So, if you keep those three goals as your objective in each and every case, that's really the priority. That's the way we have to—if the child isn't physically safe and emotionally safe, it doesn't really matter about the other two. And then if you can achieve physical safety and emotional safety, then you do have to look at permanency, because without permanency you're going to erode the first goal that you've already obtained. And then if you've got the physical safety and you've got the permanency, have you done it such a way to ensure and guarantee the overall well-being of the child? So, that's how I look at every single, and not necessarily in that order, because they're all kind of interrelated, but if I had to prioritize them it's, that would be the way in which I prioritize them.

Similarly, another judge noted:

The first thing I'm concerned about is the physical safety of the child. The second thing is the emotional health and safety of the child. Those two things are far and away ahead of anything else. After that, it's sort of the—this is trite, but it's the totality of the circumstances. Because there are some plusses, some minuses, when you start weighing the factors, well, the child does well here but not so well there. Dad's a positive in these matters, and Mom's a positive in these matters, but maybe a negative in these matters. So, it's very factually driven.

It is clear that there is a consensus among the participants in terms of the most important factors or criteria when doing a best interests of the child analysis. However, there was one criteria that was mentioned as very important by some participants and was regarded as not very important by other participants: the rights of the parents.

Balancing Parents' Rights. There was no consensus among the family court judges nor among the juvenile court judges with regard to how the parents' rights play into the best interests of the child analysis or how the rights of the parents would be balanced against the best interests of the child. Some participants were very adamant that the rights of the parents are secondary (at best) to the rights and best interest of the child. For example, one participant commented:

I don't care about the parents' rights. Well, that's too absolute. They're a very distant second. My first concern is the kid, their kids.

Similarly, another judge discussed the philosophy that the rights of the parents are secondary to the best interests of the child:

Well, I have a hard time with the rights of the parents, and that kind of a phrase. I recognize that there are parental rights, of course. But in light of the best interests standard, and if we truly adhere to a best interests of the child, it should be the parents who chose, consciously or unconsciously, to bring this child into the world, for them to make any sacrifices that are necessary, and to completely, if possible, protect the child from the consequences of the parents' choices. So when a parent isn't doing that and they are fighting in family or juvenile court, their rights are absolutely secondary to the best interests of the children. So the parents' inability to put the child first makes it easier for me to make that decision of giving much more weight to the best interest of the child rather than the parent's rights.

Conversely, many other participants viewed parents' rights as more equitable to the children's rights or best interest of the child, and thus found it challenging to try and balance the different interests/rights in any given case. Many commented on how particularly challenging it is to consider the rights of the parents when doing the best interest of the child analysis. One family court judge explained:

Well, before you even get to the best interest analysis you have to deal with the fact that the parents have rights here. And any time the court interferes with parental rights and a child, you have to have a really good reason to do that. But for example, relocation. You have to not just determine that somebody has a parent-like relationship with the child in order to consider a motion for relocation, a parent-like relationship with the child, and that the other parent's going to be detrimental, if you're going to give custody over to somebody you say is a non-parent. So, parental rights are very, very important. I mean, it goes all the way up to the Supreme Court, and we are always mindful of that. Ultimately, the best interests decision is made between two parents, and you have to pick one over the other. So it's very difficult. It's not an easy decision. These are not easy decisions to make.

Similarly, one juvenile court judge described how challenging it was to handle the rights of the parents, which he considered to be embedded within the best interests of the child standard:

The child's interest and the parent's interest, that's very, very challenging. I mean, children have a strong—first of all, the law tells us that the standard is what's best for the child, but what's best for the child is, unless there's a reason not to, to have a strong

connection with both parents, which reflects the parents' interest, and the parents have their—in family cases, still they have this fundamental constitutional right to rear their children. And it's not surprising the United States Supreme Court said that because it recognizes a really important value. But in terms of deciding, how you decide what happens to children in the family case, the law subsumes the parents' interest under the best interests of the child. But I think the best interests of the child standard—and we recognize this in family and juvenile cases also. The best interests of the child standard incorporates them because the best interests standard takes into account the genetic connection to the parent, the contact the child has had with the parent, the child's interest in ongoing contact with the parent. And those are just mirroring the parent's own interest in those. So I would say the parents' interests are sort of embedded within the best interest of the child standard.

One judge that had experience as both a family court judge and a juvenile court judge commented that perhaps it is easier to balance the rights of the parents with the best interest of the children in juvenile court than it is the family court for the following reason:

I would say that the parents in juvenile court are more damaged than the parents in family court. There are typically serious impairment issues—I would say most of the time it's substance abuse: driving while intoxicated, serious drug abuse where they're passing out, or leaving needles around. Those are the major issues. Less frequently is physical abuse, but more frequently is a parent or parents who are drug addicted, and simply can't care for the child. Occasionally it's a parent who either has a physical disability or a mental disability, and they can't get out of bed to either take care of the kids, or make sure they go to school. So I think it's easier to balance the parents' rights in juvenile court because it's more clear-cut. Family is more subtle so it's harder to balance the rights of the parents against the best interests of the children.

These results have highlighted the fact that there is little to no guidance on how judges should be considering and balancing the rights of the parents with the rights and best interests of the children.

Theme #4: Varied Levels of Confidence in Doing Best Interests of the Child Analyses

The level of confidence when performing best interest of the child analyses varied considerably among the participants. Responses ranged from not feeling highly skilled to thinking they make the correct decision in every case. Surprisingly, the level of confidence was not correlated with related experience; some of the participants with the least amount of

experience had high confidence levels, while other participants that had a significant amount of experience were less confident. For example, one of the participants with the least amount of related experience commented “I was a trial lawyer for 30 years. I have an ego bigger than Montana, so I think I get it right all the time.” Conversely, another judge with little related experience expressed “I honestly don’t feel highly skilled at doing the analysis.”

Other judges explained how their level of confidence had changed over time. Some judges expressed increasing levels of confidence over time. For example:

In the eighth year of my term, more confident than when I began. The experience is invaluable. The insight that I think a perceptive judge gains is palpable.

In contrast, other judges expressed decreasing levels of confidence over time after presiding over difficult cases. For example:

It’s changed in the last two years. I thought I was pretty good at it for a while and was fairly confident, but I’m not sure about that anymore. I just think that we make too many decisions with too little information. I say that all the time. So again, it’s impossible to tell who’s telling the truth. I’m sure there are some judges who are way more confident than me. I would say I’m less confident now than I used to be.

Finally, some judges described confidence in terms of their effort and approach to the case rather than in terms of confidence in the outcome of the case. One participant explained:

Confident is an interesting word. I’m confident that I’ll do my best, but in a lot of instances it’s absolute crystal clear, when you’re dealing with abused or neglected, or uncared for children, what’s best. They have to be extricated from the situation where they’re being abused, or neglected, or uncared for. So, in a lot of juvenile cases the issue is, were they abused, or neglected, or uncared for? But in a lot of other cases it may not be as obvious, and in those cases you feel less confident I guess about the outcome. But I’m always confident that I’m doing my best.

It is interesting that the levels of confidence varied so considerably among participants, and that the level of confidence was not correlated with amount of experience. Further, it is

interesting that the level of confidence does not necessarily increase over time; for some participants the level of confidence decreased over time.

Theme #5: Varied Reliance on Guardians *ad Litem*

When determining the best interests of the child in any given case, it is common for a Guardian *ad Litem* to be representing the child(ren). In State X, the family and juvenile courts both use Guardians *ad Litem* to represent children but in slightly different ways. In the family court, a Guardian *ad Litem* is appointed in some cases, but not all, and the appointment is at the discretion of the judge when there are disputes between the parents as to the custody and/or care of a child. In the juvenile court, an attorney is appointed for every child in every case, however the role of that attorney more of a hybrid-role, combining the role of an advocate (advocating for the child's expressed wishes) and a best interests role. Guardians *ad Litem* are typically only appointed in the juvenile court when the hybrid-role attorney feels that his/her role is in contradiction with the best interests role (i.e., what the child is expressing that they want is not viewed to be in the best interest of the child), in which case the hybrid-role attorney could request that a Guardian *ad Litem* be appointed. Therefore, there is a greater utilization of Guardians *ad Litem* in the family court than in the juvenile court. Additionally, there is a greater reliance on Guardians *ad Litem* in the family court than in the juvenile court. However, regardless of working within the family or juvenile court setting, all participants identified similar characteristics that defined high quality Guardian *ad Litem* work.

Reliance on Guardians *ad Litem*. The majority of family court judges discussed how important the role of the Guardian *ad Litem* is and how crucial they can be to determining the best interests of the child. One family court judge noted "I always rely on them. I don't necessarily always follow them. But it would be an exception if I come to a different conclusion

than they do.” Another family court judge commented that “I believe that they do an invaluable service to the court by providing it with what I believe to be appropriate and accurate information regarding the needs and best interest of the child.” Guardians *ad Litem* appear to provide a necessary and crucial service to the family court, as explained by one participant:

GALs will often be able to help settle the case, or come up with a coherent parenting plan, better than I could in a self-represented trial. Most cases in the family court have two self-represented people. It usually denigrates to the parties yelling at each other, and we keep saying, as a judge, “Please talk to me. This is not a forum for me to witness your fight. It’s a forum for you to give me information.” But when they try and question each other or call witnesses, it’s not good. So a Guardian *ad Litem* in those cases is really important in the family court in being able to sit the people down and discuss what they want to do, and how to accomplish that, and how to make the entire process go smoothly.

In the juvenile court, Guardians *ad Litem* are not only present in fewer cases, but in the cases where they are present they are not relied on as heavily. One juvenile court judge explained:

Here I also have a state agency charged with child protection issues, full of people who are educated in this area, who are writing me reports, who have a supervisor sometimes here, a social worker here, the attorney general, all advocating on what they think is in the best interests of the child. Family, you don’t have that. You have two *pro se*’s, and you don’t have outside eyes other than these two people telling you sometimes really whacky things, that you don’t know what to believe. Here you have this agency that’s neutral, in terms of like they have no skin in the game as to who gets the kid, or making up stuff. So you don’t need the GAL in juvenile as much as you do in family.

Characteristics of High Quality GAL work. Whether discussing Guardians *ad Litem* in the family court or in the juvenile court, all of the participants identified similar characteristics that they believed were indicative of high quality Guardian *ad Litem* work. Such qualities include the ability to listen, empathy, thoroughness, responsiveness, ability to work with and educate the parents, ability to remain neutral, and mediation skills. For example, one judge commented:

They have to listen. They have to be able to listen. And, I don't mean just let people talk, but listen to what they're saying. They have to work very hard to develop a relationship with the child, assuming the child's old enough to develop a relationship. They've got to be dead-center neutral up until the point where it's not appropriate to be neutral anymore. And then they've got to be, they have to be clear and forceful in their—forceful is not the right word. They certainly have to be clear in the position they're taking and why they're taking it.

Along similar lines, another judge explained:

Well, the most important thing is that they're thorough in their investigation, to obtain as much information as possible. The other thing that maybe seems obvious is they have to be good at standing in between the parents, doing their job, without alienating one or the other of the parents. It takes a certain personality to be able to do that.

Another judge discussed the extreme importance of empathy and communication for a

Guardian *ad Litem*:

Empathy. Empathy and the ability to communicate on a level that a conflicted parent can understand. So if there is a guardian who is empathetic, you're going to find an effective way to communicate the needs of the child to the parent. They're going to educate on a general basis to how the court process works—those are the best ones—and they're going to thread the needle in the solution while protecting the child from conflict. And if they are truly successful, they enlighten each parent, so that they might fight and they might squabble, but never anywhere near the child, so the child can absorb the conflict or even perceive the conflict. That takes remarkable, dedicated, and skillful people. They give of themselves. They give of their time, and generally they don't make any money.

It was clear that regardless of whether the Guardian *ad Litem* was performing work in the family court or in the juvenile court, the same set of characteristics were important. The judges all viewed the same attributes and characteristics as being indicative of high quality Guardian *ad Litem* work regardless of any particular judge's use of or reliance on Guardians *ad Litem*.

Chapter 5: Discussion

After considering the themes that emerged from the data in the current study, it is important to consider the data and results as they relate to the three main research questions: (1) How do family and juvenile court judges understand, perceive, and implement the best interest of the child standard?; (2) How do family and juvenile court judges utilize Guardians *ad Litem*?; and (3) What are the strengths and weakness of the current court system as identified by family or juvenile court judges? Beyond answering the research questions, the results of this study inform several recommendations for policy reform in the family and juvenile court systems. Additionally, there are several implications for future research that are noteworthy.

Research Question #1: Perception of the Best Interest of the Child Standard

As noted previously, judges in juvenile and family courts are guided by the best interest of the child standard when making decisions about a child's custody or placement (Goldstein et al., 1996); however, neither the legal system nor researchers have yet to adequately define the standard with any level of utility or uniformity (Warshak, 2007).

The judges that participated almost uniformly agreed that the best interests of the child standard is not well defined, however the majority of the participants also felt that regardless of the vague nature of the standard, it is in fact *adequately* defined. Specifically, 84% ($n=21$) of the participants felt that the best interests of the child standard is in fact adequately defined, despite being somewhat vague in nature. As one participant noted, "Yes it is adequately defined. I mean, having said that, it's not explicitly, definitively defined, but I think it's broad enough that it allows the court to exercise its discretion." In fact, many participants spoke of a perceived inability to further define the standard. For example, one participant stated:

A statutory definition of what's in the child's best interest I think would be almost impossible to put into writing. I think that what's in the child's best interest is: what

does the court believe, based on the evidence, and the testimony, and the recommendations provided? What should be an appropriate decision regarding the needs of the child? I don't think there is adequate space in a statutory basis to say, "These are the things that the court must consider as what is in the best interests of the child." I don't think you can do that.

The majority of the participants had similar sentiments regarding the ambiguity of the statute being necessary. Most participants felt that the guidance that is provided in the statutes and case law was minimal yet sufficient, as the judges need to have discretion and flexibility to effectuate the best interests of the child. As one participant noted:

Not that I have a philosophy, but if I did, it would be that if you're really taking the best interests of the child to heart, trying to figure out what that is, and crafting a decision that promotes the best interests of the child, you've got to think outside the box. You can't just look at the statutes and the case law. Because, it's cliché to say every child's different, but particularly because every child has a different relationship with his or her parents, and they have a different relationship. So what works in one situation, it would be really easy to say, "Every time I see this, this, this, and this, I'm going to do that, because I don't have to think about it as much, I can become consistent." But that kind of structure would be almost giving up the best interests of the child.

However, 16% of the sample ($n=4$) did feel that the best interests of the child standard was not adequately defined and expressed concerns with the level of guidance provided. For example, one participant expressed:

I will say this candidly, that quite often judges are called to make too many decisions with too little information. I've said that on the record; I've said that privately. So, that's why you hope that you get help from Family Relations. You hope that you have a competent Guardian *ad Litem*. If it's a really complicated case, you hope that you get a psychological evaluation and recommendations. So, I would always hope that I could get help from—as much help as I could get. If you don't have it, you just need to do the best that you can. But candidly, there's no magic formula. And there is not enough guidance.

Another participant expressed concern that perhaps the high level of judicial discretion might be problematic. As noted by that participant when discussing how the individual background and experiences of a judge might influence the best interests of the child analysis:

I think that in order to enforce the law and to act in the best interests of the child, the judge needs additional gloss. A statute alone is fairly sterile. But I think life experiences, particularly, in my case being a parent, gives me some slant on what is in the best interests of the child. The unfortunate thing is you might have a completely different slant on what's in the best interests of the child based on your experiences, even though we both look at the same statute.

Overall, the overwhelming majority of the participants did feel that the best interests of the child standard is in fact adequately defined, despite the lack of a specific or detailed definition. The acknowledgment of the loosely defined standard is consistent with the literature on this topic, which highlights the lack of definition and guidance for the standard (e.g., Lamb, 2014; Scott, 2014; Warshak, 2007). There is some acknowledgment in the literature that there is value in the vague best interests of the child standard, as it allows for individualized considerations of every child and allows for the adaptation of new knowledge or research that may emerge (Warshak, 2011). However, the literature also highlights that said loose definition is problematic in that it provides too much judicial discretion (e.g., Warshak, 2007, 2015) and leads to the best interests analyses being influenced by the judges' personal opinions and characteristics (Godbout, Parent, & Saint-Jacques, 2015). As discussed further in Theme #2, the findings of this study contradict the literature in that regard, as the participants in the current study reported that the amount of judicial discretion was not problematic but rather was necessary to effectuate the best interests of the child standard. Additionally, as discussed in Theme #2, none of the participants responded with any indication that there was any sort of guidance on how to weight different factors in a best interest of the child analysis. There is

undoubtedly a vast amount of judicial discretion in not only how the best interest of the child standard is defined and what criteria are considered in the analysis, but also in how the different criteria will be weighed against other factors and criteria. Due to this lack of definition and direction, the best interests of the child standard might be just as likely to exacerbate conflict as it is to facilitate genuinely appropriate and selfless decisions on behalf of children (Bartlett, 2002; Jellum, 2004).

Recommendations related to research question #1. It is crucial that a guideline regarding a hierarchy of the best interests of the child factors be developed, with training or research provided on each of the factors. It is obvious from the results of this study that there is no particular set formula that will be successfully applicable to all cases and that the standard needs to remain somewhat broad, but it is also clear that there needs to be some empirically supported guidance for the judges in terms of the relative weight to give to different factors. Although there were certain factors that were consistently viewed among the judges as the most important (i.e. safety of the child), there are also several additional factors that empirical research supports as significant and important factors (i.e., attachment issues) that were not identified by any of the judges. A proposed hierarchy of factors is attached (see Appendix F). This proposed hierarchy would not be a set formula that has to applied, but rather an empirically supported framework for judges to assist in determining what factors might be more important than others in a given case. It could serve as a basic framework from which individual cases may be analyzed, however it would not be a set formula with specific weight assigned to any specific factors. Appendix F provides a proposed hierarchy of factors, with Level 1 factors typically being factors that should receive more weight than Level 2 factors, which should receive more weight than Level 3 factors.

It also is recommended that there should be additional required trainings that are designed specifically for family and juvenile court judges. It appears that the trainings that are provided by the Judicial Branch are of high quality; however, they are few and far between. Requiring additional trainings is essential, especially when, as apparent in this sample, the formal educational backgrounds of the judges are unlikely to be in anything related to the issues that arise in family and juvenile court. It is particularly important that these additional trainings be required for judges that are new to family or juvenile law. Further, when considering the finding that very few judges seek out any training beyond what is provided by the Judicial Branch it is essential that additional required trainings be offered through the Judicial Branch. It is essential that the judges making the best interests of the child determinations have a solid understanding of the issues that play into such a determination. Particularly when considering how broad the best interests of the child standard is, it becomes even more crucial that the judges have a solid grasp on all of the related developmental and contextual issues that may arise. As one participant in the study noted when discussing the broad nature of the best interests of the child standard:

I know a lot of people argue that it's too amorphous, too ambiguous, and the court's not given enough guidance and things, but if you have a judge who is well-grounded and well-versed in normal childhood growth and development, and pathologies that we see—unfortunately, way too often—and is well-versed in the nuances of socioeconomic situations and the educational system, I think one can succeed in the present statutory framework that we have.

As described by that participant, the best interests of the child definition being broad and ambiguous is less problematic, or perhaps not a problem at all, if the judges that are applying the standard have the requisite background and knowledge to guide their analysis to what is ultimately in the child's best interest. The requisite background and knowledge needs to include empirically supported and informed information on normal child development and family

relations, as well as the pathologies that are commonly found in the family and juvenile court (e.g., child abuse/neglect, domestic violence, mental health issues, substance abuse). It is important to note that the majority of the participants did not mention the need for any additional or ongoing training. Considering the numerous complex concepts and factors that the literature highlights as having a significant impact on the families and children involved in the family and juvenile courts, combined with the judges' current lack of background and training relating to such factors, the importance of additional required ongoing training through the Judicial Branch is underscored.

Research Question #2: Utilization of Guardians *ad Litem*

As discussed previously in Theme #5, Guardians *ad Litem* are more frequently utilized in the family court than in the juvenile court. The findings of the current study highlight the fact that not only are Guardians *ad Litem* used more frequently in the family court, but they play a more crucial role in the family court and judges defer to guardians *ad Litem* more in the family court than in the juvenile court. Several judges commented on how important it is to have a Guardian *ad Litem* particularly in the family court, as often times in the family court there are no parties to the case other than the self-represented parents. In contrast, in the juvenile court, there is always the state child welfare agency present, the child is always represented by an attorney, the parents are almost always represented by attorneys, and there are often numerous other professional service providers (therapists, counselors, psychological evaluators, etc.) preparing reports and recommendations for the court. One judge who had experience in both the family court and the juvenile court noted the contrast between the usefulness of Guardians *ad Litem* in the family court versus the juvenile court:

Juvenile court kind of gives you that upper hand, in terms of not relying on this mom and this dad who just walked into the courtroom, and they're arguing that the child should be

taken from him and given to her, because of this reason or that reason. You have little insight and no neutral information. And then so, I think in family, yes, you want to hear this GAL, you need to hear this GAL, this person who doesn't—is not related to these people and has no reason to side with one or the other, that I know of, is making a recommendation. In juvenile, I have [the state child welfare agency] with a full report. So, even though I might not agree with them, I see what they're saying, and why they're saying it. I see what the issues are that they've explained. So, even if I don't agree with them, I have enormous amounts of neutral information provided to me in every case so I can be sure the evidence I'm weighing is at least somewhat credible. You don't have that in the family court.

Another judge commented on the extreme importance of having a Guardian *ad Litem* in family court when there is domestic violence present:

Especially with domestic violence cases in the family court, it's really hard, because the victim can often times be very angry, and when they start treatment for domestic violence they kind of go over the line from assertive to aggressive. And they present pretty awful, even though they're really not. So at that point, you've got the abuser, who can turn it on and turn it off, and appear to be calm, cool, and collected in court, and you've got the victim, who is acting very aggressively in court. And so you don't know what the heck is going on. So to have a guardian to help tease that out is really important. And a guardian can let me know some of the subtle stuff about coercive controlling, whereas if the victim is acting super aggressive, because she's just learning assertiveness, it's hard to tell. So that's where it's helpful.

In terms of how heavily the judges rely upon the recommendations of Guardians *ad Litem*, there was a noticeable difference between the family courts and the juvenile courts. In the family court, the majority of the participants reported heavy reliance upon the recommendations of the Guardians *ad Litem* as it is often times the only credible neutral evidence in the case. As one family court judge noted:

I think there's very few times that I've actually gone against the guardian *ad litem*'s recommendation. I think for the most part the ones that I appoint do a good job, are very professional. Unless they completely miss the underlying basis for being appointed guardian *ad litem*, I go along with their recommendations. I may change them a little bit, tweak them a little bit, but the underlying substance of the recommendation I usually go with.

In contrast, in the juvenile court, most participants spoke of a more neutral approach to the recommendations of a Guardian *ad Litem*, with the recommendations often being just one consideration among many pieces of credible evidence. For example, one juvenile court judge commented:

It's one consideration. I have ruled in different directions, even when a GAL's come in with a particular recommendation, because I've looked at everything else, and I've said, "No, it doesn't make sense to me to do what the GAL is saying to do." So I take it as one consideration among what the parents say, what the other resources say, the schools, and so forth, and so on. It's one consideration.

It is clear that Guardians *ad Litem* are utilized more frequently in the family court, are more essential in the family court as they are often the only neutral party involved in a case, and their recommendations are relied upon more heavily in the family court than in the juvenile court.

Recommendations related to research question #2. If more resources were available it is recommended that the family court be run more like the juvenile court in terms of representation. In the juvenile court all children and all parents are provided a lawyer in almost every case. If this could be implemented in the family court, it would alleviate a lot of the issues raised by the participants of this study in terms of having to make too many decisions with too little information. At a minimum, all children should be provided representation in the family court when there is any kind of dispute about custody or visitation. Additionally, resources should be made available for psychological custody evaluations in cases that present complex individual or familial issues, such as severe mental health issues or intense interparental conflict. These issues often go beyond what a judge, family relations officer, or a Guardian *ad Litem* is typically equipped to assess, and a licensed psychological evaluator is needed to shed light on what deficiencies are present and how those deficiencies may be impacting parenting or child functioning. Further, even if additional resources are not available, there should be a greater

awareness and utilization of the resources that are currently available. For example, there is the Court Appointed Special Advocate (CASA) program which is a volunteer child advocacy group that provides volunteer Guardians *ad Litem* for children. The majority of the participants had not even heard of this program. Additionally, a couple of participants mentioned a Judicial Research Team that assisted them with any cases upon request, providing legal research and/or social science research. Only two participants mentioned this resource which calls into question if this is a well-known resource throughout the judicial community.

Research Questions #3: Strengths and Weaknesses of the Current Court Systems

The participants expressed many common thoughts and ideas regarding the different strengths and weakness of the current family and juvenile court systems. The majority of the participants spoke of similar strengths of both the family and the juvenile court systems, however there were noticeable differences in terms of the identified weaknesses of the family court versus the juvenile court.

The majority of the participants identified the people that work within the court systems—both family and juvenile court—as the strength of the system. Many different types of people were identified, including judges, lawyers, mediators, and court staff.

The people that work in the court system. The Family Relations officers, in particular. I think there's a large number of judges and attorneys that are committed to the practice of family law and juvenile law—although I guess not enough. But the ones that do it really care and really want to help people and make a difference. And I think that's a strength.

Many judges commented on the family relation services in particular as a major strength of the court systems. Family relation services provides court mediators that work with litigants to help resolve disputes before the cases go to a judge. As one judge noted:

Our professional mediators, our Family Relations Services, is the envy of the country. The program that we set up 30, 40, or 45 years ago is the best in the country. If they get ahold of a case, they will find a solution in close to 85 percent of the time. So when it

comes to trial, I have to decide the worst cases, which is fine, which might be only ten or fifteen percent of the cases.

Despite the identified strengths of the family and juvenile court systems, there were numerous weaknesses that were highlighted by the participants. The common theme among most of the identified weaknesses was a lack of resources. Lack of staffing in the court house, lack of security guards, lack of resources (classes, programs, etc.) to which parents can be referred, and lack of professionals available to evaluate families with complex issues were all common responses when asked about weaknesses of the court system.

Many other participants identified a weakness related to the undesirable nature of being a family or juvenile court judge and the resulting lack of judges interested in sitting in the family or juvenile court. One family court judge commented:

I think the biggest weakness is, I think for judges it's tough to operate in a climate where, because you are a family or juvenile court judge you are incompetent, you're incapable, it's criminal what you're doing. I mean, we've been accused of everything... And it doesn't matter how good you are, or how bad you are, or if you're in the middle of the road as a judge. It doesn't make a difference anymore. The good news is you have people dedicated to staying in. I've just decided I'm not going to worry about that. When you stay in, and continue to do family because, if you're good at it you can really do a lot for the people. But I think having to respond to that can be difficult.

Similarly, another family court judge commented on the undesirable climate that surrounds family and juvenile court:

A huge weakness is the lack of judges who understand family or juvenile law—never sat family law or juvenile law, don't want to sit family or juvenile, but should, because you're burning out the judges that are constantly revolving in and out of family and juvenile court, especially family court. New judges don't want to learn or sit family or juvenile court right now, and the judges that have been doing it for a while are getting burnt out. It's a big problem.

Another weakness that was mentioned by several participants was the open nature of the family court. The juvenile court proceedings are closed to the public; however, the family court

proceedings are open to the public. This open nature was viewed as a major weakness by several judges. One judge who opposed the open nature of family court commented:

I think parents, litigants, family members, everyone is more honest about their particular circumstances in a closed courtroom, than they are in an open courtroom, which is why I don't—that's why I'm not a big fan of open family court. If it involves a child, I don't think the court should be open. If you want to talk about your divorce, and two people getting divorced that are in here about money, I don't care. But if you're talking about custody, and you're talking about—everything is ratcheted down a little bit by having a closed courtroom. You don't have everyone listening. You don't have a show. You don't have fans, and supporters, and everyone in there egging everyone on. And I find that harmful. But we've decided that open courtrooms are necessary and appropriate to meet certain constitutional standards. But I think there's other states that have closed courtrooms when it comes to family, in particular the custody issues. So, I'm probably more in support of that than I am the open courtroom for issues involving children.

Clearly there were numerous weakness identified with the current court systems, however there were not many suggestions or recommendations for reform to address the weaknesses. As one judge commented, “You would have to restructure the entire American society to successfully address most of the problems that the family and juvenile court systems face”.

Recommendations related to research question #3. After considering all of the identified weaknesses of the current family and juvenile court systems, it is recommended that there be a requirement that new family or juvenile court judges either have a minimum amount of prior experience practicing family/juvenile law, or participate in a well-defined formal judicial mentoring program. The development of a formal mentoring program for new family or juvenile court judges would serve to provide support and advice to judges that are new to family and juvenile law by pairing the new judge with a judge that is experienced in that practice area. As one participant in the study noted:

No judge should sit alone on a family bench without an experienced family judge to at least mentor them the first month or two, couple of months, six months, something like that, to share this perspective and to talk through the different experiences that a family judge can face.

It is of note that there is in fact a program in place in the judicial department which pairs new judges with more experienced judges. However, none of the participants mentioned the existence of this program, which highlights the fact that the program is not well-defined, is self-initiative based, and is not making a significant impact on the family and juvenile law judges.

One final recommendation that is practical and easy to implement in State X is to release the upcoming judicial assignments before the Judges Institute training that occurs each June. One participant expressed frustration that he received his family court assignment just weeks after attending the Judicial Institute, and had he known he was going to be transferred to family court he could have taken advantage of the family law sessions offered at the training. However, he didn't know he was being transferred to the family court and therefore didn't attend any of the family law sessions.

Summary of Recommendations

In summary, the following recommendations were developed after synthesizing the data from the three research questions and after considering the five emergent themes:

1. Develop an empirically supported hierarchy of best interests of the child factors to serve as a framework or guide to the judges when doing best interests of the child analyses (see Appendix F).
2. Provide additional training through the judicial branch, particularly with regard to empirical support for best interests of the child considerations.
3. Provide representation and/or psychological custody evaluations for all children in contested litigation in family court.
4. Develop a well-defined formal judicial mentoring program.
5. Release new judicial assignments before annual training, not after.

Implications for Future Research

The current study was useful in investigating a very understudied population on topics of great importance for ensuring the safety and well-being of children. The results of the current study not only provide support for recommendations regarding policy reform but also shed light on some additional areas of research that would benefit from further investigation.

The current study investigated the perceptions and practices of judges in State X. While there is some indication that there are similar problems among family and juvenile court systems nationally, it would be useful for similar studies to be done in other states. It would be especially interesting to investigate the identified strengths and weaknesses of family and juvenile court systems in different states after comparing what different procedures and practices are in place.

Regarding the best interests of the child standard, the acknowledgment of the broadly defined standard is consistent with the literature on this topic which highlights the lack of definition and guidance for the standard. However, the previous literature suggests that said broad definition is problematic in that it provides too much judicial discretion (e.g., Godbout et al., 2015; Warshak, 2007). The findings of this study contradict that finding, as the participants reported that the amount of judicial discretion was not problematic but rather was necessary to effectuate the best interests of the child standard. Future research should aim to explore the impact of different levels of judicial discretion on the outcomes of cases.

Another area that is ripe for investigation is the practices and perceptions of the family relations officers within the family and juvenile court systems. Many participants in the current study identified the family relations officers as a crucial and influential component of the system, yet there are no studies found in the literature investigating this population. Further, the parents/litigants would be another population that would be useful to investigate, as would the

population of attorneys representing children (both as Guardian *ad Litem* and as the hybrid-role attorney). These populations are understudied and therefore any additional research relative to these populations within the family and/or juvenile court systems would be beneficial.

There is a need for research to evaluate many aspects of the family and juvenile court procedures. For example, as was brought up by one of the participants, the juvenile court is guided by a 15-month time frame for permanency. The federal Adoption and Safe Families Act (ASFA) was passed in 1997 and, among other things, seeks to achieve permanency for children in foster care. Specifically, ASFA requires that states must file a petition to terminate the parental rights of any parent to a child that has been in foster care for 15 out of the most recent 22 months (Alpert & Britner, 2005). However, there is little empirical evidence regarding the effectiveness of this time frame and whether the implementation of this time limit has yielded positive outcomes for children. As another example, particularly in the juvenile court there are numerous programs and services that parents are sent to complete. However, there is little evidence in terms of the effectiveness of such programs or services. It would be helpful to evaluate the effectiveness of the services so that the limited resources available to the court systems could be used for only those programs and services that will have the largest impact.

Limitations

There are several limitations to the current study that need to be noted. First, the current study only includes judges that practice in State X. There could be significant and substantial differences in the training, policies, or practices of the judges in other states, and if so, the ability to generalize the findings from this study to other states is compromised. Potentially, the results of the study could be significantly different if judges from other states were included. However, the problem of the lack of research regarding the implementation of the best interests of the child

standard is not specific to State X, just as the problems with court systems are not unique to State X. Therefore, State X provides a good illustration of some of the present issues in the family and juvenile dependency courts in one state. This study in State X will hopefully inspire similar studies in other states.

The voluntary participation in the study is a potential limitation, as there may be some defining characteristic that is unique to those judges that volunteer to participate. Further, the fact that the initial participants recommended the subsequent participations could also serve as a limitation to the study. It is possible that judges recommended other judges with whom they share a defining characteristic that is not necessarily representative of the population as a whole. For example, perhaps some judges might only have recommended other judges that they get along well with professionally, and this could be due to the fact that they have similar backgrounds, or similar outlooks on certain issues or the court system as a whole. This limitation could certainly have skewed the data that may have led to themes that wouldn't be found as strongly if this limitation didn't exist. However, given that the sample size of 25 is approximately 40% of the total population, it is unlikely that this limitation is very strong.

Additionally, qualitative research in general is limited by the quantity of data that must be analyzed and linked to theories or models (existing or new), thus resources and time place practical limitations on sample size (Ambert, Adler, Adler, & Detzner, 1999). Therefore, the sample size for the study was relatively small, limiting the degree to which the findings can be generalized to the larger population. However, considering the sample of this study is approximately 40% of the total population of family and juvenile court judges in State X, and the fact that the student research felt the point of data saturation was reached, the sample size was more than adequate to achieve the goals of the research questions. Additionally, Creswell

(1998) proposed it is up to the reader to determine the generalizability of the findings of any particular study based on the data presented in the study. The results of this study provide thorough detail regarding the participants of the study, the data collection procedures, the data analysis procedures, and the interpretation of the data in order to assist readers of the study in making a determination about the extent to which the findings are generalizable to other samples or settings.

Another limitation of the methodology of the current study is the threat to the credibility of the findings. Qualitative researchers define credibility as the extent to which the study actually measured or observed what the study claimed to have measured or observed (Creswell, 1998; Patton, 2002). Researcher bias can threaten credibility, as bias may influence the interpretation of the research findings. The current study entailed interviews that were reciprocal, and as such, the student researcher's background, personal interests, and knowledge could have influenced the direction of the interview and the amount and type of data that was elicited from the participants. The student researcher has a law degree and a background in family and juvenile law, and therefore had preconceived thoughts and ideas on the interview topics before conducting any of the interviews. This potential researcher bias was addressed by the development of a thorough interview guide (see Appendix D), as well as the student researcher remaining aware of said potential bias and remaining focused on the content of the interview and the interviewee responses. Additionally, the current study was exploratory in nature and the student researcher had no stake in specific findings.

A concern surrounding validity exists in that one cannot be sure that what the participants said was the truth or complete. However, with the data analysis, general themes and concepts emerged from the data as a whole, not for each individual participant. Therefore, any

potential individual participant's specific omissions would not likely limit the validity of the data as a whole as it is unlikely that numerous respondents had the same level of sensitivity to the same issues.

Despite the possible limitations to the current study, the rich and detailed data that were collected through intensive interviews are likely to be valid and trustworthy (Weiss, 1994). Additionally, the results of this study are significant and contribute to the understanding of an issue of great importance that is vastly understudied.

Significance

The current study is significant in that it contributes to areas of the literature that are lacking — the family and juvenile dependency courts, the best interests of the child standard, and Guardians *ad Litem*. Each of these areas has been identified in the existing literature as in need of further investigation and understanding, and the current study advances the understanding of each of these areas. Further, judges are a particularly understudied population and yet an incredibly crucial population to be studied if any meaningful change is ever going to be implemented in the family or juvenile dependency courts. Family and juvenile court judges make determinations and findings every day that impact a vast number of families and children in numerous and profound ways. It is hard to imagine how the current system could ever be improved absent a deeper and more thorough understanding of the many facets of the system from the perception of the judges. The current study contributes towards advancing this understanding and improving the court systems.

On a policy level, the current study led to the development of recommendations for policy reform in the realm of efficient, uniform, and appropriate standards in family and juvenile dependency courts nationwide. Additionally, the children who find themselves involved in the

court system, either as a victim of abuse/neglect or entangled in a divorce/custody battle, often face numerous and substantial individual and familial crises. The current study will advance the literature with the ultimate goal of taking steps towards the implementation of policy reform that can help mitigate some of the negative effects of the crises these children face.

There will never be a perfect family or juvenile court system. Even if the system is reformed, there will always be issues that cannot be remedied by any statute, case law, or policy. There will always be the presence of the difficult issues families face, such as substance abuse, mental health issues, and domestic abuse, and there is no single change to the court system that will eliminate those issues. As one judge noted:

There are just so many problems that aren't susceptible to a judicial resolution. And so many systemic problems and societal problems that to truly protect children you would have to have a revolution, and change the whole way we do everything in this country. You would need to change everything starting with the preschools, schools, school lunches, parent education, parenting. I mean, you have to restructure the American society to do that, to really make a significant difference in the lives of these children. The best thing we can do right now is set up boundaries the best we can for these parents, and hope to insulate the children from as much of the conflict and chaos as possible.

Perhaps the answer to improving our family and juvenile court systems is not quite as drastic as a revolution, but it is clear that major changes are required to ensure that the best interests of children are truly at the forefront of our judicial systems.

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Appendix A

Initial Letter to Participants/Invitation to Participate in Study

Date

The Honorable (full name)

Name of Court

Address of Court

Dear Judge (last name):

You are receiving this letter as an invitation to participate in a research study that is being conducted on family and juvenile court judges in [State X]. Specifically, the research study aims to explore the perceptions of family and juvenile court judges relative to the best interest of the child standard in [State X] and the use of guardians *ad litem*. The goal of the study, which will be completed as my Ph.D. dissertation, is to inform future policy reform regarding the best interest of the child standard. This study has been approved by the UConn Institutional Review Board (IRB), and will be overseen by my Ph.D. advisor Dr. Preston Britner.

Participation in the research study entails participating in an interview. The duration of the interview, which can be conducted either in person or over the telephone, is expected to last approximately 30 to 60 minutes. All information collected will be kept confidential and neither your name nor any identifying information will be used in any analysis, discussion, presentation, or publication. Enclosed you will find a list of the topics and types of questions I plan to cover in the interview. Upon completion of the study, if you wish, I will mail you a summary of the research findings.

I will follow up with you within the next 1-2 weeks to inquire as to your willingness to participate in the study. If you agree to participate, I will arrange a day and time for the interview that is most convenient for you. If you wish to contact me or Dr. Britner regarding this study, we may be contacted at [phone numbers] respectively.

As a former family law attorney, former guardian *ad litem*, and current Ph.D. student, I would be exceptionally grateful for your participation and your insight into this understudied and important topic.

Sincerely,

Jodie Comer Oshana, M.A., J.D.,
Ph.D. candidate, Human Development and Family Studies, University of Connecticut

Appendix B

Interview Topics (to be covered in the research study)

I. Education/Experience — Will include questions about your experience as a judge, length of time on the bench, experience prior to becoming a judge, and applicable training/education.

II. “Best Interest of the Child” Standard — Will include questions about your thoughts on how well defined the standard is in case law, statute, and practice. Additional questions will revolve around your experience applying the standard, the factors you consider in a best interest of the child analysis, and balancing the interests of the child with the competing interests of the parents and the state.

III. Guardians *ad Litem* — Will include questions about your use of GALs, especially related to a best interests of the child determination. Additional questions will include your procedures for appointing GALs and your view on the quality of GAL work in [State X].

IV. Strengths/Weaknesses of the System — Will include questions about your view on the strongest and weakest aspects of the family/juvenile courts in [State X], and any recommendations you may have for improving the system.

Appendix C

Consent Form for Participation in a Research Study



Principal Investigator: Preston A. Britner, Ph.D.

Student Researcher: Jodie Comer Oshana, M.A., J.D.

Study Title: Family and Juvenile Court Judges and the Best Interests of the Child: Current Practices, Procedures, and Recommendations

Introduction

You are invited to participate in a research study that explores the perceptions of family and juvenile court judges in [State X] relative to the “best interest of the child” standard. You are being asked to participate due to your specialty as a family or juvenile court judge in [State X]. The practices and procedures of judges will be explored, as well as any recommendations for future policy reform regarding the best interest standard.

This consent form will give you the information you will need to understand why this study is being done and why you are being invited to participate. It will also describe what you will need to do to participate and any known risks, inconveniences or discomforts that you may have while participating. We also encourage you to ask questions now and at any time. If you decide to participate, you will be asked to sign this form and it will be a record of your agreement to participate. You will be given a copy of this form.

Why is this study being done?

The purpose of the study is to learn about your perceptions -- and those of other family and juvenile court judges in [State X] -- relating to your current practices and utilization of the best interest of the child standard. We will use this information to make recommendations for policy reform as it relates to the best interest standard, in hopes of developing a more specific and informed standard to be utilized in the [State X] court system.

What are the study procedures? What will I be asked to do?

If you agree to take part in the study, you will be asked to participate in an interview, which can be completed either on the telephone or in person, and is anticipated to run approximately 30 to 60 minutes in length. The interview will consist of questions relating to your professional opinions, perceptions, practices, and procedures relative to the best interest of the child

standard that is utilized in cases involving children. You will also be asked general demographic questions, such as your educational background and length of time on the bench. A list of the specific topics that will be asked during the interview is attached with this consent form. If you agree to participate in a telephone interview, you are asked to return this consent form through the mail with your signature. Upon receipt of your signed consent form, you will be contacted by telephone to arrange a time for the interview that will be most convenient for you. Alternatively, if you agree to participate in an in-person interview, this consent form will be signed immediately preceding the interview, which will be arranged at a date, time, and location that is most convenient for you. The interviews will be audio-recorded. Confidentiality will be maintained throughout the entire study (see below). You will not be contacted again after the completion of your interview unless you request to be contacted or to have a summary of the research findings provided to you.

What are the risks or inconveniences of the study?

We believe there are no known risks associated with this research study; however, a possible inconvenience may be the time it takes to participate in the interview.

What are the benefits of the study?

You may not directly benefit from this research; however, we hope that your participation in the study may contribute to an increased understanding of the current state of the best interest of the child standard in the [State X] court system. This increased understanding will then be used to guide future policy and professional standards. If you wish, a summary of all findings from the study will be provided to you.

Will I receive payment for participation? Are there costs to participate?

There are no costs, and you will not be paid to be in this study.

How will my personal information be protected?

We will do our best to protect the confidentiality of the information we gather from you, but we cannot guarantee 100% confidentiality. However, confidentiality will be a priority throughout the entire study and the following procedures will be used to protect the confidentiality of your data. Your name will not be linked to the interview data. The master list of participants, any audio-recordings of interviews that have not yet been transcribed, and the transcriptions of completed interviews will be kept in a secure locked location with access limited to the student interviewer (Jodie Comer Oshana) and her Ph.D. advisor Dr. Preston Britner. All audio-recordings will be transcribed within two weeks of the date of the interview. The transcriptions will contain no identifying information, and following the successful transcription of the interview, the audio-recording will be deleted. All electronic files will be password protected. Any computer hosting such files will also have password protection to prevent access by unauthorized users. Only members of the research team will have access to the passwords. After the completion of the study, your identifying information will not be included in any publications or presentations of any

kind. Any such publications or presentations will be presented in summary format, and you will not be identified.

You should also know that the UConn Institutional Review Board (IRB) and Research Compliance Services may inspect study records as part of its auditing program, but these reviews will only focus on the researchers and not on your responses or involvement. The IRB is a group of people who review research studies to protect the rights and welfare of research participants.

Can I stop being in the study and what are my rights?

You do not have to be in this study if you do not want to participate. If you agree to be in the study, but later change your mind, you may drop out at any time. There are no penalties or consequences of any kind if you decide that you do not want to participate. Additionally, if you agree to participate, during the interview you do not have to answer any question that you do not want to answer.

Whom do I contact if I have questions about the study?

Take as long as you like before you make a decision. We will be happy to answer any question you have about this study. If you have further questions about this project or if you have a research-related problem, you may contact the principal investigator (Dr. Preston Britner) or the student researcher (Jodie Comer Oshana). If you have any questions concerning your rights as a research subject, you may contact the University of Connecticut Institutional Review Board (IRB) at 860-486-8802.

Documentation of Consent:

I have read this form and decided that I will participate in the project described above. Its general purposes, the particulars of involvement, and possible risks and inconveniences have been explained to my satisfaction. I understand that I can withdraw at any time. My signature also indicates that I have received a copy of this consent form.

Participant Signature:

Print Name:

Date:

Signature of Person
Obtaining Consent

Print Name:

Date:

Appendix D

Interview Guide

Date:

Time:

Type of Court (Family or Juvenile):

Location of Court:

V. Education/Experience

1. How many years have you been a judge? How many years have you been a family/juvenile court judge?
2. How many years did you practice law prior to becoming a judge?
 1. Did you practice family or juvenile law as a lawyer?
 3. Do you have any other related experience?
 4. Do you have any education/training in family/child issues?
 1. Is there any mandated training for judges? If so, on what types of issues?

VI. "Best Interest of the Child" Standard

1. Do you feel that the best interests of the child standard is adequately defined?
 1. Case law?
 2. Statutes?
2. How confident are you in your ability to assess each family and come up with a decision that is in the best interest of the child(ren)?
 1. Do you ever doubt if your decisions are in the best interests of the child?

2. How do you address situations when there are no options that you believe are beneficial to the child, yet you are forced to make a decision?
3. What factors do you typically consider when doing a best interest of the child analysis?
4. How do you decide which factors are more important than other factors in your analysis?
5. How does the level of conflict between the parents impact the way you handle a case?
6. Are there certain types of cases (with certain factors present) when you are more likely to appoint a GAL or psychological custody evaluator to the case?
7. When/why do you appoint a psychological custody evaluator as opposed to a GAL?
8. Under what circumstances/how often do you consult with other professionals (other judges, mental health professionals, etc.) to assess a particular case before you make a decision?
9. How do you balance the best interest of the child with the competing interests of the integrity of the family, the rights of the parents, and the rights/responsibilities of the state?

VII. *Guardians ad Litem*

1. How do you decide when to appoint a GAL to a case?
2. Do you have an official policy/procedure for appointing GALs?

1. How do you decide if you will appoint an attorney or a volunteer/CASA?
2. How do you decide which specific person will be appointed?
3. Do you feel GALs typically do an adequate job?
 1. What are some qualities/characteristics of GALs that do the best work?
4. Are you more likely to appoint a GAL if the parents have higher levels of conflict?
5. How heavily do you rely on the recommendations of the GAL?

VIII. Strengths/Weaknesses of the System

1. What do you think are the biggest strengths of the current practices and procedures employed in family/juvenile court?
 1. What do you think works well?
 2. What aspects of the current system do you think provide the most benefit to children/families?
2. What do you think are the biggest weaknesses/flaws of the current practices and procedures employed in family/juvenile court?
 1. What do you find frustrating? What do you think litigants find frustrating?
 2. Are there any aspects of the current practices/procedures that you believe are harmful to children/families?
 3. Are there any aspects you find difficult to navigate?
3. How do you think the current procedures and practices in family/juvenile court could best be improved?
 1. Do you foresee these improvements ever happening?

Appendix E

List of Codes

Time as Judge
Time as Family Judge
Time as Juvenile Judge
Time as Lawyer
Practice as Family Lawyer
Practice as Juvenile Lawyer
Training
Related Experience
Educational Background

Best Interest of the Child (BIC) Adequate
BIC Definition
Factors
Most Important Factors
Weighing of Factors
Confidence with BIC

Use of GALs
Characteristics of Quality GALs
Reliance on GAL recs

Strengths
Weaknesses
Recommendations

Appendix F

Proposed Hierarchy of Factors in Best Interests of the Child Analysis

Parent-Child Factors	Parent Factors	Child Factors	Family Factors
<u>Level 1</u>	<u>Level 1</u>	<u>Level 1</u>	<u>Level 1</u>
Quality of Relationships	Substance Abuse	Safety	Domestic Violence
Psychological Parent	Mental Health	Basic Needs	<u>Level 2</u>
<u>Level 2</u>	<u>Level 2</u>	<u>Level 2</u>	Coparent conflict
Parental Warmth	History of care-taking	Wishes of 16/17 year olds	Facilitate contact with other parent?
Discipline	<u>Level 3</u>	<u>Level 3</u>	<u>Level 3</u>
<u>Level 3</u>	Stability of environment	Wishes (if younger child)	Sibling relationships
History of Parent-Child Relationship	Parenting skills/knowledge	Development concerns	Relationships with extended family