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University of Connecticut 2005
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Literature Review

Domestic relations cases constitute the single largest category of cases filed in the major trial courts, accounting for a full one-third of all court filings (Newbauer, 1997). These cases include, but are not limited to: divorce, abuse, neglect, child custody, visitation, and child support. These family court judges are given the difficult responsibility to resolve issues involving children with the daunting task of determining whether or not a child will have future contact with his or her parents.

The role of a family court judge is complex and unique in the court system. On the one hand, a judge is expected ensure that the rules of the court are respected, stay neutral, and only intervene to resolve disputes necessary to keep the process moving to a conclusion (Hardcastle, 2005). However, a family court judge becomes a force within the family system, he or she is involved and morally and ethically compelled to manage these cases while keeping in mind the greater good of the children (Hardcastle, 2005). It would seem understandably difficult for a judge to remain neutral and not interfere in the lives of a family when he or she is making decisions that may ultimately change the way that family functions in every day situations. Personal conflict or tension may arise to or between judges who base their verdicts on the best legal decision or legal precedent, and judges who view the best decision as one which may benefit the family as a whole.

Family court judges preside over domestic relations cases without a jury. In these courtrooms a judge must rely entirely on the present facts and every bit of his or her experience to come to an acceptable judgment (Vanderbilt, 1958). They often take an active role in fact finding, shaping, and organizing collected evidence because judgments require complex

information and will have long term consequences for the lives of children (Weiss, 1987). These judges must take into account each party's relationship to the child and what the future may hold for the child based on the decisions that will be made. For judges to make informed decisions about families, they need to be knowledgeable with regard to child development and what constitutes as healthy family functioning; using personal experience and specific case facts may not be enough to determine what is best for the children in a domestic relation case.

Judicial selection is a highly unstructured process which varies between states and often allows participation by lawyers, judges, voters, interest groups, and elected officials (Newbauer, 1997). Newbauer (1997) writes that the debate over what characterizes good judges, who should select them, and how accountable or independent they should be produces a crazy pattern of judicial selection procedures throughout the country. There are four basic selection methods; partisan elections, nonpartisan elections, merit selections, and appointments.

In a judicial election using a partisan ballot, candidates are listed by their party affiliation (Newbauer, 1997). Some states which use partisan ballots to select trial court judges include Indiana, Mississippi, Missouri, and Texas. Concerned about corruption in city governments due to party bosses using judicial posts as patronage to reward others in the party, some states began using the technique of a nonpartisan ballot (Newbauer, 1997). Nonpartisan elections take place in sixteen states including North and South Dakota, Ohio, Oklahoma, Kentucky, and Nevada. With nonpartisan ballots, officials run for office not on the basis of their party affiliation, but on their personal qualities (Newbauer, 1997). In these elections judicial candidates can use their experience and knowledge as the basis of their campaign to preside over a particular court system.

Six states, including New Hampshire, Maine, and Virginia, use gubernatorial appointments in which the governor chooses who will fill empty spaces on the state's judicial bench. These judges are appointed directly and may not always have the qualifications needed for specific jurisdictions.

Merit selection, also known as the nonpartisan court plan, incorporates unique aspects of the different methods for judicial selection. The first step is the creation of a judicial nominating commission, compiled of lawyers and laypersons that create a list of qualified nominees. From these names the governor makes a selection, and after a short period on the bench, the new judge faces an uncontested retention election. The voters decide if, "Judge X should be retained in office?" (Newbauer, 1997), and this judge typically returns to office. Over a twenty year period, only 22 judges out of 1,864 retention elections received less than the majority of affirmative votes, and nine of these elections occurred in Illinois, where a judge needs to gain 60% or more of the vote to remain on the bench (Hall & Aspin, 1987). Merit selection of judges is used in sixteen states including Connecticut, New Mexico, Utah, and Massachusetts.

These four formal selection methods are not always a true guide to how judges are actually chosen (Newbauer, 1997). Often times states using either partisan or nonpartisan elections use merit selection or appointment methods to "temporary" fill vacancies, and these judges tend to stay on the bench. Nationwide, it is estimated that half of all trial judges received their position through some sort of interim selection (Ryan et al., 1980), indicating that many family court judges may not be qualified for their particular role within the court system.

Most family court judges are well educated and experienced in family law, but have little formal education regarding child development, mental health, and the family system (Kreeger, 2003). These judges make everyday decisions impacting the lives of children and families

across the county, but often receive no documented training after they are placed on the bench. Law school does not necessarily provide court personnel with information needed to address the medical, social, child development, and psychological issues that often occur in cases involving families (Hardcastle, 2005). Courses in family law may give attorneys and judges the ability to determine what is practical in legal decision making; however, they do not provide the knowledge needed to determine the maturity level of children expressing their own wishes in custody cases or to determine what is in the best interest of the children regarding parental placement.

Some states are now mandating that family court administrators have some training to prepare them for issues that will arise in court. California is moving toward training court personnel to be better qualified to handle cases involving families. California's Family Code now has some training requirements for all court connected custody evaluators to prepare them to assess the health, safety, and welfare of the children involved in domestic relation cases (Baron, 2003). However, Baron (2003) also suggests training for judicial officers in child development, attachment theory, abuse and neglect, domestic violence, and substance abuse before they are appointed to the judicial bench.

Judges employ different techniques to absorb the information that they are presented with in court proceedings. The use of this information will ultimately influence their final decisions regarding custody and visitation of children in domestic relation cases. Judges' views of children's competence has been determined more often by context than by psychological data, and it seems that justices use their common knowledge as the most relied upon source in these situations (Koocher, 1987). Haffmeister and Melton (1987) wrote that the foundation for judges' decisions comes from their social background or their institutional background. These

backgrounds may be what compose their common knowledge; however, even family court judges with a specialized degree, let alone just a law degree, cannot master the range of social science that applies to children (Weiss, 1987). The scant amount of training programs found within family court research suggests judges throughout the country may not have enough child development and family system education to make accurate and appropriate conclusions regarding custody and may be using their narrow common knowledge to make these crucial decisions.

Judges rely on professionals to bring social science evidence or testimony to their attention during domestic relations cases (Kerr, 1986). Court Appointed Special Advocates, Guardians *ad litem*, mental health professionals, or social workers may all have the opportunity to speak on behalf of the children or the parents in a custody case. Clearly the Court and its staff are not trained social scientists, and there is always the considerable risk that misinterpretations of presented research and theory may occur (Kerr, 1986). These misinterpretations, frustrations, and differences in education may produce a barrier between social scientists and judges. From attorney to judge, law professionals are trained to determine the correct conclusions based on cause and effect relationships where social science professionals are trained to determine conclusions based on the family system embedded in the larger sociocultural system (Grossman & Okun, 2003). This difference in education and mindset may not allow for judges to completely understand the depth of testimony that social scientists present. Grossman and Okun (2003) explain that judges may have difficulty understanding the difference between clinically based social science information and that which is researched based. Kerr (1986) writes that judges tend to base their decisions on what is certainly true, and social scientists base their conclusions on what is only probably true. The competing systems of reasoning, and possible

language barrier may create an environment within the courtroom that is tension filled and could be harmful to the outcome of a custody dispute.

In 1999, Redding and Reppucci conducted a study measuring judges' attitudes and their rulings regarding cases where social science evidence was present. They hypothesized that a judge may ignore relevant research when it did not coincide with his or her own sociopolitical belief. One hundred and sixty-three judges were sampled, and it was found that judges were more likely to give social science evidence weight when it was congruent with their own personal beliefs and less weight when it was inconsistent with their beliefs. Bersoff and Glass (1995) established similar results when they found that the Supreme Court will use or misuse social science research when it supports the desired legal result and they will ignore or reject the research when it does not support the preferred result. This inconsideration for social science research may be harming the lives of children and families in this country. It is clear that with training judges should be able to understand and use social science research properly; however, without an appropriate understanding of what judges really know about child development and the family system, we may never be able to provide them with training programs that will be beneficial to their decision making.

It can be assumed that for many children, that if mishandled, the experience of parental divorce or separation from caregivers can negatively influence their development. It is evident that judges have some bearing on the degree to which children benefit or are harmed by the experience of parental separation. Judges who decide on changing the parenting relationship need to have some understanding of attachment theory and child development, subjects that are not generally included in a legal education (Kreeger, 2003). It is important for the emotional well being of children to have their custody placements and visitation decided by someone who

is educated and understands the consequences, positive or negative, of any change in the relationship with a child's caregivers.

Political appointee may often be ill-suited and untrained to work among children (Polier, 1941). Family court training programs are therefore necessary to offer children the best possible outcome after parental separation. Family court judges in our legal system are not always devoted to Family Court, and some jurisdictions may have judges move between the court systems. When this happens, it may be more likely that the judge in the family court will have even less experience with family relation issues than a judge that serves his or her time on the bench in family court only. Family court judges need to be permanent judges who are trained and able to deal with child development and attachment issues within the courtroom to provide the best possible outcomes for children.

Judges often use their own estimations of a child's maturity and cognitive ability when deciding whether or not to ask the child about his or her custody placement wishes. However, the factors used by judges to determine if a child is mature or intellectually capable of making these important decisions frequently do not reflect current research on child development (Mlyniec, 1996). Mlyniec (1996) concluded that judges simply rely on their estimations of the social maturity and cognitive capacity by assessing the child's answers to the questions posed by lawyers or the judges themselves, not by any knowledge they may have on assessing a child's maturity or decision making ability. Judges need education to enable them to make more informed, and thus better, decisions in the important area of considering the child's wishes in determining custody (House, 1998). Judges who rely on child maturity and cognitive ability estimations need to be well informed of child development theory to ensure that they make the correct evaluations.

There is no research to date to suggest that judges possess accurate, impartial, or up-to-date knowledge of the unique needs of children and their families. If the use of social science research is to be increased and correctly used, judges must have confidence in the dependability and effectiveness of the social sciences as a basis for establishing extralegal fact (Kerr, 1986). In addition, to reduce the misuse of social science research, judges must have a better understanding of the methods and application of the social sciences (Kerr, 1986). This may imply that the responsibility of educating judges falls essentially to social scientists themselves. However, without an accurate grasp of what knowledge, correct or incorrect, judges may already possess training programs can not be developed that will show to be practical in the courtroom.

Judges' understanding of child and family factors and their influence on decision making has yet to be addressed (Wallace & Koerner, 2003). Thus, the present study seeks to determine family court judges' knowledge of child development and how it may affect their estimation of child maturity and custody decision making.

Method

Participants

Participants in this study included 124 judges from 11 states in the United States who preside over family court. The states included Connecticut, Indiana, Mississippi, Missouri, New Mexico, New Hampshire, North Dakota, Ohio, Oklahoma, Texas, and Utah. The sample had an average of 10.5 years experience as a judge, and an average of 9.2 years experience hearing divorce and custody cases. The judges indicated that, on average, 54.4% of the cases that they hear involve family matters.

The sample consisted primarily of males (77.4%), ranging in age from 33 to 68. Ninety of the judges indicated that they were married, 23 remarried, 4 divorced, 3 never married, and 2 widowed. A total of 110 (88.7%) judges answered that they had children.

The sample had the option of specifying their undergraduate majors, and only 6 of the 124 participants had majors that now relate to their present jurisdiction. These include 6 psychology majors and 2 social science majors. In addition to their undergraduate majors, the participants could list any other graduate degrees that they may hold. Only four judges listed graduate degrees relating to child development. One judge held a degree in Counseling Psychology, one had a Masters in Social Work, one had a Masters in Guidance and Counseling, and one judge held a Ph.D. in Health Sciences. Six judges responded with valid specializations that they had in law school; however, none of these included any child or family law concentrations.

Measures

The web-based questionnaire was composed of (a) general issues regarding custody and children's wishes, (b) judicial experience, (c) questions regarding the manner of involving children in custody cases, (d) judicial interviews, (e) judicial knowledge regarding child development theory, and (f) demographic information.

The general issues regarding custody and children's wishes section included 7-point Likert-type scales which measured the participant's level of agreement or disagreement regarding statements about involving children in the custody decision making process. These included the likelihood that children would be interviewed, whether or not the parents' attorneys would be present, and if the age or maturity level of the child played a role in the manner in

which the child was asked his or her wishes. Some of these questions about general issues regarding custody and children's wishes were generated by Crosby-Currie (1996). Another portion of the questions came from research examining children's voices during litigation by Atwood (2003).

The judicial experience section included questions concerning the amount of years participants have been on the bench. Judges were asked to identify the percent of domestic relations cases and contested child custody cases they hear in an average year, the amount of child development education given prior becoming a judge, continuing education once becoming a judge, and an estimation of their own child development knowledge. A 7-point Likert scale regarding decisions to ask children their wishes being guided by common law or own discretion was also examined.

If Judges indicated that they have asked a child about his or her custody placement wishes in a case they were instructed to continue with the survey. The next questions regarding the manner of involving children in custody cases and judicial interviews included 7-point Likert scales based on agreement level, likelihood, weight given to the wishes of a child, importance of child factors including maturity level and apparent emotional health, and the frequency of judicial behaviors. These questions were generated by Crosby-Currie (1996) and Atwood (2003).

The judicial knowledge regarding child development theory section included 10 multiple choice child development knowledge questions. These questions were modeled after sample GRE Psychology subject test questions. The final section included non identifying demographic information questions concerning age, sex, race or ethnic group, marital status, parenthood,

education, specialization in law school, undergraduate major, graduate degrees, and a space for participant's comments on the issue of children's wishes in contested custody cases.

Question Category	Question
General Issues Regarding Custody and Children's Wishes:	
	In general, a child is capable of intelligently expressing reasonable wishes regarding custody, if the child is of what age...
	Approximately how many years have you been on the bench?
Judicial Experience:	
	Approximately how many of those years have you been hearing divorce and custody cases?
	Approximately what percent of the cases you hear involve family matters?
	Approximately how often do you participate in continuing education or other judicial training?
	Please indicate how much training and coursework in child development or developmental psychology you had prior to becoming a judge
	Please indicate how much training and coursework in child development or developmental psychology you had after becoming a judge
	Please indicate how knowledgeable you feel you are in the area of child development
Questions Regarding the Manner of Involving Children in Custody Cases:	
	How strongly do you agree or disagree that the likelihood that a child would be asked about his/her wishes in a case before you is dependent on your estimate of the child's level of maturity?
	How important is the child's level of maturity to the weight that you would give to the child's wishes in making your custody decision?
	How important is the child's apparent emotional health to the weight that you would give to the child's wishes in making your custody decision?
	How important is your general impression of the child's relationship with each party to the weight that you would give to the child's wishes in making your custody decision?
Judicial Knowledge Regarding Child Development Theory:	
	Younger children are not as good at planning as older children. They lack all of the following EXCEPT the ability to:
	When disadvantaged children have been placed into enriched environments through adoption or through community social and

	education improvements, the results have generally been:
	Some indicators of the quality of the home environment are better predictors of the children's intellectual performance than others. Two scales that seem to be the strongest predictors of future scholastic achievement are:
	Research on children's development of resistance to temptation indicates that:
	The developmental achievements of children tend to _____ as the number of parental marital transitions (divorce/remarriage/divorce) becomes progressively extended.
	At about 7-9 months, there is a shift in the infant's social responses. IN particular, infants:
	The most accurate conclusion, regarding the casual factors behind the long-term effects of early deprivation, would be early maternal social deprivation results in developmental lags and abnormalities primarily because the infant has:
	Preschool children (3-5 years old) are most likely to describe themselves in terms of:
	According to research on high school students' grade achievement, which of the following sources of support for academic achievement has the strongest association with grade point average?
	Psychologists who emphasize that infant differences in attachment patters may be inborn are likely to focus attention on infant:

Procedures

Judges from 11 states were selected to participate in the current study on the basis of the differences between jurisdictions of how judges solicit the preference of children during a custody dispute and how much weight they give to the children's wishes. Judges names and addresses were found in *The American Bench: Judges of the Nation 2004/2005*. This information was confirmed on each of the state's website after using various search engines to look for the state's judicial sites.

Similar to Dillman's Total Design Method (Dillman, 1978), an introductory mailing was sent to 1046 judges, 111 confirmed family court judges, explaining the study and requesting their participation. The letters contained a World Wide Web link where the judges could access the 20- to30-minute questionnaire online. Within one week, an email was sent to 439 of the judges

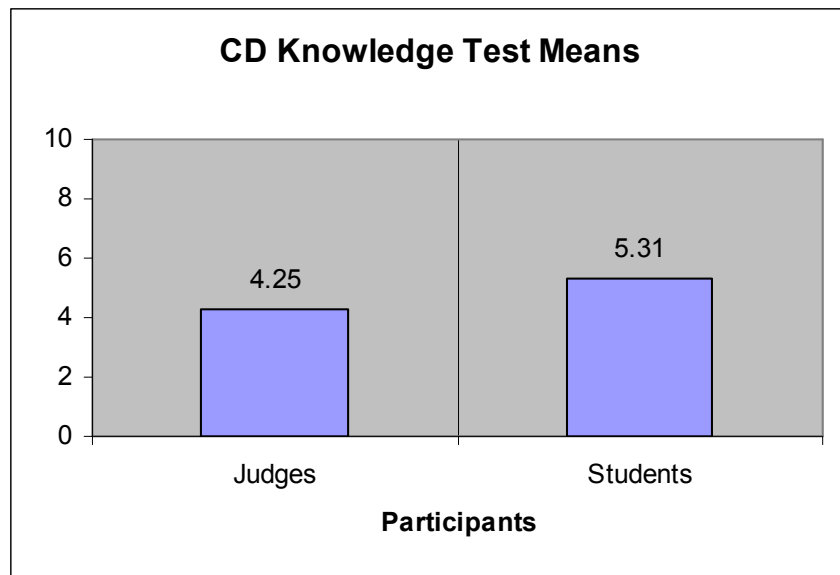
who had available email addresses. In order to maximize the response rate, a follow up postcard was sent approximately one week after the initial mailing reminding all respondents to complete the survey.

One hundred and forty-four students from the University of Connecticut's Human Development and Family Studies program were asked to participate in the child development portion of the survey. These data were collected and used as comparative data with the judges' responses, and all analyses was conducted via SPSS.

Results

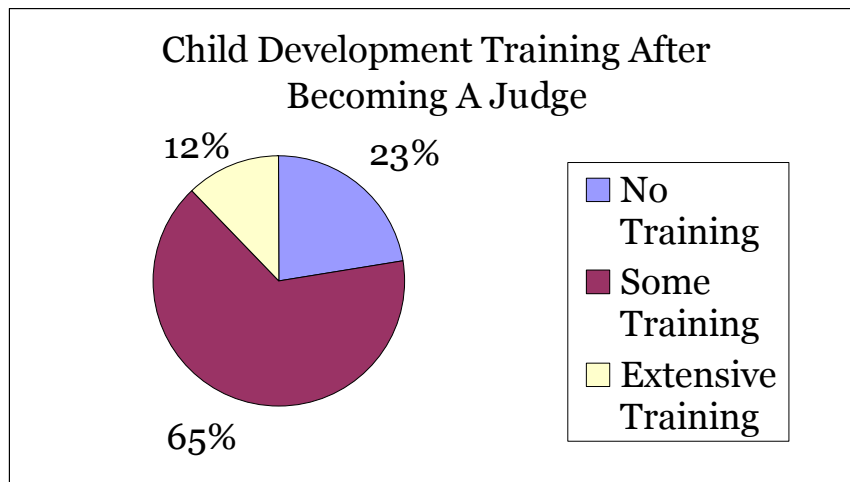
Judicial Knowledge Regarding Child Development Theory

Judges correctly answered an average of 4.25 out of 10 child development theory questions. The college students averaged 5.31 correct out of 10. The college students, as a group, performed at a higher level than did the family court judges, $t(266) = 4.68, p < .001$.



Child Development Training

All judges were asked about their child development training prior to and after becoming a family court judge. Only 11.29% of the judges indicated that they participated in extensive training or coursework in child development or developmental psychology before and after working on the bench, 54.03% indicated that they received some training, and 34.68% indicated that they had no child development training prior to becoming a judge. Child development training and coursework was just as scarcely provided to participants after they had become judges. Only 12% indicated that they had extensive training after becoming a judge, 65% had some training, and 23% had received no training.



Those judges who indicated that they received training prior to becoming a judge during college, from having children of their own, and through some Bar Seminars dealing with family cases. Many judges noted that their child development or psychology courses in college were over 25 years ago and that theories and other practices have no doubt changed since then.

After becoming a judge, some judges indicated that Continuing Legal Education courses, seminars and workshops through different judicial counsels, and their own families have trained

them in child development. Few judges indicated any coursework that would fully prepare them to handle child and family law cases.

The judicial responses to the child development knowledge questions significantly correlated (.294; $p < .01$) with the amount of training family court judges received after becoming a judge. This indicates that the more child development and developmental psychology coursework and training a judge receives after he or she is appointed to the bench, the better he or she will score on the child development portion of the survey.

Judicial Estimation of Child Development Knowledge

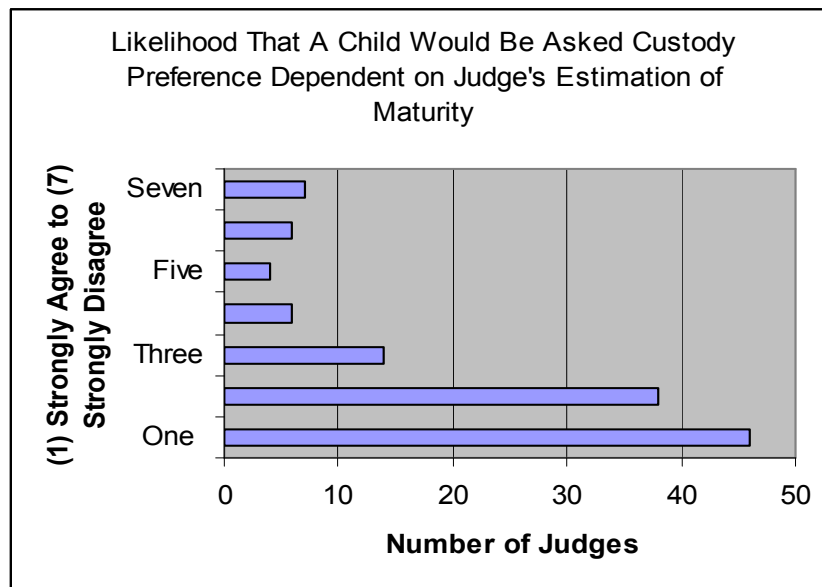
Judges were asked to identify how knowledgeable they feel in the area of child development on a 1 to 7 scale, 7 being very knowledgeable. The mean response was a 4.21 with a standard deviation of 1.32. This mean indicates that the judges felt moderately knowledgeable in the area of child development.

This estimation of child development knowledge significantly correlated with the percent of cases involving family matters a judge hears (.301; $p < .01$), and the child development and developmental psychology coursework and training prior to (.441; $p < .01$), and after becoming a judge (.494); $p < .01$). Judges who handle more domestic relations cases and received more training estimated their own knowledge of child development issues to be high.

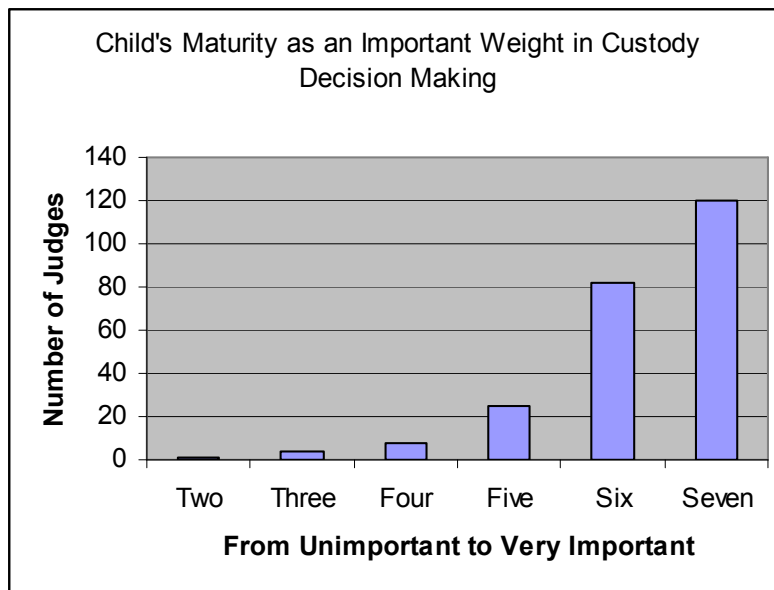
Judges' own estimations of child development knowledge also correlated with the judges' feelings of their ability to estimate a child's maturity level and how that estimation influences asking a child his or her preferences in a contested custody case, (.32; $p < .01$). This relationship suggests that the more confident judges are in their child development knowledge the more confident they are in estimating a child's maturity level and using it as a factor in soliciting the custodial wishes of the child.

Weight Given to Child's Level of Maturity

Judges indicated that they often estimate the level of a child's maturity and that children are often asked their wishes in a custody case dependent on this estimation. Most (i.e., 69.4%) of the judges strongly agreed that a child would be asked about his or her wishes in a custody case depending on the judge's own estimate of the child's maturity, 19.8% moderately agreed, and 10.7% strongly disagreed.



In addition to their estimation of a child's maturity depending whether the judges consults the child on his or her wishes, judges specified that maturity is often an important factor in the weight given to the child's wishes when making custody decisions. In the Likert-scale where 1 was not at all important and 7 was extremely important, 68.3% of the judges rated a child's level of maturity as a very important factor, 30.8% rated maturity as moderately important, and .9% gave the child's maturity level little or no importance.



The judges' answers to the questions regarding the likelihood that he or she would ask a child his or her wishes depending on their estimation of the child's maturity and the weight that the child's maturity is given in the custody decision were correlated (.359; $p < .001$). The more a judge uses his or her own estimation of children's maturity as a factor in deciding whether or not to ask them about their wishes the greater the judge is likely to give more weight to the children's maturity level when making the final custody decision.

Neither maturity issue was correlated with the child development questions; however, all trends followed a positive direction. The more judges used their estimation of the child's maturity as a factor in deciding whether or not to ask a child about his or her wishes and maturity as a factor in the final custody decision the more child development knowledge questions they answered correctly.

Judicial Experience and Child Development Knowledge

Surprisingly only 1 of the 7 Judicial Experience questions was strongly correlated with the Child Development questions. The training received after becoming a judge was the only

experience factor that was significantly correlated at .294 ($p < .001$). The remaining six were not correlated; however, trends were all in a positive direction indicating a minimal relationship between the judges' experience and their answers to the Child Development Knowledge questions.

Age of Child and Child Development Knowledge

Judges indicated at which age (6, 8, 10, 12, 14, 16) they believed children were capable of intelligently expressing reasonable wishes regarding custody. Only age 10 was significantly correlated with the Child Development Knowledge questions at .192 ($p < .001$), the greater the Child development knowledge the more capable the judges' believed that 10 years old were in expressing their wishes. Although there was no significant correlation between the other ages there was a general trend in which those with greater child development knowledge believed younger children to be more capable of intelligently expressing reasonable wishes.

Interestingly there was no correlation between the ages that are the farthest apart, for example between age 6 and 16. However, as the ages get closer together they become significantly correlated with one another. There was a trend in which judges indicated that they believed older children to be more capable of intelligently expressing reasonable custody wishes.

Are Children Capable of Intelligently Expressing Reasonable Custody Wishes

	Age 6	Age 8	Age 10	Age 12	Age 14	Age 16
1 - Strongly Agree	3	5	9	15	37	70
2	6	6	11	26	39	29
3	6	11	15	23	17	12
4	12	11	25	26	16	5
5	8	18	21	20	6	3
6	19	22	17	4	4	4
7 - Strongly Disagree	69	49	25	9	4	0

* Note: Cell Sizes above 12 are Bolded

Discussion

Although judges indicated that they felt knowledgeable in the area of child development, their low score on the Child Development Knowledge section shows otherwise. Most judges rated themselves as moderately knowledgeable; however, the average score on the child development portion of the survey was very low. A sample of college students averaged a score higher than that of the judges. This overestimation may indicate that many of the judges believe they are qualified to make decisions about children's developmental maturity, needs, and issues, despite the fact that their child development knowledge, training, and background is limited.

Judges indicated that they have received some training in child development and developmental psychology issues prior to becoming a judge; however the amount has yet to have an impact on their knowledge when given child development multiple choice questions. These judges are required to make daily decisions that affect the lives of children and families across the county. Many of these family court judges do not have the appropriate child development

knowledge to make these decisions, and many currently receive no training or coursework to further educate them in the issues that will arise in family court.

Training for family court judges is imperative to ensure that judges are continuing to make decisions based on the best interests of the child. If social science is used in the courts, judges must be aware of its reliability and how it can be used to determine legal fact. Therefore to ensure proper custody arrangements, judges in line for family court bench positions should have a background in child development or psychology, and additional training should be tailored to the specific needs of these judges.

Most (i.e., 69.4%) of the judges strongly agreed that a child would be asked about his or her wishes in a custody cases depending on the judge's own estimate of the child's maturity, and 68.3% of the judges give a large amount of weight to the child's level of maturity when determining the final custody decision. Family court judges are constantly assessing children's maturity, attachment to and relationship with each parent, and emotional health; however, many do not have appropriate training in child development or an understanding of the skill that it takes to make these assessments.

Crosby-Currie (1995) found that 89% of judges replied that asking specifically about a child's wishes in an interview would depend on the child's age, and 85.6% indicated that the weight given to the wishes was also dependent on the child's age. In that study, judges' results were compared to those of mental health professionals. The judges had a narrower range of ages in which they would allow a child's wishes to have an impact on the final custody decision. The mental health professional gave more credibility to younger children. Consistent with these results, the current study found that when asked about age and the impact it may have on children's wishes being expressed during custody cases; judges indicated that they were more

likely to believe that older children could express their wishes in an intelligent and reasonable manner. With an appropriate amount of child development training, judges may come to realize that children are often able to convey their custody wishes in an intelligent and reasonable way regardless of age.

A child's maturity and age may be related; however, it is not always correct to assume that an older child is more mature than a younger child. Young children are often capable of intelligently expressing their wishes. One author writes, "In all cases involving custody, judges should give no weight to preferences stated by children under ten. Because children under ten have not developed to the point where they can likely engage in rational decision making, courts need not give weight to their preferences" (Mylniec, 1996). Mylniec (1996) goes on to say that all wishes should be respected and recognized because young children may have extraordinary moments of wisdom; however, their wishes should be disregarded by the court. Social science research, based upon child development knowledge, provides conflicting, research based information. Greenburg Garrison (1991) found that 9 year old children were capable of being involved in the custody decision making process. There is data to suggest that certain aspects of general problem solving ability and divorce related knowledge and experience may be more predictive of a child's competence to make custody decisions than age (Greenburg Garrison, 1991). Children of any age, including younger than ten, maybe have this ability and knowledge and can be capable of intelligently expressing their wishes regarding custody. Mylniec, a Professor of Law, provides no research to support his opinion, and this un-researched statement may incorrectly influence judges who already do not have an appropriate knowledge of child development.

The individuals who recommend or decide custody and visitation often do not seem to understand what sort of interaction is needed to strengthen and maintain parent-child relationships after a divorce, and as a result their decisions seldom include sufficient amounts of time or adequate distribution of that time to promote healthy parent-child relationships (Kelly & Lamb, 2003). Judges need to be fully aware of child development research to make sure that parent-child attachments are broken only when absolutely necessary. There are consequences related to breaking bonds with caregivers. For instance, when toddlers are separated from caregivers, intense distress and disturbances can occur (Kelly & Lamb, 2003). The disruption of important attachment relationships may cause depression and anxiety particularly in young children who may lack the cognitive and communication skills to enable them to cope with the loss (Kelly & Lamb, 2003).

It is extremely difficult to reestablish relationships between young children and their parents after these relationships have been disrupted; therefore, the task for judges is to make sure that once trusted attachment figures do not become strangers to their children (Kelly & Lamb, 2003). Judges are required to make decisions each day that may disturb the relationship between families, and they need to be sure that they are educated enough to make decisions that best benefit the children. Decision makers need to be familiar with social science research on the formation and maintenance of parent-child relationships, and on the consequences of disrupting important attachment relationships (Kelly & Lamb, 2003) in order to make knowledgeable custody and visitation decisions.

Child development, developmental psychology, and family system training programs should be mandated prior to and after becoming a judge. If it is left up to social science professionals to teach, court systems need to set up workshops to educate judges in order to

produce more knowledgeable decisions, and social scientists should be prepared to teach judges what is needed for custody decision making. Training and workshops should be continuous and constantly updated due to changes in research and theory. Judges need to be aware of the differences in children's cognitive and physical growth, family systems, and attachment in order fully understand a child's custody preference and to make sure that decisions are always in the best interests of the children in divorce cases.

It is rare that a judge will seek out social science research on his or her own (Weiss, 1987). In addition to training, social science research needs to be readily available for judges to access when needed. When judges need to reach beyond case law to substantiate their current case opinion, they tend to rely on law reviews, so for social science information to reach legal decision makers, social scientists must learn to use these law reviews to publish their work (Hafemeister & Milton, 1987).

One would assume that large amounts of literature would exist concerning judicial decision making in the context of children's choices; however, little has been written about how judges evaluate children's decisions in a legal context (Mlyniec, 1996). When judges do write, it tends to be in the form of opinions and it contains little guidance concerning how trial judges should evaluate the preferences children state, or how research into child development actually informs a judge's decision (Mlyniec, 1996). Judges have not kept a record of how they evaluate children's competencies and how different family systems may create for different custody outcomes, and this may be because they do not have an adequate grasp on the different theories of families and child development. If judges had a broader understanding of child development they may be able to keep better records, and write opinions that could provide help to other judges making similar estimations.

For judicial interviews and decisions to be meaningful and reliable, judges must be aware of the differences throughout child development stages, including the differences in perceptions, language and communication skills, attention spans, memories, and moral values, and they must apply this knowledge to their questioning of the child and to their final decision (Jones, 1984). Judges must use age appropriate questions, comfortable environments, and other age and maturity appropriate tools to gather correct information from children.

Family court judges make decisions everyday that change the lives of children and their families. There is a strong need for better judicial recruitment and child development training prior to and after judicial selection tailored to the unique needs of a family court judge. It is critical that judges be fully prepared in all aspects of the law and of child development in order to make sure that the best interests of the child are first and foremost important when determining custody decisions.

References

- Atwood, B. (2003). Hearing children's voices: The child's voice in custody litigation: An empirical survey and suggestions for reform. *Arizona Law Review*, 45.
- Baron, S. (2003). Issue facing family courts: The scope of family court intervention. *Journal of the Center for Children and the Courts*, 115.
- Bersoff, D. N., & Glass, D. J. (1995). The not-so Weisman: The Supreme Court's continuing misuse of social science research. *University of Chicago Law School Roundtable* 2, 279-302.
- Crosby-Currie, C. A. (1996). Children's involvement in contested custody cases: Practices and experiences of legal and mental health professionals. *Law and Human Behavior*, 20, 289-311.
- Dillman, D. A. (1978). *Mail and telephone surveys: The total design method*. New York: John Wiley & Sons.
- Greenberg Garrison, E. (1991). Children's competence to participate in divorce custody decisionmaking. *Journal of Clinical Child Psychology*, 20, 78-87.
- Grossman, N. S., & Okun, B. F. (2003). Family psychology and family law: Introduction to the special issue. *Journal of Family Psychology*, 17, 163-168.
- Hafemeister, T. L., & Milton, G. B. (1987). The impact of social science research on the judiciary. In G.B. Milton (Ed.), *Reforming the law: Impact of child development research* (pp. 27-59). New York: Guilford Press.
- Hall, W., & Aspin, L. (1987). What twenty years of judicial retention elections have told us. *Judicature*, 70, 340-347.

- Hardcastle, G. W. (2005). Adversarialism and the family court: A family court judge's perspective. *UC Davis Journal of Juvenile Law and Policy*, 57.
- House, B. L. (1998). Considering the child's preference in determining custody: Is it really in the child's best interest? *Journal of Juvenile Law*, 19, 176-195.
- Jones, C. J. (1984). Judicial questioning of children in custody and visitation proceedings. *Family Law Quarterly*, 18, 43-91.
- Kelly, J. B., & Lamb, M. E. (2003) Developmental issues in relocation cases involving young children: When, whether, and how? *Journal of Family Psychology*, 17, 193-205.
- Kerr, N. (1986). Social science and the U.S. Supreme Court. In M. F. Kaplan (Ed.), *The impact of social psychology on procedural justice* (pp. 56-82). Springfield: Charles C. Thomas Publishers.
- Kreeger, J. (2003). Family psychology and family law – A family court judge's perspective: Comment on the special issue. *Journal of Family Psychology*, 17, 260-262.
- Koocher, G. P., (1987). Children under the law: The paradigm of consent. In G.B. Milton (Ed.), *Reforming the law: Impact of child development research* (pp. 3-26). New York: Guilford Press.
- Mlyniec, W. J. (1996). A judge's ethical dilemma: Assessing a child's capacity to choose. *Fordham Law Review*, 64.
- Neubauer, D. W. (1997). *Judicial process: law, courts, and politics in the United States*. Fort Worth: Harcourt Brace College Publishers.
- Polier, J. W. (1941) *Everyone's children, nobody's child: A judge looks at underprivileged children in the United States*. New York: Charles Scribner's Sons.

- Redding, R. E., & Reppucci, N. D. (1999). Effects of lawyers' socio-political attitudes on their judgments of social science in legal decision making. *Law and Human Behavior, 23*, 31-54.
- Ryan, J. P., Ashman, A., Sales, B., & Shane-Dubow, S. (1980) *American Trial Judges*. New York: Free Press.
- Vanderbilt, A. T. (1958). *Judges and jurors: Their functions, qualifications and selection*. Boston: Boston University Press.
- Wallace, S., & Koerner S. S. (2003). Influence of child and family factors on judicial decisions in contested custody cases. *Family Relations, 52*, 180-188.
- Weiss, C. H. (1987). The diffusion of social science research to policymakers: An overview. In G.B. Milton (Ed.), *Reforming the law: Impact of child development research* (pp. 63-85). New York: Guilford Press.