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The Role of Expertise in Legal Decision Making in Juvenile Dependency Cases:

Comparing Judges to Mock Jurors

A dissertation submitted in partial fulfillment of the requirements for the degree of
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by

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ABSTRACT

In child abuse cases, when the child has been removed from the parents' care, and has

been in out of home placement for 15 of the last 22 months, the courts are required to file

a petition to terminate parental rights. At the termination of parental rights (TPR) trial the

judge must decide if it is in the best interest of the child for parental rights to be

terminated. This is a difficult decision that will impact the lives of both the child and the

family. Several states allow jury trials to decide if termination should occur (Szymanski,

2007). Yet, research has failed to address whether the use of juries is idyllic in child

abuse cases. It could be argued that judges have a degree of expertise in legal decision

making, as they have the requisite legal knowledge and experiences necessary to make

informed decisions, thus making them better equipped to make decisions, particularly in

complex and controversial cases such as child abuse. Further, there are many factors

within a legal case, particularly a child abuse case, that might impact cognitive

processing, and which could influence the outcome decision. The current study sought to

identify judicial expertise factors that may impact decision making, determine how

similar (or different) judges and mock jurors are in terms of their decision to terminate

and decision making factors they identified, and determine if (and how) cognitive

processing could explain the differences. To achieve these goals, the study was conducted

in two phases. Phase I assessed different expertise factors in order to determine which

factors, or combinations of factors, might constitute judicial expertise. Phase II assessed

differences in expertise as it related to decision making. A mock TPR trial was

constructed, and, as most termination trials end in termination of parental rights, case

facts were manipulated to encourage participants to make a decision to *not* terminate

parental rights. Participants were also asked about specific decision making factors, cognitive processing, and emotional reaction to the case. Phase I results revealed that there were no expertise variables which impacted the outcome decision or decision making factors; however, judges did demonstrate high levels of experience and training relating to child abuse and neglect cases. Therefore, the remaining analyses examined expertise in terms of a judge/mock juror dichotomy. Results of phase II of the study indicate that expertise (i.e., judge versus jurors) does impact some of the decision making factors. Judges perceive certain aspects of the case as less complex, are more likely to identify the anti-termination factors as relevant to decision making, and experience less negative emotion in response to the case as compared to mock jurors. Judges were also more likely to be rational processors when making decisions, as determined by multiple cognitive processing and disposition measures, including the Rational-Experiential Inventory, Cognitive-Experiential Self Theory measures, and a in-case processing measure of rational processing. While there was no main effect for expertise on outcome decisions, there was an interaction between expertise and anti-termination (e.g., experimental) factors. Judges were much more likely to rely on the information in their decision making. That is, judges who were in the anti-termination conditions were less likely to terminate than were jurors. Expertise also exhibited an indirect effect on case processing. There were also differences on multiple decision making factors and on the outcome decision based on cognitive processing. Rational processors perceived less risk of returning the child home, more risk of leaving the child in foster care, and were less likely to terminate parental rights. Further, several of the decision making factors mediated the relationship between rational processing and outcome. Based on these

results, it was determined that expertise has multiple impacts decisions, including

contextualized direct impacts on outcome decisions, as well as indirect impact by

influencing rational processing, which in turn influences consideration of important

decision making factors as well as outcome decisions.

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CHAPTER 1: INTRODUCTION

Every year, millions of children are reported to child protection services as potentially abused or neglected (Snyder & Sickmund, 2006). Despite the fact that the majority of these reports are unsubstantiated, over 900,000 children are found to be victims annually. A majority of these children become involved in the juvenile dependency court system. When the cases come before the court, the judge has to make the difficult decision of whether the child should remain in the home or be removed from his parent's care. Currently, there are more than 500,000 children placed in foster care in the United States (Snyder & Sickmund, 2006).

Making decisions in child abuse and neglect cases poses a difficult legal choice. Judges must weigh all the benefits and risks as either decision, to remove the child or leave the child in the home, could pose significant risk to the child. If the child remains at home, there is the risk that the abuse will continue or worsen. However, if the child is removed from the home, both the child and parents may suffer significant emotional trauma due to separation, and problems that may occur with attachment. Further, children who enter foster care often manifest emotional, behavioral, and developmental problems (Clausen, Landsverk, Ganger, Chadwick & Litrownik, 1998), particularly when they experience instability of placement moves (Newton, Litrownik & Lansverk, 2000). When judges oversee the multiple hearings involved in a juvenile dependency case, they make decisions that will impact the entire family.

The majority of states require that judges make all juvenile dependency decisions. However, some states allow juries to make decisions at key stages in the juvenile dependency process. Juries are typically allowed during specific contested trials, but

judges still make the decisions regarding all other components of the case. This means that juries are tasked with deciding one aspect of a case, without prior knowledge and understanding of the implications this decision has on the future of the case. Research has failed to examine how jury and judicial decision making may be similar or different in child abuse cases. The current research seeks to address this gap by examining differences in decision outcomes and the decision making process between judges and mock jurors.

Research on Judges and Juries

Research in the area of judicial decision making, particularly comparing it to jury decision making, is fairly rare. Some studies, examining decisions in criminal cases, indicate judges and juries are fairly similar in their decisions (Eisenberg et al., 2005; Kalven & Zeisel, 1966), while other studies find that judges may be more lenient than juries, based on their lower conviction rates (Leipold, 2005). Leipold's study indicates that the difference in conviction rates may have to do with the crime category, yet fails to ascertain why different case types may impact leniency. In fact, few studies have attempted to explain why these differences in decisions might exist. Studies examining differences in judges and jurors have found differences in the decision making process relating to perception of complexity of the case (Heise, 2004) and evaluation of evidence (Arce & Fariña, 2005). Yet, no studies have examined the underlying reasoning for this. Further, the majority of research has examined criminal case types (Eisenberg et al.; Leipold), and failed to address civil cases, such as child abuse and neglect trials.

Judges and juries differ on many dimensions. Judges in child protection see hundreds or thousands of these cases every year, and have the opportunity to acquire

specialized training in the area of child abuse and neglect to help them evaluate the case and make informed decisions based on current laws. This makes them experts in the area of child protection. The multitude of cases also may desensitize judges, making them more objective when evaluating difficult cases. Judges see so many cases, they may not longer respond as emotionally, and be thus more objective. They are expected to be rational and unbiased decision makers. Juries, on the other hand, are quite different. They are selected from the community, may have little or no experience with the juvenile dependency system, and are not trained to make informed decisions in this area of law. They have no legal knowledge (other than that given in the trial), and may rely on their own biases and judgments when making a decision. Thus, expertise and experience may be the primary dimensions on which judges and jurors differ.

Expertise

Judges are trained and experienced, making them 'experts' in decision making involving child protection cases. One might assume that experts make better decisions because they have experience and training, yet this is not always the case. Experts and non-experts often differ in their decision making strategies, but may reach the same outcomes (Shanteau & Stewart, 1992). One theory is that experts often form heuristics (rules of thumb) which guide their decision making (Baron, 1994). Judges, too, may rely on heuristics, or limited information when making a decision. A study of judges found that they rely on only one to three factors when making decisions to set bail, despite the amount of other information available (Ebbesen & Konečni, 1975). These judges may be more inclined to rely on the information they see as legally relevant to the issue at hand. Although this research has been focused on criminal cases, it could be assumed that all

judges might make decisions in this fashion. Thus, judges in child abuse cases may rely on their heuristics when making decisions. Jurors should rely on evidence and jury instructions, making their decision making process different, which may (or may not) lead to different outcomes as compared to judges. This may cause jurors to think more about the case because they have not developed heuristics. It may also cause jurors to think about different aspects of the case than judges, which can be positive or negative. If they are paying attention to more legally relevant information, it may be beneficial; if they are paying attention to information that should not impact their legal decision, it will be detrimental to their decision making.

Emotion

Jurors' lack of experience may also make them more prone to experiencing strong emotions in reaction to case facts. Both social workers and police officers report experiencing emotions when exposed to child abuse victims (Cheung & McNeil Boutte-Queen, 2000). Reports indicate they experience a wealth of emotion, with the most prominent being anger and empathy. Anger is on the emotions identified which leads to emotional decision making (Tiedens & Linton, 2001), which may bias decisions. Judges experienced in child abuse and neglect cases may be less prone to responding emotionally because they have seen many of these types of cases and have developed cognitive coping mechanisms to address the emotions that arise. This difference in processing may help explain how judges and jurors differ, assuming they do differ.

Dual Processing Theory

According to Epstein (1990), individuals can process information for decision making in two ways. They can process information rationally, which requires logical,

analytical thought, or they can process information experientially, which is more rapid, and relies on emotion and heuristics. Epstein termed this theory Cognitive-Experiential self-theory (CEST; Epstein, 1990). This theory can be applied when making comparisons between judges and jurors, and could explain both their divergent thought processes and their similar outcome decisions. Judges, who are legal experts trained to apply the current laws, will develop heuristics or rules of thumb, which may cause them to experientially process information when making decisions. Jurors, on the other hand, may react emotionally, and also process information experientially. However, research also indicates that individuals can switch between processing modes or may simultaneously process both rationally and experientially (Epstein, 1990; Kirkpatrick & Epstein, 1992). They may experience anger and process experientially, and then calm down and rationally process the remainder of the case. Of course, research also indicates that initial heuristic processing has the potential to impact later systematic processing (Chaiken & Maheswaran, 1994). This means that early heuristic processing may make individuals overlook important case factors that rational processors would identify. Depending on the type of processing, jurors may come to better decisions than judges, or arrive at conclusions similar to judges.

Although comparing judges and jurors is not a novel idea, the current two-phase research study has the potential to add several things to the field of psychology and law. Phase I analysis examines expertise factors that may influence decision making and outcomes, which will allow the researcher to determine which factors are relevant to expertise and how these impact decisions. Phase II of the study has multiple advantages to the field. First and foremost, it allows researcher to examine the differences between

judges and jurors, and draw conclusions regarding 'how good' jurors are as decision makers in child abuse and neglect cases, which is important in applying the results to real world settings. Second, the research may provide an explanation of why and how the differences might occur, an area that has received little theoretical or empirical attention. The research also has the potential to inform theory about information processing and decision making in general. Finally, the current research has the potential to expand the literature on expertise and expert decision making. This study will allow researchers to determine what impact experience and expertise have on legal decision making, and specifically how expertise can impact emotion, understanding, and perception of risk.

Overview of Chapters

Chapter two provides an overview of the child abuse and neglect system, tracing it from its roots in the United States to its current form. The chapter also highlights relevant laws which impact decision making as well as delineates the juvenile dependency court process.

Chapter three provides an overview of the relevant decision making literature focusing on the decision makers, specifically as it relates to judges and jurors. Legal decision making is reviewed first with respect to judges, identifying previous research and gaps in the methodological and content areas. Research focusing on jurors is also reviewed. Finally, comparisons are made between judges and jurors.

Chapter four discusses factors which might influence legal decision making. These factors include a review of the expertise literature and impact of expertise on various decision making factors. This chapter also discusses the role of uncertainty and emotion in decision making, particularly as they are relevant to expertise. Finally, the

chapter discusses specific research relating to the child abuse and neglect system.

Chapter five outlines Epstein's Cognitive Experiential Self-Theory (CEST). This dual process theory posits that individuals process information both rationally and experientially. The theory is explained and outlined in a manner relevant to the field of legal decision making.

Chapter six outlines the study overview and hypotheses that will be assessed. Chapter seven discusses the methodology employed. Chapter eight outlines the results and Chapter nine offers discussion of these results and their implications to the field.

CHAPTER 2: CHILD MALTREATMENT AND THE LEGAL SYSTEM

History of Child Abuse and Neglect

Child welfare practice and policy in the United States stems largely from English common law, where the king served as *parens patriae*, or 'parent of the state,' whereby the government had the power to serve as guardian to orphaned children. Essentially, the British government had the right to usurp the rights of parents or caretakers in order to serve as a guardian for those in need of protection. The colonial laws originally in place mostly applied to children in institutions. Those which addressed parental treatment of children were not regularly enforced (Levine, Wallach & Levine, 2007).

Historical events which have given rise to the juvenile law system currently in place in the United State began in 1874, when a mission worker discovered the abuse of an orphan named Mary Ellen Wilson. At that time, there were no child protection services, so the mission worker reported the abuse to the Society for the Prevention of Cruelty to Animals (SPCA). The SPCA obtained a warrant and removed the child from her caretaker's custody. Publicity from this case led to the development of the New York Society for the Prevention of Cruelty to Children in 1875 (Levine et al., 2007). The organization was given legal authority to find abused and neglected children, and take them into custody. In 1899, the first juvenile court was founded in Cook County, Illinois, representing the first court with exclusive jurisdiction over minors. Although this court was primarily focused on juvenile delinquency, it provided a system in which the child abuse and neglect court system could emerge. Other states followed suit, and within twenty years every state had a juvenile court system. Federal laws began to increasingly address child maltreatment, shaping state laws and funding for the child welfare system.

Child Abuse Laws

      In 1935, Congress passed the Health, Education and Welfare Act (P.L. No. 74-271; Social Security Act). Among other interests, the Social Security Act provided federal assistance for child welfare services, including Title IV-E funds which provide federal payments for foster care and adoption assistance. In 1944, the United States Supreme Court confirmed the state's authority to intervene in the family in order to protect children (*Prince v. Massachusetts*, 1944). The case was significant in that it demonstrated the important balance between parents' rights to raise their children as they see fit and the state's obligation to protect children from harm. Two years later, the U.S. Department of Health and Human Services Children's Bureau joined the Social Security Administration, and the Social Security Act was amended to give aid to dependent children.

      In the 1970s, awareness of child abuse became more prevalent and every state adopted mandatory reporting laws whereby specific professionals, such as teacher, doctors, and social workers were required to report suspected abuse. These laws were encouraged by the Child Abuse Prevention and Treatment Act of 1974 (CAPTA; P. L. 93-247) which provided funding to states to support prevention, investigation, and treatment of child abuse, on the condition that the states met their requirements, one of which was to have mandatory reporting laws. Reporting laws were solidified in 1991 when Congress passed the Victims of Child Abuse Act of 1990 (P.L. 101-647) which further defined child abuse, and made more specific requirements for mandatory reporting.

      In addition to requiring states to have mandatory laws in place, CAPTA also

provided a minimum definition of child abuse and neglect, and established a National

Center on Child Abuse and Neglect. The law has been amended and reauthorized

continually over the years, including a complete rewrite of the Child Abuse Prevention,

Adoption and Family Services Act of 1988 (P.L. 100-294) and further amendments with

the Child Abuse Prevention and Treatment Act Amendments of 1996 (P.L. 104-235). The

most recent amendment came in the Keeping Families Safe Act of 2003 (KFSA; P.L.

108-36) which reauthorized and extended the CAPTA in order to ensure that the national

clearinghouse originally created maintained and disseminated information on treatment

and prevention. KFSA also made further demands on the state to improve the child

welfare system, and offered greater flexibility in funding opportunities.

Child Abuse Laws' Impact on the Courts

As child abuse laws progressed, they began to increasingly recognize and address

the importance of the court process in child welfare. The Omnibus Budget and

Reconciliation Act of 1993 (P.L. 103-66) authorized funding to the courts to analyze the

handling of child protection cases and work toward improvement. Funds were made

available through the state Court Improvement Program (CIP), which is still in place

today. The program began the movement toward improved court practice in juvenile

dependency cases.

In 1997, Congress sought to further enhance the court process with the passing of

the Adoption and Safe Families Act (ASFA; P.L. 105-89). ASFA called for timely case

processing to ensure that children were placed in a safe and permanent home as

expediently as possible. The ASFA set clear timelines of when key court events should

occur, and clarified important issues regarding court findings of 'contrary to welfare' and

'reasonable efforts.' The ASFA also had significant impact on the role of the judges, especially regarding decision making in juvenile dependency cases. Judges, after ASFA, were authorized to decide that states did not have to provide services to families in severe cases of child abuse and neglect. The courts were also tasked with monitoring the agency's reasonable efforts to find permanent homes for children. Given the expedited timeframes required in the ASFA, courts must decide early in the case if reunification services are required. The courts must also hold more decisive and comprehensive permanency hearings earlier than in the past. Thus, ASFA called for enhanced judicial oversight and timely decision making in cases. Since 1997, other acts, such as the Strengthening Abuse and Neglect Courts Act of 2000 (P.L. 106-314), have arisen to further aid the states in enhancing the court system.

In addition to ASFA, other specific laws have been passed which require enhanced judicial oversight and put constraints on the decision making process. In 1978, Congress passed the Indian Child Welfare Act (ICWA; P.L. 95-608) which established standards for the placement of Native American children in foster or adoptive homes, required tribal jurisdiction over Native American children if possible, and required preference of placements to be in Native American family environments when applicable. This Act required judges to take into account additional considerations regarding Native American children. Several years later, the Multiethnic Placement Act (MEPA; P.L. 103-382) was also passed. MEPA prohibited agencies from delaying or denying or otherwise discriminating when making foster care or adoptive placements, and required states to ensure (when possible) that plans were developed to recruit diverse foster families to provide an ethnically similar placement for children. Both MEPA and ICWA impact

judges' legal decisions by requiring greater consideration of factors such as race and ethnicity when making placement decisions.

Child Abuse and Court Structure

The development of the first juvenile court marked an important initial step in treating juveniles as different from adults and following *parens patriae* rationale discussed earlier. The development of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) solidified this distinction, and brought attention to the need to improve juvenile justice policy and practice.

The juvenile courts differ from adult criminal and civil cases in several ways. As the juvenile courts are set up under *parens patriae* rationale, early courts made little effort to ensure due process rights to children or adults. The court was serving as a guardian to children, and thus did not see the need for the formality of hearings often found in adult criminal and civil cases. The juvenile dependency court has been working toward increased formality by ensuring attorneys for children and parents, and is increasing mandates that parents and children have attorneys from the early stages of the court process to ensure that their due process rights are being met.

The juvenile dependency courts also differ in the amount and type of hearings that judges must oversee. In a typical criminal or civil case, judges (and juries) hear all the evidence and make decisions regarding guilt and sentencing (if necessary). This may take place in one or two hearings or in a multi-day trial. In juvenile dependency cases, there are multiple hearings, spread out over months, all linked to the same case. Decisions must be made at each hearing that can significantly impact the lives of the parents and children. It may be years before the case reaches resolution.

Further, juvenile dependency cases are often complex. They require multiple decisions across the life of the case, each one potentially impacting future decisions and outcomes, not just for the child, but for the entire family. In their role, judges must make decisions regarding whether to remove the child from the home, where the child should be placed, what services should be offered, what level of compliance is acceptable, and what permanent plan is best for the child. This requires a degree of expertise, as judges will need to understand the consequences of these decisions. Removing the child from the home can be emotionally distressing to the child, siblings, and parents. On the other hand, allowing the child to remain in a home where there is risk of physical, sexual, or emotional abuse or neglect can be just as damaging if not more so. The judge must not only weigh the evidence in these cases but the probable consequences of any decisions made, including special concerns such as bonding with the parents, the educational and health needs of the child, and substance abuse issues, and how they may impact the family. While decisions in adult court also have important consequences, the complexity of juvenile dependency cases makes them unique.

The child welfare system need not always involve the courts. In fact, many cases never reach the courts at all. According to the Office of Juvenile Justice and Delinquency Prevention (Synder & Sickmund, 2006), the process works as a filtering system. Thousands of calls come into child protective services (CPS) each week. CPS screens all referrals and makes the determination if the claim of abuse is substantiated. At this point, CPS offers services to parents and the families to help address their issues and concerns. Often, these services are voluntary.

However, some situations require intervention by the court. For example, cases in

which there is an imminent risk to the child, or when parents will not voluntarily agree to

services (e.g., substance abuse treatment), may be sent to the juvenile dependency court

(Synder & Sickmund, 2006). Once involved in the juvenile dependency court, there is a

process of hearings until the case reaches resolution, with each hearing marking key

events in the case.

Preliminary Protective Hearings

Many of the cases which come to court involve situations in which the child has

been removed from the home because of imminent risk. CPS files a petition to remove

the child from the home. Although the names of hearings are not consistent across

jurisdictions, the first juvenile dependency court hearing is often called the preliminary

protective hearing.[1] These hearings must occur within a short time following removal of a

child from their home. The purpose of the preliminary protective hearing is to determine

if the child can be safely returned home while the trial is still pending (NJCFCJ, 1995).

At this hearing the court must evaluate the risk to the child of returning home, what can

be done to eliminate this risk, and where the child should be placed to best serve the

child's needs (e.g., placement with a relative instead of foster care). The court must

consider that removing the child from the home is disruptive to the family, and what the

emotional and physical consequences are to the child if placed in foster care. The court

must also determine if the agency has made reasonable efforts to prevent removing the

child from the home or explored ways to safely return the child home. Although a

complex decision, the court must weigh the risks to the child, and determine what course

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[1] Preliminary protective hearings are also called detention hearings, protective custody hearings, shelter care hearings, or emergency removal hearings, depending on the jurisdiction.

of action is in the best interest of the child until the adjudication trial where the court

determines if the allegations made by CPS are substantiated by evidence.

Adjudication Trial

The second hearing in the juvenile dependency process is the adjudication

hearing, or trial.[2] In the adjudication hearing, the court must determine if there is enough

evidence to prove the allegations made by CPS and if the evidence is legally sufficient to

allow the state to intervene. Courts must also determine if CPS, made reasonable efforts

to prevent the need for placement or to safely reunify the family (NCJFCJ, 1995).

Sometimes, parents admit to the allegations and an evidence-based trial is not necessary.

In these cases, the court must ensure that the parents understand the allegations to which

they have agreed and the consequences of agreeing to the allegations. The courts also

have to determine where the child should be placed until the disposition hearing if the

court determines that jurisdiction is necessary in the case.

Disposition Hearing

The disposition hearing typically follows immediately after the adjudication

hearing. In the disposition hearing the court must determine where the child should be

placed, and who shall have control over the child (NCJFCJ, 1995). The court must also

begin to examine the long-term plan for the child and the agency's case plan for the

family and child. The case plan will include suggested services and goals so that the

family can work toward a permanent plan for the child, either reunification with the

parents or an alternate plan (e.g., relative guardianship). Plans for parental and sibling

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[2] The adjudication hearing is also called a fact-finding hearing or jurisdictional hearing in some
jurisdictions.

visitation are often ordered in the disposition hearing, as well as plans for implementation and monitoring of the case plan and review of the case.

Review Hearings

Review hearings take place following the disposition of the case, and offer an opportunity for the court to examine the status of the case. Timing of review hearings depends largely on the state statutes, but they are required within six months of the child entering foster care, according the ASFA (P.L. 105-89). Some states have more frequent reviews, particularly for young children, as a timely permanent placement is always the goal and younger children are still forming bonds with caregivers. At the review hearing, the court must determine if there is need for continued placement of the child, if progress has been made by parties to alleviate the concerns, whether the plan for the child is still in the best interest of the child, and any modifications that should be made to the case plan or visitation arrangements (NCJFCJ, 1995).

Permanency Planning Hearings

Within one year of entry into foster care, courts must hold a permanency planning hearing (P.L. 105-89). At the permanency planning hearing the court must determine the permanent plan for the child. The court must set specific dates by which the child will be returned home. If reunification is not a safe possibility, the court must determine other plans and set dates for legally making the child available for adoption, arranging legal guardianship of the child, or keeping the child in foster care on a long-term basis (NCJFCJ, 1995). If reunification is not likely, the court (or agency) may petition for termination of parental rights in order to free the child for adoption.

Termination of Parental Rights Hearings

According to ASFA (P.L. 105-89), a termination of parental rights petition must be filed for children who have been in foster care 15 of the last 22 months. Other situations may warrant a termination petition, particularly when parents have not made progress toward goals specified in their case plan making reunification is unlikely. The termination of parental rights (TPR) hearing is one of the most difficult hearings a juvenile dependency court judge oversees. In this hearing or trial, the court must determine if there are sufficient legal grounds for termination of parental rights, and if termination of parental rights is in the best interest of the child. Termination strips parents of all rights to the child including visitation, communication, or obtaining information about the child (NCJFCJ, 1995). These hearings can be contested trials where evidence is presented from both sides; alternatively, parents may voluntarily relinquish their rights. Following the trial, the courts must develop a post-termination plan for the child, which will include a plan for permanency and safety of the child.

The Current State of the Juvenile Dependency Courts

Nationwide, CPS receives 50,000 calls a week, of which about 18% are substantiated (Synder & Sickmund, 2006). Of these substantiated calls, many never enter the court system. On the other hand, at present there are more than 500,000 children in foster care in the United States (Synder & Sickmund, 2006). Judges across the country are tasked with making these difficult decisions every day, some with little or no training specific to the area of juvenile dependency. Yet, progress has been made in enhancing the juvenile dependency court process.

The state CIP and ASFA have both helped to enhance the state of juvenile dependency courts in the United States by clarifying issues, setting specific court

improvement goals, and providing funding to the courts to help enhance the court process. The National Council of Juvenile and Family Court Judges (NCJFCJ) has also worked to enhance the system. In 1995, the NCJFCJ published the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases,* which served as a foundation for change in the courts. The *RESOURCE GUIDELINES* made specific recommendations to improve practice in the juvenile dependency system, such as enhanced judicial trainings in the area and allowing one judge to oversee the case from start to finish, and has served as an impetus for system improvement. The NCJFCJ has also worked with specific courts through their Victims Act Model Court Project. This project allowed the NCJFCJ to establish model courts around the country with the goal of enhancing court process, by improving judicial training and following the recommendations of the *RESOURCE GUIDELINES* (NCJFCJ, 1995).

In addition to the model courts project sites, the *RESOURCE GUIDELINES* also make specific recommendations regarding the role of the judge. The *RESOURCE GUIDELINES* endorses a one family – one judge system of decision making. That is, it recommends that one judge oversee a case from start to finish. This will allow the judge to become more familiar with every aspect of the case, thereby offering a degree of expertise in the specific case, and allowing better decision making. This process has been extended upon as specialized courts which follow the same principles of specialized and enhanced court processing have sprung up across the United States. Many juvenile courts specifically focus on dependency and delinquency, allowing judges to specialize in the area, becoming more aware of the complex issues that surround child abuse cases. Other jurisdictions have implemented Unified Family Courts which oversee several types of

family related cases, including juvenile dependency, divorce, and custody. The thought is that these courts allow judges to become more familiar with all the issues that surround a family so that they can make more informed decisions in the case.

Despite the emergence of specialized courts, many courts still serve as general jurisdiction courts, hearing all types of cases. However, this does not mean that the judge does not have some semblance of expertise in the area, nor does it mean that judicial officers are not hearing the entire case. These judges are still legal experts and may have various levels of training. Another distinction among jurisdiction is that some states permit jury trials as part of the child abuse and neglect case processing.

Use of Jurors in Child Abuse Cases

The use of jury trials in child abuse cases is not widespread. In 2003, only 11 states permitted or required the use of jury trials in child abuse and neglect cases (Szymanski, 2004). However, "state legislatures in these remaining 40 jurisdictions continue to discuss and debate the issue of jury trials in abuse, neglect, [and] dependency cases" (Szymanski, 2004). Since 2003, at least one other state (Arizona) has implemented a jury trial process in juvenile dependency cases and several others have discussed the concept and tried to pass legislation which would allow jury trials. These 11 states allow jury trials in one (or both) of two key trials in the juvenile dependency process.

Six states allow the use of a jury in the adjudication trial in juvenile dependency hearings. These states include Colorado, Maine, Massachusetts, Montana, South Dakota, and Wyoming. Six states also allow the use of the jury in termination of parental rights trial. These states include Texas, Oklahoma, Nevada, Virginia, Wisconsin, and Wyoming (Syzmanski, 2007). Oklahoma's law was passed after the Oklahoma Supreme Court held

that termination of parental rights hearings required the full constitutional rights of the parents, including the right to a jury trial (*A.E. v. State of Oklahoma*, 1987). The remaining jurisdictions prohibit the use of a jury trial via case law, statutes, local court rules, or common practice (Syzmanski, 2007).

In 2005, the Children's Action Alliance conducted an examination of the first year of use of a jury trial in termination of parental rights trials. Preliminary data from this assessment indicated that the majority of both jury and bench trials ended in termination. Results also demonstrated that jury trials tended to occur quicker than bench trials (Children's Action Alliance, 2005). While statistical comparisons between jury and bench trials were not made, the authors did note that similar termination percentages occurred between the two groups. It was also noted that jury trials differed from bench trials in that they offered more elements that could lead to mistrials or appeals (Children's Action Alliance, 2005). Although not a statistical comparison of juries versus judges in termination trials, this assessment offers a first glimpse of some of the concerns that arise depending on the legal decision maker. The abilities of judges and jurors to make these difficult decisions and factors which influence these decisions are both important to consider, and are thus discussed more at length in the next chapter.

CHAPTER 3: LEGAL DECISION MAKING: JUDGES VS. JURORS

Legal decision making has long been of interest to researchers, producing a wealth of studies on varying topics (e.g., Kalven & Zeisel, 1966). The complex nature of the current research involves research in multiple dimensions of decision making. One of the most important factors revolves around the impact of the decision maker. In the legal system, there are many legal actors who can influence the case, but the two charged with making key legal decisions are judges and jurors. Both judges and jurors have an important role in the legal system. Therefore, research on judges and jurors is separately examined and then combined to compare known differences between the groups.

Judicial Decision Making

Over the years, the approach to studying the judiciary has changed. Early approaches often focused primarily on individual characteristics (e.g., liberalism or conservatism) used to predict discretionary actions of judges (e.g., Nagel, 1962), often taking a political science approach. These studies generally focused on retrospective case decision analysis. Yet, as time progressed, interest in other aspects of the judicial decision making process emerged. Researchers began focusing on discretionary aspects of the bench, such as setting bail (Ebbesen & Konečni, 1975). Later studies sought to fill in the gaps not investigated by prior research and often focused on psychological models of decision making and other more applied approaches. However, gaps still exist in judicial research areas. Additionally, judicial studies often employ weak methodologies. Herein, the study of judges is explored, the history of judicial study is traced to the modern approach, weaknesses in the methodology are identified, the gaps in the literature are addressed, and recommendations for improving studies are made.

Overview of Judicial Research

Early Areas of Focus

Early attempts at studying judicial decision making predominantly focused on explaining discretionary decisions of judges by examining global individual differences (Ebbesen & Konečni, 1982). By far, the most common factor examined in judicial decision making has been political party affiliation (Nagel, 1961). Examination of non-unanimous case decisions found differences for nearly every case type when comparing party affiliation. Researchers have also explored differences in judicial decisions based on liberal/conservative attitudes (Nagel, 1963), religious affiliations (Nagel, 1962), and judicial role orientation (Scheb, Ungs, & Hayes, 1989). Liberalism attitudes and religion (comparing Catholic to Protestant) were both found to be related to at least some case type decisions. However, judicial role orientation (e.g., the judge's attitude regarding the legal and political functions of the court) was found to mediate the relationship between political affiliation and judicial decisions (Scheb et al., 1989).

This early research failed to consider contextual variables that might also play a role in judicial decisions, an oversight which prodded the next round of judicial research. Instead of merely focusing on personal factors in making decisions, researchers began to put the decisions in context. The culture of the court (i.e., perceived expectations of the judge) was found to play a role in decisions (Smith & Blumberg, 1967) as well as the context in which the court case takes place (Wenner & Dutter, 1988). Research began to explore more specific case facts such as offense and offender information (e.g., race and socioeconomic status), and found this information to be relevant to the decision as well (Tomkins, 1990). Although these studies provided some insight into judicial decisions,

they also left the opportunity for advancement of knowledge in the field.

Contemporary Work

Recent work on judicial decision making has sought both to fill the gaps left by prior research, and to further enhance the field. The majority of research regarding personality characteristics was conducted in the1950s, in a time when judges were a fairly homogenous group, which made comparisons regarding race and gender difficult. The present diversity of the judiciary has allowed for these comparisons, although the findings were not all together groundbreaking. Studies indicated small overall effects of race (Steffensmeier & Britt, 2001), age (Manning, Carroll, & Carp, 2004), and gender (Steffensmeier & Hebert, 1999). For example, examining the interaction of context, offender characteristics, and gender did provide some interesting results because female judges were found to be harsher on black offenders and more lenient on older offenders (Steffensmeier & Hebert). Findings support earlier suggestions that individual factors must be considered in addition to context.

In addition to helping fill in the gaps, contemporary work has also focused more on the decision making process, developing psychological theories of decision making and finding application for the research. While early research has exhibited a predictive and explanative focus, new research has worked more toward understanding decisions of judges in order to assist in judicial decision making. Focusing on small aspects of the decision making process has yielded some interesting findings, indicating a judicial bias with anchoring effects, as judges typically make sentencing decisions anchored to the recommendation of the prosecutor (Englich & Mussweiler, 2001; Fariña, Arce, & Novo, 2003) and order effects as the judge was more swayed by later evidence (Kersthold &

Jackson, 1998). Broader attempts at psychological theories of judicial decision making have also been made (Ballou et al., 2001; Simon, 1998), although using quite different approaches. Simon (1998) has proposed an elaborate psychological model of judicial decision making, the central feature of which is the mental state of the judge at the time of decision, and how the cognitive representations of the information evolve with the legal decisions. His focus has been on the shift from conflict found within the case to the closure which is reached when the judge makes a decision and finds relevant cognitions to support it (Simon, 1998). All of these studies provide pieces of the puzzle of judicial decision making.

In addition to providing different information, present-day studies of judicial decision making have also functioned in a different capacity than earlier studies whose purposes were primarily descriptive or predictive. Contemporary studies emphasize the importance of application of research. For example, Ballou et al. (2001, 2007) have taken an action oriented research approach to developing a psychological model of decision making. They began with an expressed judicial need for assistance in making decisions under time pressure in cases where risk was being assessed (i.e., continuation of restraining order, emergency removal in child protection). From here, they examined relevant literature, interviewed individuals involved in the system, and developed a psychological model in the form of key questions judges could use in making decisions (Ballou et al., 2001, 2007).

Current research has also been conducted to determine how well judges understand and apply new criteria, such as *Daubert*. The *Daubert* standard sets the legal precedent for admissibility of evidence on a relevancy prong (e.g., whether the evidence

fits the facts of the case) and a reliability prong (e.g., if the evidence has been empirically

tested, supported by peer review, and is generally accepted in the scientific community;

Daubert v. Merrell Dow Pharmaceuticals, 1993). Researchers sought to discover the

influence of the new *Daubert* standard of evidence. They found that judges were more

comfortable with previous standards, and that they do not fully understand the evidence

criteria, despite admonitions to the contrary (Gatowski et al., 2001). This line of research

has serious implications for judges, suggesting that new trainings should be conducted to

keep judges up to speed on new policy. While each of these approaches has merit in its

own way, it is also important to consider the methodologies of each of the studies.

Methodologies of Judicial Research

Without a doubt, the most prolific method in studying judicial decision making

has been retrospective analysis of case decisions and sentences. Most studies have taken

case decisions and examined whether they varied by demographic differences,

particularly in state Supreme Court cases in which a non-unanimous decision was

reached. They applied a variety of statistical techniques to discover if differences existed,

including correlation, analysis of variance, and regression. The major concern with these

studies, primarily the early ones (e.g., Nagel, 1961, 1962), is that they examined non-

equivalent groups, sometimes only comparing one judge to the rest of the panel. Further,

they focused specifically on one factor instead of taking multiple factors into

consideration. Of course, this was due in part to the homogeneity of judges in the early

1950s, a time when there were not many factors which varied. This might also be due to

the small sample size that many used (e.g., Scheb et al., 1989 used only one jurisdiction).

Other methodological concerns were noted. Often correlational studies attempted

to draw causal inferences, and many of the studies were lacking in statistical sophistication. Additionally, there is suggestion that a multi-method approach would have been better suited to studying any party in the criminal justice system (Ebbesen & Konečni, 1982). Similarly, past measures are not ideal because conclusions are drawn from case decisions which are written to be persuasive, and which may not adequately portray what the judge was truly thinking (Simon, 1998).

A second approach to studying judges was the use of case scenarios. Judges were asked to make evaluations based on vignettes which manipulated some factors in the case, to determine which factors had the most impact on decisions (e.g., Kerstholt & Jackson, 1998). Although these studies provided some insight by allowing direct communication and comparison among judges, it is not without flaw. Most importantly, case scenario examples often have a narrow focus, examining one psychological aspect (e.g., anchoring), and this may not have much application in a real world setting (Ebbesen & Konečni, 1982). Despite the diversity of content and methodology explored thus far, there are still many gaps in the research.

Gaps in Knowledge Regarding Judges

Perhaps the most profound of these gaps is the failure to consider the complexity of the decision making process by examining multiple factors, both external and internal, which may influence decisions. Researchers have long identified this as a potential concern (Ebbesen & Konečni, 1982; Smith & Blumberg, 1967; Steffensmeier & Hebert, 1999). While most research has examined individual factors (i.e., race, gender, political affiliation), contextual variables, or cognitive biases, little research has been conducted which incorporates the interaction of these variables. Further, most attempts at explaining

judicial decision making fail to take into account external factors, such as the opinion of other legal actors in the case (Ebbesen & Konečni, 1982).

A second potential gap of the literature is the relative lack of decision making models which are specific to the judicial decision making process or specific case types. While much research has examined the overall impact of the above factors on case decisions across case types, less has focused on specific case types. For example, juvenile court judges who only hear juvenile cases probably will make different decisions than general or criminal court judges. These differences in case types may be important in understanding judicial decision making. Further, little work has been conducted which addresses the entire decision making process, as most only addresses individual key concepts or points in the decision process.

A third gap in the research is the relative lack of advanced methodology. Many of the studies fail to address judges specifically, and only focus on their decisions. While the decisions are ultimately important, the reasoning contained therein is specific to persuasive intent and may not capture the entire picture, especially reasoning that is not socially acceptable (Simon, 1998). More in depth interviews with judges should provide a more complete picture. Further, there are few studies which focus on naturalistic decision making (i.e., in a real world setting). Written scenarios lack verisimilitude and may not be generalizable (Ebbesen & Konečni, 1982).

Concerns with Studying Judges in General

There appears to be a general perception that judges are a difficult population to study because of status and professional remoteness (Dobbin et al., 2001). Judges often have full caseloads and time constraints that may make it difficult for them to complete

lengthy surveys. Additionally, questions need to be phrased appropriately, as judges will

not openly admit to bias in decision making. Social desirability may prohibit judges from

responding in a manner that might make it appear as if their decisions are based on

anything other than law, even if other factors are taken into account. However, most of

these concerns can be overcome.

Overcoming Difficulties

One way to overcome these difficulties is to make the study as realistic as

possible so that it has real world implications, and so that the judges are making decisions

consistent with how they would in court (Ebbesen & Konečni, 1982). Other ways to

overcome difficulties with studying judges is to try to account for all factors that might

come into play, to make sure the research is relevant to a judicial population, to ensure

the issue is understood by all research team members, and ensure researchers are familiar

with the court structure and process (Dobbin et al., 2001). Additionally, when

interviewing judges, it is essential to make sure to have adequate staff so that no judges

are missed because of inadequate resources to interview them. Considering these factors

should help to overcome the difficulties inherent in studying this population.

Juror Decision Making

Like judicial decision making, research regarding juror decision making is also

quite diverse. Studies over the years have addressed a variety of topics including

demographic characteristics of the jurors (e.g., age, gender, race), attitudinal

characteristics (e.g., authoritarianism), beliefs and expectation of jurors, and how these

factors impact juror decision making. Some researchers have already determined that

these extra legal factors have little real impact (Hans & Vidmar, 1982), especially

compared to evidence and case characteristics (Visher, 1987). The fact that there may be bias may lead people to question the ability of jurors to make unbiased decisions in the legal system.

There is a great deal of controversy in the literature regarding 'how good' juries are (Levine, 1992). This controversy is compounded by the many studies testing psychological concepts on 'mock jurors' and applying their findings to a legal setting. Although proponents and opponents of the jury offer a wide variety of arguments, the controversy regarding jurors has several key arguments. Some of the major arguments include: jurors cannot understand complex evidence; jurors do not understand or follow legal instruction; jurors often rely on preconceived biases in decision making; and jurors may experience emotional reactions in cases influences the verdict.

Concerns with Jurors

Jurors Cannot Understand Complex Evidence

One potential criticism of jurors is that that they cannot understand complex evidence in cases, particularly in complex medical malpractice cases (Vidmar, 1994). Researchers have examined this assertion in several ways. One way is to determine if the jurors see the evidence as it is intended. Results indicate a significant proportion of individuals distort evidence (Carlson & Russo, 2001). That is, evidence that is supposed to be slightly pro-plaintiff is not always viewed in this manner by mock jurors. Further, when information is missing, mock jurors tend to infer the missing details, which can result in two different stories, and likewise two different verdicts when viewing the same evidence (Pennington & Hastie, 1986). This may be because jurors focus on irrelevant information, especially if the information is presented by someone they consider an

expert, such as a psychologist (Schwarz, Strack, Hilton & Naderer, 1991). These studies seem to indicate that jurors do have trouble with complex evidence. A re-examination of the classic Kalven and Zeisel study has shown high judge and jury verdict agreement when the evidence is very clear, but only 60% agreement when it is not clear (Gastwirth & Sinclair, 2004).

On the other hand, some studies indicate that complexity of evidence has little impact on outcome. That is, despite whether the evidence is considered easy or complex in cases, the same rate of judge-jury disagreement occurs (Gastwirth & Sinclair). This may lead researchers to conclude that judge-jury disagreement is not related to understanding of the evidence (Kalven & Zeisel, 1966). This assumption is supported by primarily qualitative data which suggests that, even if the case is complex, jurors tend to understand the message (Vidmar, 1992; 1994). Thus, research provides a mixed view on how well jurors understand complex evidence.

Jurors Do Not Understand Legal Instructions

A second concern with jurors is that they do not understand legal instructions. Research tends to suggest that jurors do have difficulty understanding and applying legal instructions. Studies which have focused on jury instruction comprehension indicate jurors have low comprehension (Hastie, Schkade, & Payne, 1998), even when the instructions have been rewritten to be more comprehensible (Wiener, Pritchard & Weston, 1995). Further, research has also demonstrated that jurors do not always follow instructions to disregard evidence (Pickel, 1995), although this may not be a comprehension issue. The inability of jurors to comprehend instructions can have serious implications. In one study, more than half of mock jurors held a party liable because they

felt their behavior warranted a specific charge, although the trial court judge concluded

that the facts did not warrant this (Hastie et al., 1998). Participants who scored higher on

instruction comprehension made this mistake less often. In sum, jurors are not very good

at understanding legal instructions, and may base their verdicts on misunderstood

interpretations of the law.

Jurors Often Rely on Preconceived Biases

A third consideration is that preconceived biases may impact the jury. A review

of relevant literature demonstrates jury bias based on race, sex, and sexual orientation

(Levine, 1992). Additionally, many of the studies examined took place in a time in

American society when discrimination was the rule rather than the exception. Recent

research has provided important additional input.

One highly studied area of jury decision making and preconceived bias is the

impact of pre-trial publicity. The results clearly indicate that negative pre-trial publicity

can bias jurors and influence the verdict (Hope, Memon & McGeorge, 2004). Biases in

general can influence perception of evidence, and effectively distort it (Carlson, & Russo,

2001). Further, research indicates that if jurors have preconceived notions about certain

aspects, expert testimony (even when it is weak) reinforces those biases, thus these

preconceived notions affect message processing (DeWitt, Richardson & Warner, 1997).

Jurors' Emotional Reactions Influence Case

Yet another concern with jurors is that they may react emotionally and

influence the outcome of the case. Emotion may impact legal decision making in a

variety of ways (Feigenson & Park, 2006). Anecdotal and experimental evidence both

support this notion. Levine (1992) notes several examples throughout his book of jurors

indicating they 'felt sorry for' or 'really liked' one of the parties, clearly indicating that this may have played a role in decision making. Experimental studies have also noted that sympathy for the defendant may play a role in judge-jury disagreement, but only for lesser crimes (Gastwirth & Sinclair, 2004). Anger may also play a role in decision making (Bright & Goodman-Delahunty, 2006). Showing potential jurors gruesome evidence photos increases both anger toward the defendant and a higher conviction rate (Bright & Goodman-Delahunty). Emotion might also enhance heuristic (e.g., emotional, quick thinking) and inhibit systematic (e.g., effortful, logical thinking) processing in a case (Feigenson & Park, 2006; Lieberman, 2002), depending on what emotion it is (Tiedens & Linton, 2001). When induced to think emotionally, people tend to rely on heuristic processing, and may rely on previous cognitive biases and stereotypes (Lieberman, 2002). The only evidence that directly contradicts this conclusion comes in the area of medical malpractice research. Despite the notions that jurors are emotional and sympathetic toward the plaintiff, they rarely find in his of her favor (Vidmar, 1992; 1994).

One of the most important issues relating to emotion in decision making is what role it should play in legal decision making (Feigenson & Park, 2006). Notions of legal justice often imply a rational decision making process. Yet, lawyers often dramatize their cases just to get an emotional reaction from jurors. The important distinction, and that which appears to be lacking in the relevant research, is the difference between expected emotion based on legal factors (i.e., evidence of a heinous crime) and the inappropriate emotion (i.e., negative attitude based on pre-trial publicity or stereotypes; Feigenson & Park, 2006). Thus, it is difficult to determine if jurors are "too emotional" in their

decision making.

In sum, the evidence clearly shows that the verdict on juries' abilities is still out. Research demonstrates that jurors have trouble understanding legal instructions, they do have biases and emotions that impact their decisions, and they may have trouble understanding complex evidence. It also should be noted that, while the mock juror studies do provide valuable information, their focus is often narrow, they may provide an unrealistic portrayal of the evidence, and often do not include one of the most important features of the jury process-deliberation (Ebbesen & Konečni, 1982). Therefore, conclusions on the abilities of jurors should be considered in light of these methodological weaknesses.

Methodologies of Studying Jurors

Unlike judicial research which often studies decisions retrospectively, research on jurors offers more diverse methodologies. Real jurors are difficult to study. Researchers usually do not have access to jurors while they are deliberating, so they cannot determine how decisions are made during the process. However, they can access juror members either before or after trials. One popular method that has been employed is using post trial interviews with jurors and examining factors in relation to their outcome decision (e.g., Visher, 1987). While this provides some interesting findings, it does not allow for experimental manipulation. Researchers have solved this concern by conducting mock juror studies.

Mock juror studies allow researchers to access individuals who potentially could be jurors. In this way, researchers can specifically test assumptions regarding factors which may influence individual jurors (e.g., Hope et al., 2004) or the jury deliberation

process (e.g., MacCoun & Kerr, 1988). Participants are given case information and are asked to make legal decision such as a verdict or sentencing. Mock juror studies have both pros and cons. While these studies allow for more rigorous statistical analysis and experimental manipulation, they also have the same weakness noted in judicial studies in that they also lack the verisimilitude of real trials (Ebbesen & Konečni, 1982). Using students as mock jurors has also caused some concern in terms of applicability, especially since researchers disagree on their ability to represent community perceptions accurately. Some research has indicated that students may be more lenient than community members (Field & Barnett, 1978), while others have determined that students and community members do not differ significantly in their responses (Zickafoose & Bornstein, 1999). Despite any methodological concerns, studies of mock jurors are quite common, and provide valuable insight into the field. These studies, however, rarely make comparisons with judges.

<div align="center">Comparing Judges to Juries</div>

Many studies have attempted to determine if juries make as good decisions as judges. Overall, research has found both similarities and differences. When examining multiple case types, the evidence does indicate that juries come to more varied decisions and are more severe in their sentences (King & Noble, 2005). Jurors do not always understand legal instructions (Wiener et al., 1995), while judges should show no such problem (although this comparison has not been explicitly tested). Comparisons of judges and jurors also indicate that judges find cases less complex than jurors (Heise, 2004). Judges and jurors also vary in their evaluation of evidence (Arce & Fariña, 2005). Thus, differences do emerge between judges and jurors.

On the other hand, research examining outcomes has found that judges and jurors are very similar. Overall there is an 80% agreement rate of juries and judges (Eisenberg et al., 2005; Kalven & Zeisel, 1966), indicating legal agreement the majority of the time. Based on these data, juries are purported to be accurate 87% (for Kalven & Zeisel dataset) and 89% (for Eisenberg's dataset) of the time (Spencer, 2007). These studies primarily rely on retrospective accounts of decisions, particularly interviewing judges and jurors following verdicts to determine level of agreement and ratings of the case. To date, studies have rarely assessed judge and juror differences in an experimental setting. Still, the research already conducted seems to imply that the differences between jurors and judges may not be in the outcome, but in the nature of the decision making process. Because it is important to consider factors that affect the decision making process, it is proffered that specific factors, such as expertise and emotion, may influence these legal decision makers. These specific factors are discussed in the next chapter as they relate to legal decision making.

CHAPTER 4: FACTORS WHICH MAY INFLUENCE LEGAL DECISION MAKING

In addition to examining how characters of the decision maker affect legal decision making, it is also important to explore external factors which may influence the decision making process. While these factors are many and varied, the current chapter specifically addresses factors which may influence decision making in child abuse and neglect cases. Specifically, the role of expertise in legal decision making, exploring the many ways that expertise can directly or indirectly influence decisions, the role of uncertainty in decision making, and the role of emotion in decision making will be addressed. Further, because the current research seeks to examine decision in child abuse and neglect cases, factors which have been found relevant to these decisions are also examined.

Expertise

One major difference between judges and jurors is their experience and education. While some indicate novices and experts arrive at the same conclusions (Phillips, Klein & Sieck, 2004), others demonstrate that novice and experienced decision makers differ specifically in application of relevant information and procedural knowledge (Drury-Hudson, 1999). Understanding what distinguishes experts from non-experts from a cognitive perspective depends largely on how expertise is defined. Several lines of research have attempted to understand expertise from differing perspectives, focusing both on similarities of experts and their individual differences (Ericsson, 2005). However, what most researchers agree on, at least to some extent, is that experience plays a role in expertise (Klein, 1997). Judges would thus, be much more likely to have an

expertise when it comes to legal decision making. Most jurors have little experience making legal decisions, as most individuals do not commonly sit on juries. Whereas judges oversee legal matters on a daily basis and will thus garner years of experience making legal decisions.

Others in the field of expertise have demonstrated that experience is a necessary but an insufficient part of expertise (Shanteau, Weiss, Thomas & Punds, 2002). Some research on expertise also postulated that expertise was developed through knowledge and experience (Ericsson, 2005). Judges would definitely be more knowledgeable than jurors, as they have had multiple years of training and received advanced degrees in the area of law. Of course, the extent literature also indicates that those who have experience may not be experts, but most experts will have a great deal of experience. It was further speculated that expertise is best demonstrated by being able to discriminate between similar items and showing marked consistency (Shanteau et al., 2002). This is definitely something that judges have demonstrated as prior research indicates that judges rely on few factors when making their decisions (Ebbesen & Konečni, 1975). Judges tended to rely on recommendations of the prosecutor most heavily, showing consistency despite the individual circumstances of the case. Despite the differences in definition of expertise and line of research, what most researchers tend to agree on is that cognitively, experts are differentiated from non-experts in their ability to represent problems at a deeper level (Phillips et al., 2004).

Although experts and non-experts may arrive at similar conclusions, they tend to represent problems differently. One reason for this speculated difference is that experts tend to have more procedural knowledge to draw upon (Drury-Hudson, 1999; Kardes,

Muthukrishhnan & Pashkevich, 2005). Experts will use this knowledge (and past

experience) to fill in the missing gaps in order to better predict future experiences

(Phillips et al., 2004). Another thought is that experts focus more on the situation itself

than analyzing a course of action (Phillips et al., 2004). A final consideration, and one of

the most common theoretical assumptions, is that experts tend to rely on heuristics, or

rules of thumb, that they have developed over the years when they make decisions

(Crook, 2001; Ebbesen & Konečni, 1975; Phillips et al., 2004). This is often

demonstrated by experts' unawareness of the decision making process, indicating they do

not think, they just act. This cognitive difference may have serious implications in the

legal domain.

How Expertise May Impact Legal Decision Making

Expertise of judges may have serious implications for legal decision making. For

one, the legal expertise and experiences of judges can make a big difference in applying

case facts to relevant law and rendering a decision. While jurors had trouble interpreting

instructions (Wiener, Pritchard & Weston, 1995), judges should show no such problem.

Experience may also influence the perception of complexity of case, as judges' rating of

complexity find it much simpler than jurors (Heise, 2004). Further, judges' assessments

of dangerousness may be impacted by the fact that judges may see portrayals of

dangerous behavior every day (Poletik, 2002). Judges and jurors also vary in their

evaluation of evidence (Arce & Fariña, 2005), indicating judges and jurors may use

different strategies. Finally, it is important to consider that judges may be better equipped

to make decisions. Experts have the ability to discriminate what information is diagnostic

and what is not (Shanteau, 1992). In the case of judges, their expertise should allow them

to be better adept to identifying legally relevant information on which to base their decision.

The role of experience may also influence the emotionality of judges. Current research indicates the individuals get desensitized when repeatedly exposed to violence (Carnagey, Anderson & Bushman, 2005). Although specific research has not been conducted, it might be assumed that judges become somewhat desensitized to certain information that might provoke emotion in others, especially when they are continuously exposed to it. The research does demonstrate that judges' perceptions of credibility and verdict decisions are not impacted by the emotionality of the witness; however, jurors' perceptions of credibility and verdict decisions are (Wessel, Drevland, Eilertsen & Magnussen, 2006). The role of emotion in decision making might have serious impact on outcome and on the process of decision making and will be discussed more at length later in the chapter.

Concerns with Expertise

Cost of Expertise

One of the potential costs of expertise is that is requires years of experience and training, and there is no way of anticipating for certain who will become an expert and who will not. Although there is a shift in the area of expertise toward understanding expertise in order to develop training programs and teach novices to think on this level (Klein, 1997), there is still too much that is not known about how expertise is developed to be able to effectively train novices to be experts.

Another cost of expertise is that experience can strengthen beliefs to the point of overconfidence (Kardes et al., 2005). Therefore, experts might be so confident in their

decisions that they fail to take into account other relevant information that would actually make for a better decision. This has serious implications in the legal arena where each decision can be important.

A final cost of expertise is that experts tend to rely on heuristic thinking (Phillips et al., 2004). They may be unaware of their decision making process, and thus will not know when the process is inaccurate or needs modification. Relying on rules of thumb may not provide a systematic way to evaluate a situation appropriately, and decisions may be made consistently for all cases based on these heuristics instead of considering situations unique to the case.

Expert Judgment Overrated or Beset by Systematic Problems

Focusing specifically on judges, it may seem that expertise is overrated in the legal system or even beset by systematic problems. One reason may be that many judges are general court judges who see a variety of cases, making expertise in a specific domain difficult to develop. Another concern is that judges typically begin as lawyers and may develop an expertise in their practiced field. However, when they become judges this expertise may interfere with their decision making abilities. Particularly when dealing with ambiguous situations, they may rely on their own experiences when making a decision (Kardes et al., 2005). That is, judges who were defense attorneys may recall what their "typical" client did, and base their decisions on this. This has been effectively demonstrated with judges compared to psychiatrists in decisions about dangerousness (Poletiek, 2002). Judges used their past experiences and frame of reference (e.g., typical defendants), and found suicidal people more dangerous individuals who posed a harm to others (Poletiek, 2002).

Further, judges are often assumed to have expertise in the field of law, but law is an evolving field. Consider, for example, the rules of evidence. When *Daubert* replaced *Frye*, judges had to evaluate evidence based on the new standards. Research suggests that judges did not clearly understand the new evidence criteria (Gatowski et al., 2001). However, jurors might assume that judges would know how to apply strict evidence criteria. The assumption that judges are experts might lead jurors to believe that evidence presented had met these rigorous criteria or at least implies that the evidence has met some standard of 'good enough' to be presented in court, and this perception could impact how the jurors weigh the evidence.

Finally, experts often develop rules of thumb, or heuristics in decision making. The study of judges has revealed that they, too, demonstrate this. When making decisions about setting bail, judges rely on very few factors (Ebbesen & Konečni, 1975). Some even primarily rely on just one factor—the recommendation of the prosecuting attorney (Englich & Mussweiler, 2001). Current expertise research indicates that experts show discriminatory behavior, as evidenced by being able to differentiate between similar but not identical situations (Shanteau et al., 2002). Yet, evidence shows that judges may create decision rules and apply them non-discriminatorily across situations (Ebbesen & Konečni, 1975). Of course, this may also illustrate their expertise in the field, as this demonstrates that judges, as experts, are typically less swayed by changing contexts. Judges may be unwilling or unable to change, and may not consider each case as unique.

As noted above, expertise may have direct or indirect effects on decision making. One way that expertise may impact decisions is that experts may vary in terms of their emotional reaction to a case. Emotion can thus impact other attributes of the decision

making process.

<div align="center">Emotion</div>

Legal decision making is often characterized by a state of uncertainty as legal actors seek to determine the case facts and make a decision regarding a verdict. Despite the fact that democracy depends on citizens and court officials to be rational decision makers when trying to create certainty from uncertain situations, these decisions are rarely made through a completely rational process. In fact, a great deal of the decision making process may be completely affective. Therefore it is essential to consider the role of emotion in legal decision making before addressing uncertainty.

Years of research have clearly shown that the human mind is prone to bias. This may have to do with the fact that information is processed both rationally and emotionally, with the ability to utilize both processing systems simultaneously or switch between the two as motivated to do so (Epstein, 1990; Kirkpatrick & Epstein, 1992). Rational processing entails systematic effortful processing as opposed to emotional processing which involves automatic processing, including heuristic processing which accounts for some of the bias in decision making. Affective processing includes emotional, heuristic, and automatic processes which occur outside of the awareness of the individual but still have a major impact. Because emotional (experiential) thinking is so prevalent, legal decision making must be considered as a product of affective processes.

Emotion can influence legal decision making in three distinct ways. It can affect information processing strategies, sway judgment in the direction of the valence of emotion, and it might function as a source of information (Feigenson & Park, 2006). The very nature of the trial process is conducive to affective influences. In fact, affect may

influence the trial even before it begins. Pre-trial publicity can create a negative attitude

toward the defendant which can distort interpretation of evidence presented later in the

case (Hope, Momon & McGeorge, 2004). Once the trial begins, everything from *voir*

dire to verdict and sentencing can be impacted by emotion.

The *voir dire* itself is aimed at determining the underlying biases of potential

jurors (Levine, 1991). Individuals' stereotypes and biases may be activated immediately

upon seeing the defendant and plaintiff (e.g., the 'attractive is good' heuristic; Lieberman,

2002) and priming them to think affectively. Further, opening arguments might dramatize

the situation and evoke emotion in the jurors. The emotion evoked will encourage either

systematic or heuristic processing (Tiedens & Linton, 2001).

After opening arguments, evidence and testimony are presented and further allow

for heuristic processing. Gruesome evidence promotes anger, which will enhance

heuristic processing of the case and influence perception of the defendant and verdicts

(Bright & Goodman-Delahunty, 2006). Further, the valence of emotion regarding

evidence and testimony may bias the juror in favor of one of the parties. In turn, they may

interpret their positive or negative feelings toward the party as a type of information, and

make assumption regarding guilt or innocence based on this affect (Feigenson & Park,

2006). By the end of the trial, the juror's decision of guilt or innocence may be the result

of affective influences from the first sight of the client or first sight of evidence, and yet

they may not even be aware of these influences. In sum, affective processing can

influence a legal case from multiple perspectives, beginning prior to the case and

continuing throughout its course. However, despite the fact that it is virtually impossible

to have a completely rational systematic processing of a legal case, it does not necessarily

mean that the quality of decision making is decreased.

Quality of Decision Making

Legal decision making need not be entirely rational to still maintain quality. Affective processing may occur at any stage of the legal process, yet when motivated, individuals can switch back to rational, or more effortful logical processing**,** or may utilize both at the same time (Epstein, 1990; Kirkpatrick & Epstein, 1992). Thus, the individual may be rationally processing the majority of the time.

Further, as indicated elsewhere in this document, there is still some speculation as to the role that emotion should play in the courtroom. Our rational system is built upon social norms and moral values, as evidenced by the role that community standards play in the legal system and the evolving nature of the law (Finkel, 1995). This can be interpreted in multiple ways. One, it might be assumed that these moral values are affectively grounded, springing from the experiential processing system and not at all rational. Or, it might be assumed that anger is to be expected when heinous crimes against society are committed. This does not, however, indicate that this anger is not rational. In fact, absence of emotion might be more suspect. Thus, the processing through emotion may have rational or experiential processing ties.

A final thought is that affective processing is essentially automatic or heuristic processing. Ironically, research indicates that expertise in decision making is often demonstrated by heuristics or rules of thumb that are used to make decisions (Phillips et al., 2004). Judges often demonstrate this by relying on only a few variables in making bail decisions (Ebbesen & Konečni, 1975). If judges are considered 'expert' decision makers in the system, there should be little doubt regarding the quality of their decision

making. As jurors have a high agreement level with judges (Eisenberg et al., 2005), both seem to make adequate decisions. The truth is that individuals cannot be expected to be completely rational in all aspects of the legal process, but can be motivated to think rationally, and, as long as their decision falls within the context of the law, there is no reason to believe their decisions are inadequate.

When discussing legal decision making, it is also important to consider uncertainty. Legal decision makers may experience a state of uncertainty when making decisions (i.e., unsure of the verdict). Yet, this uncertainty may be experienced differently by each individual. Therefore, a more in-depth look at the types of uncertainty is warranted.

Uncertainty

A wealth of research suggests that uncertainty can be experienced in multiple ways. The experience of uncertainty can shape the response of the individual. Perhaps the most comprehensive explanation of uncertainty experience lies in the distinction of probabilistic and nonprobabilistic uncertainty (Rottenstreich & Kivetz, 2005). A probabilistic mindset occurs when individuals make judgments by estimating the likelihood of relevant events. This is often considered a normal approach to uncertainty in that individuals will make logical, systematic efforts to estimate the likelihood of events. However, a second type of uncertainty occurs when a non-probabilistic mindset is induced, in which judgments are based on intuitively generated rules or non-probabilistic cues (Rottenstreich & Kivetz, 2005).

When an individual is experiencing uncertainty with a probabilistic mindset, they will be making likelihood estimation judgments about the predicted outcome. This may

induce a statistical mindset, particularly when the uncertainty is due to chance (Schul, Mayo, Burnstein & Yahalom, 2005). In a trial setting, often the individual is trying to predict the probability that the defendant committed the crime based on the evidence. Evidence might be present for both sides of the case, creating uncertainty. If uncertainty is experienced this way, the individual may be looking for concrete ways to predict if the defendant committed the crime. The verdict will depend on whether the probability is in favor of or against guilt.

This type of uncertainty is also experienced when individuals are making regret-aversive decisions (van Dijk & Zeelenberg, 2005) such as bail setting. When setting bail, judges examine the probability that the individual is a flight risk (Ebbesen & Konečni, 1975), and may as well be determining how they will feel if bail is set too low and the individual is released but then skips town. The same might be true for sentencing. Sentencing might be based on the probability of future crime or future dangerousness. Therefore, those experiencing uncertainty with a probabilistic or statistical mindset would likely engage in decision making based on a risk assessment.

A second way uncertainty can be experienced is in a nonprobabilistic manner. In a nonprobabilistic mindset decisions are based on intuitive rules or cues (Rottenstreich & Kivetz, 2006). This might be the case for clinical models of uncertainty which result in individuals seeking to fill in the gaps to better understand what happened (Schul et al., 2005). As the story model predicts (Pennington & Hastie, 1986), when individuals experience uncertainty in the trial setting, they will reduce it by trying to create a cohesive story about the events. These individuals will be focused on trying to understand the situation, and not on making predictions. Their decisions will then be based on the

understanding that they have created. Thus, the nature of experienced uncertainty can influence decisions that are made.

The type of uncertainty mindset experienced may depend on the personality of the individual, and what type of cognitive processing is being utilized. Some individuals seek resolution in uncertainty while others do not (Hodson & Sorrentino, 1997). There is also some evidence that uncertainty can be experienced both automatically and systematically, indicating that processing may influence how uncertainty is experienced (Ferreira, Garcia-Marques, Sherman & Sherman, 2006). In sum, how uncertainty is experienced will largely impact people's response to it.

Expertise may impact the individual's uncertainty. Experts may be more likely to view uncertainty from a probabilistic mindset because they have relevant information to base their decision on and they are coming from a regret-aversive perspective. They will be trying to predict the likely outcome. Non-experts may not feel that they have sufficient information, and may view things from a nonprobabalistic mindset, particularly if they are merely trying to understand the situation and not make predictions. This may be particularly true for judges and jurors. Judges may be more likely to consider the outcomes to the child, while jurors may be more focused on trying to understand the case. Further, judges are more familiar with legally relevant information on which to base their decision.

<center>Factors Specific to Child Abuse and Neglect Cases</center>

In addition to expertise, uncertainty, and emotion, other factors specific to child abuse cases may impact legal decision making. The majority of research on child abuse cases comes from the research on child protection decision making, although some comes

from mock juror and judge studies. The literature on child abuse decision making portrays a complex set of individual and case factors which can influence decisions.

Individual Factors

Drury-Hudson (1999) posited that expertise, in the form of experience and procedural knowledge, has a positive impact on child protection decision making. Specifically, the research focused on the ability of social workers to draw on relevant research to understand the current legal and policy implications of their decisions when assessing the risk of leaving a child in the home. Other research has focused on negative impacts of such issues as burnout on child protection decision making (McGee, 1989). Again, the research focused on the impact on assessing the risk to the child based on vignette examples of a child neglect case. This approach was furthered by a more general approach to individual factors decision making involving a qualitative examination of the decision making process (Beckett, McKeigue, & Taylor, 2007). Mock juror studies of child sexual abuse cases have also found that demographic factors influence decisions. In particular, gender is associated with more convictions and pro-prosecution decisions (Bull Kovera, Levy, Borgida & Penrod, 1994; Golding, Bradshaw, Dunlap & Hodell, 2007).

Although these approaches definitely contributed to the literature, the narrow focus on the individual decision maker is somewhat suspect, as it fails to consider other factors which may influence the decision making process. Therefore, a shift occurred toward examining characteristics of the case and offender that may have impacted decisions. The offender characteristic approaches sought to broaden the focus, shifting the attention away from the individual and on to situational factors.

Case Factors Which Impact/Influence Decision Making

Research has also indicated that case factors can significantly impact decision making. Case factors, such as the age of the child, substance abuse of the parent, and the existing parent-child relationship have all been shown to impact child welfare workers' decisions (English, 1997). Judges, too, seem to take case factors into consideration when determining child placement. Factors which have been found to impact judicial child abuse decisions include whether the home is a single parent home, the presence of siblings, and the bond (or lack thereof) between the parent and child (Ward, 1996). These factors are similar to custody decisions made by judges as they indicated influential factors in their decision including child's age, developmental status, and the parent-child relationship (Wallace & Koerner, 2003).

Differences among professionals have also been noted. Social workers rely on different information than do judges when making decisions (Britner & Mossler, 2001). Social workers tend to pay more attention to the severity of abuse and previous service delivery, while judges tend to focus more on likelihood of reoccurrence. This notion may correspond to the expertise literature, as professionals develop expertise relevant to their field. The implication is that jurors and judges may rely on completely different factors when making decisions in child abuse and neglect cases.

Taken altogether, the research indicates that individual factors and case factors all influence decisions regarding abused or neglected children. These factors directly impact decision making, but other factors may indirectly affect decisions.

Factors that Indirectly Affect Decision Making in Child Abuse Cases

Child abuse cases can be very emotional. Social workers report distress when

responding to child abuse calls. As one researcher indicates 'a child in distress arouses a response in most people' (Munro, 2005, p. 384). Both social workers and police report varying emotions related to exposure to child abuse cases. One of the most common emotions experienced is anger, followed by empathy (Cheung & Boutte-Queen, 2000). Further, the high burnout rate of child protection workers (McGee, 1989) indicates that there may be emotional consequences related to continuously working with child abuse cases. Burnout has been studied with child protection workers, but not judges or jurors who may experience the same types of emotional reaction to the case. Therefore, this may influence their decision making. Research also indicates that females and parents of either gender have stronger emotional reactions to child abuse than males and individuals without children (Stone & Taylor, 1981). Exposure to evidence in child protection cases, particularly dramatic evidence, can influence decisions of jurors (Bright & Goodman-Delahunty, 2006). Finally, both judges and child protection workers seem to be influenced by the current workplace and social culture of the time (Smith & Blumberg, 1967; DePanfilis & Girvin, 2005). Therefore, both populations might fall prey to or benefit from similar effects.

In addition to emotional effects, the social worker may also influence the other legal actors. The child protection worker may be seen as an expert both by the judge and by the jurors, which can influence jurors' decisions (Cutler, Dexter & Penrod, 1989). A similar impact might occur for judges, as previous research indicates that one of the factors most related to judicial decisions are the suggestions of other legal actors such as the prosecuting attorney (Ebbesen & Konečni, 1975). Therefore, judges may be influenced by the individual they see as an expert decision maker, or, they may use this

information as an anchor when making decisions (Englich & Mussweiler, 2001). Even so, the perceived expert (e.g., a social worker) may be influential only if the experts' suggestions match the preexisting schema (DeWitt et al., 1997).

In sum, it appears that there are multiple factors which may influence the decision making process, particularly in legal decision making. Expertise may influence perceptions of uncertainty and emotion, which may in turn impact other aspects of the decision making process. Child abuse cases, in particular, are complex and have high degrees of uncertainty (e.g., predicting risk) and emotion (e.g., anger). Therefore, all these factors may play a role in the legal decisions made in this context. While this research provides a succinct summary of many factors that may influence decision making, it fails to explain why these differences may occur. Cognitive experiential self-theory offers one plausible explanation of why differences in the decision making process might occur.

CHAPTER 5: COGNITIVE EXPERIENTIAL SELF-THEORY

The review of the literature on legal decision making, particularly in child abuse cases, is ripe with complexity. Although expertise can explain why decisions may differ, it fails to explain the intricate nature of the decision making process. Varying models of decision making have attempted to do just that. The dual process theories are among the most explored in the decision making arena. Cognitive-Experiential Self Theory (CEST) offers one of the best possible explanations for cognitive processing in legal decision making (Epstein, 1990, 1994). This theory is reviewed as it pertains to legal decision making.

CEST is one of several dual processing theories (Chaiken & Trope, 1999; Epstein, 1990, 1994); it posits that individuals can process information though two distinct, yet interrelated systems, a rational and an experiential system. The rational system constitutes the effortful, logical, and systematic processing, while the experiential system constitutes automatic, heuristic, emotional processing. Individuals can engage in either rational or experiential processing depending on how they are cued to think and their motivation (Kirkpatrick & Epstein, 1992). CEST assumes that systematic and automatic processing are interrelated systems which individuals can utilize one or both simultaneously or easily switch between the two (Epstein, 1992). This means that individuals can go from effortful to effortless processing and vice versa.

The type of processing may impact how individuals perceive information. While rational processing is more process oriented, experiential processing is more outcome focused and action-oriented. This may mean that individuals who are processing experientially may look at the big picture, but overlook important details that could

influence the decision-making process (Epstein, 1992). Of course, it should be noted that although one can switch between processing styles, the current processing style may bias the other. Chaiken's work, among others, suggests that experiential processing may cause individuals to overlook information on which a rational processor might focus (Chaiken & Maheswaran, 1994).

Applicability to the Field

CEST has much applicability to the field of legal decision making. Research has already demonstrated that the type of processing an individual is using may impact verdict and sentencing decisions (Lieberman, 2002). Therefore, possible application of CEST to legal decision making is discussed, focusing specifically on aspects of the trial which may influence processing. These aspects include testimony and evidence presentation, arguments from lawyers, and deliberations.

Evidence and Testimony. Both evidence and testimony can impact the type of processing. Research clearly indicates that gruesome evidence can increase anger and thus emotional processing (Bright & Goodman-Delahunty, 2006). Increased anger can make individuals think emotionally, or experientially, instead of processing rationally, which may influence the remainder of the case. Testimony may also influence processing. Complex evidence may evoke rational thinking as individuals may have to work harder to try to understand the information. On the other hand testimony that is too complex may evoke experiential thinking, leading individuals to attempt to heuristically process the gist of the evidence, instead of focusing on important details. Further, other factors of testimony may also influence processing. For example, attractive individuals may influence more affective processing in line with the 'attractive is good' heuristic

(Lieberman, 2002). That is, jurors may see an attractive witness and automatically put credit into what they are saying just because they are attractive. The juror processes experientially (relying on the attractive is good heuristic) and does not rationally evaluate the information provided. Another consideration is lawyer's arguments.

Lawyer Arguments. Lawyers have the ability to influence processing in two distinct ways. First, they can help to simplify and sum up the case in both opening and closing arguments. Simplifying the case may lead to less cognitive load, and thus more rational processing. Second, lawyers may dramatize the case (Levine, 1991), making it more emotionally charged which would encourage experiential processing, as noted in the CEST model. Thus, lawyers' arguments may influence the case outcome.

Deliberations. A final consideration which may influence processing is jury deliberation. Although many times this aspect is left out of research regarding juror decision making, it is an essential component. In deliberations, there are likely to be individuals who are processing experientially and individuals who are processing rationally. These individuals have the potential to influence the other jurors to change their processing style, and perhaps change their decision. Logical conversation, bringing up facts do not fit into a pre-existing schema, for example, may elicit rational processing (Maheswaran & Chaiken, 1991). On the other hand, engaging in heated arguments may lead to more emotional or experiential processing.

CEST also provides a plausible explanation as to why judges and jurors might have different decision making processes, and still arrive at the same conclusion. Judges are considered experts in the field. Their expertise may make them more likely to rely on heuristics when making decisions. As an expert, they will be familiar with the important

factors in the case, and will know which factors are best predictors based on training and experience. Jurors, on the other hand, may process the case experientially because they are emotional. Their emotional response may lead them to decrease rational (logical) processing. Yet, they may reach the same ultimate conclusion as judges.

In sum, CEST provides a plausible explanation for differences that may arise between judges and jurors in the decision making process, although the exact nature of this distinction cannot yet be ascertained. Judges, because they are experts, may rely on heuristics and process experientially, while jurors, who do not have already formed heuristics, may process more rationally. On the other hand, judges are supposed to be unbiased decision makers and may be able to rationally process better than jurors, particularly if jurors get emotionally invested in the case. Although the majority of research focusing on dual process theories seeks to explain differences in performance, it may be that, particularly with judges and jurors, the outcomes will be the same, but the process may differ. These possibilities make it necessary to research the exact role of CEST in discerning differences in the decision making process, which the current study seeks to do.

CHAPTER 6: STUDY OVERVIEW AND HYPOTHESES

The use of a jury trial within the juvenile dependency (i.e., child abuse) system is a much understudied topic. At present, six states permit or require a jury trial at the termination of parental rights (TPR) trial.[3] These six states do not include Arizona, which implemented jury trials between 2003 and 2007 on a temporary basis. Over the years, several other states have proposed legislation that would ensure the right to a jury trial in TPR trials, but none of them have been enacted (Szymanski, 2007). There remains an ongoing debate in the field of juvenile dependency as to whether jury trials should be implemented. Yet, there remains little empirical research to inform this debate. There is, however, some general research comparing judges to juries.

Studies comparing judges to jurors have found that judges and jurors agree on case outcomes in the majority of cases (Eisenberg et al., 2005; Kalven & Zeisel, 1966). Further research has determined that they may disagree on aspects of the case which might be pertinent, such as degree of evidence and case complexity (Arce & Fariña; Heise, 2004). However, no research has examined differences in cognitive processing. The current study seeks to address this gap by making comparisons between judges and jurors in TPR trials, both in terms of outcome decisions and the decision making process. The complexity of the juvenile dependency decision making process is addressed by allowing judges and jurors to make outcome decisions, and report on the factors which impacted their decision making process.

One postulated reason for differences between judges and jurors is because their expertise levels differ. Judges are trained to understand and apply the law. They are not

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[3] These states include Nevada, Oklahoma, Texas, Virginia, Wisconsin, and Wyoming

only familiar with the legal aspects of the case, but experience over the years also allows them to better understand the consequences of their decisions. This may be particularly true for judges who are specialized or work in specific court contexts. Over the years, they may develop an expertise beyond a legal expertise (e.g., they gain experience and training making them more proficient within a specific area of the law) which can inform their decisions. Thus, expertise of the decision makers in the legal system can vary greatly, with jurors representing the least expertise as non-experts, and specifically trained judges exerting the most expertise.

Expertise may impact multiple factors in the case, including perception of important case factors, and ultimately the final case decision to terminate parental rights or not. On the other hand, some case facts may be viewed similarly by experts and non-experts. For example, substance abuse by the parent may be viewed very similarly by experts and non-experts. Therefore, the current study will examine the impact of expertise on factors such as emotion, perception of risk, perception of case complexity, and identification of relevant information in making a legal decision as well as examine the impact of case facts which may not be impacted by expertise. Further, expertise and case facts will be examined as they relate to the final outcome decision (i.e., whether to terminate).

In addition to discovering how expertise may influence case factors and decisions, it is also important to discover why expertise may impact decisions. Expertise is posited to impact how information is processed. According to Cognitive-Experiential Self-Theory (CEST), information can be processed in two distinct, yet interrelated ways (Epstein, 1994). Individuals can process information experientially, which involves

effortless, emotional, or heuristic processing, or they can process information rationally, which involves deliberate, analytical decision making. Experts may process information more rationally than non-experts, which may impact outcomes. On the other hand, experts may process more experientially than non-experts, also impacting outcome. Thus, the current research also seeks to determine if CEST can help explain the impact of expertise on decision making.

Finally, previous research has indicated that some demographic factors may play a role in the decision making process. When applicable, these demographic factors will be examined to determine if they interact with expertise in making decisions. Four main sets of research questions will be addressed.

Research Questions

1. Which judicial **expertise factors** influence outcome decisions**?**

2. Which variables (e.g., expertise, demographics, presence of anti-termination factors) impact **outcome decisions** in termination of parental rights trials?

3. Which variables (e.g., expertise, demographics) impact specific **decision making factors?**

4. Can **cognitive processing (CEST) explain the differences** in decision making between experts and non-experts?

In order to examine the impact of expertise on decision making and the decision making process, an experiment will be conducted whereby important case facts in a mock TPR trial will be manipulated, and participants will have to make decisions regarding the case outcome (i.e., whether or not to terminate). Case processing (i.e., which factors are most important, perceptions of risk, perception of complexity) will also be examined.

Finally, researchers will examine cognitive processing to determine if CEST explains why expertise impacts decision making. A mock TPR trial was designed in order to assess juror and judge differences. The mock trial was a modified version of a training instrument already used by the National Council of Juvenile and Family Court Judges for training purposes. The mock case scenario was modified based on extensive review of case files from real TPR trials, TPR appeals, and conversations with experts in the field. The final case scenario was evaluated by two experienced judges for authenticity and believability. Both judges had extensive experience working in child abuse and neglect and conducting termination of parental rights trials. Typically, the majority of TPR trials end in termination of parental rights regardless of whether they are decided by a jury or judge (Children's Action Alliance, 2005). It appears, then, that the consensus is that termination is usually inevitable. Using this commonality, the TPR mock trial has been setup to include expectancy inconsistent case facts which suggest that the parents' rights should not be terminated.

According to Maheswaran and Chaiken (1991), individuals can be motivated to engage in rational processing when they are presented with expectancy inconsistent information. The presentation of this information requires individuals to have more effortful processing. Therefore, inclusion of expectancy inconsistent information in the TPR mock case scenario should promote rational processing among participants. This will allow an opportunity to make comparisons between individuals who are processing experientially and those processing rationally.

Due to the large percentage of cases which result in termination (more than 90%; Children's Action Alliance, 2005), three anti-termination case facts will be manipulated

in the mock TPR trial, so that comparisons can be made for each case fact individually as well as additive effects of all case facts. The three case facts which will be manipulated in the mock trial are: presence of a sibling who still resides in the home, statistics on the adoptability of the child, and the presence of a support system of the mother.[4] Therefore, the final study design will be a 2 (presence or absence of sibling fact) x 2 (presence or absence of adoptability fact) x 2 (presence or absence of the support system fact) design. Each of these facts is expected to decrease the likelihood that individuals will choose to terminate parental rights. Additive effects are also postulated to occur, in that individuals with more anti-termination factors will be less likely to terminate.

In order to examine the impact of expertise, the study was conducted in two phases. Phase I answered research question one, which determined which judicial expertise factors influenced decision making, something that the current literature base has failed to adequately ascertain. At present there is no consistent definition of expertise (Phillips et al., 2004), so it was important to determine what it meant to be an expert in a TPR trial in order to determine how expertise would be classified for further analyses. Phase II was conducted to answer research questions two, three, and four, which represented the bulk of the study, examining the impact of expertise and interacting variables on case outcomes, decision making factors, and cognitive processing.

Variables of Interest

There were several variables of interest in this study, with the first being expertise. Researchers determined what judicial expertise factors impacted outcomes in

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[4] These three case facts were added based on conversations with judges, who have more than 15 years experience conducting termination of parental rights trials, regarding which facts might lead to a decision not to terminate parental rights.

order to use this information for further analysis. The second variable of interest was the primary dependent measure, which was the termination decision that must be reached at the conclusion of the TPR trial. At the termination trial, the judge or jury must determine if termination is in the best interests of the child based on the case presented.

A third set of dependent measures represented specific aspects of the decision making process which may impact the outcome (termination decision). These include self-reported measures of which items went into the decision, including emotion caused by the case, perception of risk, and perception of case complexity. All of these factors have been shown to influence legal decision making.

Another measure of interest was cognitive processing. Cognitive processing was measured in multiple ways, including a process measure, a CEST typical processing measure (Epstein et al., 1992) and the REI, a cognitive style (personal differences) measure (Epstein et al., 1996).

Emotion was also considered as an important variable. Research has shown that individuals often experience negative emotion (particularly anger) when exposed to child abuse cases (Ward, 1996). In order to assess this, a modified version of the Juror Negative Affect Scale (JUNAS; Bright & Goodman-Delahunty, 2006) was used. This allowed comparisons between experts and non-experts in terms of emotional reaction to the case. All measures are discussed at length in the method section. Finally, demographics were collected.

<center>Phase I</center>

Research Question 1: Which judicial expertise factors influence outcome decisions?

The first question of interest was which judicial expertise factors influence

outcome decisions? The extant literature on expertise has failed to create a consistent definition of what it means to be an expert. There is some general agreement, but most authors use their own definitions of expertise (Phillip et al., 2004). Therefore, an important first step in this study was to determine which factors make up expertise- at least in TPR cases. To that end, several questions were asked (to judges only) to determine what factors made a difference in decision making. Judges were asked about their years of experience on the bench, years working with child abuse and neglect cases, their number and types of trainings, their current position, and their interest/passion for the work. All of these variables were entered into a regression equation to determine which (if any) of the factors impact case outcome decisions. From there, decisions were made as to how the experts should be classified (either as one group or in degrees of expertise). As the literature did not identify one specific factor which makes up expertise, no hypotheses were predicted for this factor. Additionally, it was assumed that there was no difference in experts, and all further hypotheses for research questions two through four were formed on the assumption of one group of experts (all judges) compared to non-experts (jurors). Therefore, phase II hypotheses will focus only on the expert/non-expert dichotomy.

<div align="center">Phase II</div>

Research Question 2: Which variables (e.g., expertise, demographics, presence of anti-termination factors) impact outcome decisions in termination of parental rights trials?

The principle focus of the research is designed to assess if expertise impacts outcome decisions. Specifically, the research was designed to determine if judges differ from mock jurors in making termination of parental rights decisions. Further, the

researcher sought to determine how the inclusion of expectancy inconsistent anti-termination factors differentially impacted participants, based on expertise.

Termination Decision

Research comparing judges to jurors has found similar outcomes in terms of decisions. Yet, overall, judges appear to be a little more lenient than jurors (Leipold, 2005). This may be because of the expertise of judges. Experts are more likely to rely on heuristics, based on their experiences when making decisions (Kardes et al., 2005). This may lead them to process case facts experientially (Epstein, 1990), making their decisions different than non-experts (jurors). However, when faced with expectancy inconsistent factors, judges may be more likely to process rationally. Also, judges are more likely to rely on previous experiences that they have had within the courts, when making decisions. These experiences, which may appear commonplace to judges, may be more emotion provoking to non-experts that do not have these experiences. Further, prior evidence indicates that parents and females may be more impacted by child abuse cases, and thus are more conviction prone (Bull Kovera et al., 1994; Golding et al., 2007). The hypothesized main effects of termination were:

Hypothesis 2a. The presence of any of the anti-termination factors will decrease the likelihood of termination.

Hypothesis 2b. The number of case facts against termination will impact the termination decision. More anti-termination case facts will lead to decreased likelihood of terminating.

Interactions

Hypothesis 2c. There will be an interaction between expertise and the anti-

termination factors. Experts, in the anti-termination conditions will be more likely to terminate than experts who are not in the anti-termination condition. This will not be true for non-experts.

Hypothesis 2d. There will be a four way interaction between expertise and the three anti-termination variables, in that experts will be more likely to terminate when they are in the condition with all three anti-termination factors, particularly in comparison to when they are in the no anti-termination condition. Non-experts may exhibit a similar trend, but not to the same degree.

Hypothesis 2e. Experts, who are in the sibling condition, will be more likely to terminate than non-experts in the sibling condition. There will be no impact of expertise among participants in the non-sibling condition.

Hypothesis 2f. Experts who are in the adoptability condition will be more likely to terminate than non-experts in the adoptability condition. There will be no impact of expertise for participants in the non-adoptability condition.

Hypothesis 2g. Experts who are in the support condition will be more likely to terminate than non-experts in the support condition. There will be no impact of expertise among participants in the non-support condition.

Hypothesis 2h. Non-experts who are parents will be more likely to terminate than non-experts who are not parents. Expert parents will not differ from expert non-parents in terms of termination decisions.

Hypothesis 2i. Non-expert females will be more likely to terminate than non-expert males. There will be no gender difference among experts.

Research Question 2a. How will the decision making process impact the relationship

between expertise and termination decisions (if at all)?

Hypothesis 2j. Perception of risk will impact the termination decision. Those who perceive risk for returning the child home will be more likely to terminate and those who perceive higher risk of the child being in foster care will be less likely to terminate.

Hypothesis 2k. Expressed negative emotion will impact the decision to terminate. Higher negative emotion will lead to greater probability of terminating.

Mediations

Hypothesis 2l. Perception of risk will mediate the relationship between expertise and the termination decision. That is, experts will perceive less risk and therefore be less likely to terminate.

Hypothesis 2m. Expressed negative emotion will mediate the relationship between expertise and the decision to terminate. Experts will experience less negative emotion and therefore be less likely to terminate.

Research Question 3: Which variables (e.g., expertise, anti-termination factors, demographics) impact specific decision making factors?

The primary variable of interest was expertise. Therefore, all sets of hypotheses have predictions or research questions related to expertise. However, when previous research indicates, other factors, such as cognitive processing and demographics are also predicted to impact decision making factors and will be noted in the hypotheses. Expertise may directly or indirectly affect the perception of case factors. Theoretically, experts should be more adept at making decisions because they will take into account the expectancy inconsistent factors when making their decision, while non-experts should not. If their processing styles differ, this too may impact their perception of case factors.

Expertise may impact perception of key case facts, perception of risk, perception of case complexity, and emotional response to the case.

Decision Making Factors

Judges and jurors were asked a series of questions regarding the factors that they used in decision making. The first question was an open – ended question regarding which facts participants believe were more important in informing their decision. Asking participants to self-generate lists can reduce the research bias inherent in providing respondents lists of choices (Rosenblatt & Fisher, 1993). Further, this served as a check of cognitive processing (see Research Question 4 for more details). In terms of decision making factors, those who are familiar with typical child abuse cases (i.e., experts) should be able to generate extensive lists as they know what to look for. However, the research also indicates that both expertise and emotion can influence processing. If individuals are processing experientially, they may be more likely to recall few items (heuristics) that were used in the decision making process. However, individuals (regardless of expertise) who rationally process the information should be able to give more examples. As the research is somewhat conflicted as to how experts might respond, the following research question is posed:

Research Question 3a. How will experts and non-experts differ in the factors they use in decision making?

Hypothesis 3a. Experts will list fewer factors than non-experts.

Hypothesis 3b. Rational processors will list more factors than experiential processors.

Interactions

Hypothesis 3c. Experts who process rationally will list more factors than experts who process experientially. Non-experts will exhibit this trend, but not to the same extent as experts.

The second question asked judges and jurors to identify how much several factors influenced their decision making. A list of potential factors from the case scenario was included. Participants will be asked to indicate the amount of influence each item had on their decision. The list included legal factors and case factors that may have impacted the decision making process, such as testimony of various parties, jury instructions (legal factors), age of the child, substance abuse of the parent, and information on parent-child relationship. Participants were asked to identify how heavily they relied on each of these factors when making their decision.

It is already known that judges identify some of these factors as influential in their decision making, such as child's age, and parent-child relationship (Wallace & Koerner, 2003), and that judges and social workers differ in their decision making criteria (Britner & Mossler, 2001). The experience of judges should impact decision making by making them better at identifying important aspects of the case, as experts and non-experts differ in their application of relevant information and procedural knowledge (Drury-Hudson, 1999). Judges rely on as few as three (Ebbesen & Konečni, 1975) or even only one primary factor (Englich & Mussweiler, 2001) when making decisions, so they may choose few factors as really important. Jurors, on the other hand, may rely on irrelevant information, as they may not know which information should be considered the most important (Schwarz et al., 1991). Heuristic processing of the expert judges would also indicate that they select few items and weight them more heavily as compared to non-

experts. Prior research has not adequately described how expertise may impact the selection and weighting of impact case facts, therefore a research question was posited in lieu of multiple and conflicting hypotheses.

Research Question 3b. How will expertise impact the number, type, and weight of the facts selected?

It was also postulated that judges, because they are experts, would be better able to identify and consider relevant case facts than judges. Therefore, when the anti-termination factors are presented in the case scenario, judges should rely more heavily on these factors than jurors.

Hypothesis 3d. Experts in the sibling condition will weight the sibling factor more heavily than non-experts in the sibling condition.

Hypothesis 3e. Experts in the adoptability condition will weight adoptability more heavily than non-experts in the adoptability condition.

Hypothesis 3f. Experts in the support condition will weight parental support more heavily (i.e., more important) than non-experts in the parental support condition.

No interactions are postulated for the anti-termination factors.

Perception of Risk

Another factor which should be considered as part of the legal decision is the perception of risk. In legal decision making, there is always a degree of uncertainty. Uncertainty can be experienced in a variety of ways and the experience of uncertainty itself can impact decisions. Risk may be perceived by examining uncertainty from a non-probabilistic mindset, which is based on intuitive rules (Rottenstreich & Kivetz, 2006). Judges, as experts, will have developed intuitive rules based on their experiences which

can guide their decisions (Ericsson, 2005).

Judges may already have the tools to more accurately perceive risk, as they have more procedural knowledge from which to draw (Drury-Hudson, 1999; Kardes et al., 2005). Experts will use this knowledge (and past experience) to fill in the missing gaps of information in order to better predict future experiences, such as perception of risk (Phillips et al., 2004). Further, judges' frame of reference will include many similar cases (similar experiences) from which to draw relevant information which may impact their perception of risk. Other demographic factors may impact risk perception as well because females and parents seem to be more conviction prone (Golding et al., 2007), which may indicate that they perceive greater risk. Further, the age of the participants may impact their perception of risks, as young adults often view risks differently than older adults (Steinberg, 2007). However, as judges may be more adept at perceiving risk than non-experts, demographic factors should not influence their perception.

Research Question 3c. Does expertise impact perception of risk? If so, how does it impact perception of risk?

Interactions between Expertise and Demographics

Hypothesis 3g. Females will perceive more risk than males. who are non-experts. Females who are experts will not differ from males who are experts.

Hypothesis 3h. Parents who are non-experts will perceive more risk than non-parents who are non-experts. Parents who are experts will not differ from non-parents who are experts.

Hypothesis 3i. Older adults who are non-experts will perceive more risk than younger adults who are non-experts. Older experts will not differ from younger experts in

perception of risk.

Perception of Case Complexity

Another factor which was postulated to impact the verdict decision was perceived complexity of the case. This will be determined by asking participants to rate the complexity of the testimony given, the complexity of jury instructions, and the complexity of the law. Prior studies on case complexity are mixed, yet overall they indicate that judges and jurors differ in how they perceive the case complexity (Gastwirth & Sinclair, 2004). Jurors often have trouble understanding jury instructions (Hastie et al., 1998; Weiner et al., 1995) and may thus see the case as more complex than judges who are familiar with case law and instructions.

Hypothesis 3j. Experts will find all aspects of the case less complex than non-experts.

Hypothesis 3k. The addition of anti-termination case facts will increase the perceived complexity of the case.

Emotion

The final dimension which might impact decisions in child abuse and neglect cases was that of emotion. Participants will be asked to rate the emotions that the case vignette produced by using a condensed form of the Juror Negative Affect Scale (JUNAS; Bright & Goodman-Delahunty, 2006). Expertise of the judge should make the judge less likely to experience strong negative reactions to the case. Some research supports this notion, as judges do not respond to emotional witnesses in the same manner that jurors do (Wessel et al., 2006). Also females and parents, traditionally, respond more negatively to child abuse than males and non-parents (Stone & Taylor, 1981). As judges

typically should not respond emotionally to the case, then this should not be true for judges.

Hypothesis 3l. Experts will experience less negative emotion following the case than non-experts.

Interactions between Expertise and Demographics

Hypothesis 3m. Non-expert parents will experience more negative emotion than non-expert non-parents. Expert parents will not differ from expert non-parents.

Hypothesis 3n. Non-expert females will experience more negative emotion than non-expert males. There will be no gender difference among experts.

Research Question 4: Can cognitive processing explain the differences in decision making between experts and non-experts?

Expertise has the potential to influence the decision making process in several ways. First, expertise may impact the cognitive process involved in decision making, that is, whether individuals process information experientially or rationally. Cognitive processing may help to explain differences in decision making factors and outcome decisions for experts.

Decision Processing

According to cognitive-experiential self-theory (CEST), individuals can process information either experientially or rationally (Epstein, 1994). As expertise has been linked to heuristic processing, child abuse experts should process experientially. This is supported by research that indicates that judges do engage in heuristic processing (Guthrie, Rachlinski, & Wistrich, 2001). Further, jurors, as non-experts, may experience more emotional reactions to the case, which could also increase experiential processing,

particularly when experiencing certainty oriented emotions such as anger or disgust (Tiedens & Linton, 2001). On the other hand, judges, as experts, should be trained to systematically examine the evidence for each case. Therefore, when expectancy inconsistent information is presented, they may be more likely to notice it (i.e., engage in systematic processing). Because previous research has found conflicting results, a research question will be posited as to whether experts engage in rational processing to a greater extent than non-experts.

Research Question 4a. Will experts or non-experts process more rationally? In addition to determining how expertise impact cognitive processing, it is also important to determine how cognitive processing will impact the outcome decision and decision making process.

Hypothesis 4a. The inclusion of anti-termination factors will increase the probability of rationally processing.

Hypothesis 4b. Rational processors will be more likely to not terminate than experiential processors because they will be more aware of the anti-termination factors.

Hypothesis 4c. Rational processors will perceive less risk to the child than experiential processors.

Hypothesis 4d. Rational processors will perceive the case as less complex than experiential processors.

Hypothesis 4e. Emotion, as measured by a modified version of the JUNAS scale, will impact the type of processing. Specifically, those who experience anger (a certainty oriented emotion) will be more likely to process experientially as compared to those who are not experiencing anger.

Mediations

Hypothesis 4f. Cognitive processing will mediate the relationship between expertise and outcome decisions. Judges will process differently than mock jurors, and this will impact the termination decision.

Hypothesis 4g. Perception of risk will mediate the relationship between processing and outcome decisions. Rational processors will perceive less risk and this perception of risk will influence outcome decisions.

Hypothesis 4h. Perception of case complexity will mediate the relationship between processing and outcome decisions. Rational processors will perceive the case as less complex and thus be less likely to terminate.

Hypothesis 4i. Cognitive processing will mediate the relationship between negative emotion and outcome decisions. Individuals who experience negative emotion will be more likely to engage in experiential processing, and thus impact the outcome decision.

CHAPTER 7: METHOD

Participants

Three hundred eleven participants completed the study. Of these, 43% were judicial officers, recruited from the National Council of Juvenile and Family Court Judges' membership and 57% were community members or students. The community members were recruited via flyers (passed out a local shopping center) or online ads (posted on Craigslist) and were entered into a raffle to win one of three $100 prizes. The students were recruited from introductory psychology and criminal justice courses at a mid-size western University and given course credit. The final sample consisted of 51% male, 49% female. The average age of participants was slightly higher for judges than community members (54 vs. 41 years, respectively). Descriptive differences are reported in Table 4. According to Cohen's (1983) power analysis, it was determined that 26 participants were needed per cell, assuming a medium effect size ($d = .5$), power of .8, and an alpha level of .05. The average cell size for the judicial sample was 17 and the average cell size for the mock jurors sample is 22. Combined cell sizes (when examinations were done across expertise reached an average of 39).

Design

The study was designed to encourage rational processing. Because most termination trials end in termination (Children's Action Alliance, 2005), it is plausible to assume that terminating is the typical/stereotypic response. Adding expectancy inconsistent factors should encourage rational processing of the case and make participants less likely to terminate. Therefore, the design of the study was a 2 (presence or absence of sibling factor) x 2 (presence or absence of adoptability factor) x 2 (presence

or absence of support group factor) x 2 expertise (judge versus mock juror).

Materials

Case Scenario

A case scenario was provided to respondents which summarized a juvenile dependency case at the termination of parental rights trial phase (see Appendix A). The case scenario was a modified version of a training tool used by the National Council every year to train judicial officers on best practices in juvenile dependency cases. The case scenario was designed with a mother with substance abuse issues, a common theme in juvenile dependency and one of the decision making factors previously identified as impacting judicial decisions (e.g., Ballou et al., 2001). The scenario began with *voir dire* questions. *Voir dire* questions were added to the scenario to increase perceived authenticity and to examine possible differences that might emerge between individuals who may or may not pass jury selection. These items were taken from Arizona jury instructions specific to a termination of parental rights trial. *Voir dire* questions were followed by jury instructions detailing the legal requirements which must be met in order to terminate parental rights. This included the federal law regarding termination as well as state level laws which detailed information used to make a best interest determination (an important factor in termination). The case scenario then outlined the relevant case information, including the filed termination petition including key dates and outcomes from the earlier hearing process, case facts, and testimony from all parties. Real case files containing no confidential information, which are used in training exercises at the National Council, were examined during the modification process, in order to make the case scenario as realistic as possible. That is, the language of the case scenario, including

testimony, was consistent with other termination cases in which substance abuse was a primary factor in the case.

The case scenarios varied only on the case facts (e.g., facts agreed upon by all parties) that were provided. For the case facts, respondents were randomly assigned to one of eight conditions, which included some combination of three anti-termination case facts. As the purpose of the study is to examine the role of rational processing in explaining decision making differences among experts and non-experts, it is important to encourage rational processing. The majority of cases which reach a termination of parental rights trial end in termination of parental rights (Children's Action Alliance, 2005). Therefore, termination appears to be the expected outcome. To encourage rational processing, expectancy-inconsistent factors (i.e., against termination) were selected, as facts that are contradictory to expectations encourage rational processing (Maheswaran & Chaiken, 1991).

In order to come up with these anti-termination factors, state laws related to the best interest decision (i.e., which factors people should consider in determining if termination is in the best interest of the child) were examined. Then, researcher asked expert judges to provide examples of facts which had led them not to terminate in past cases. Expert judges indicated that the presence of another sibling (who remained in the home) was a big factor, as well as if the mother had a support system, and whether or not the child had a permanent plan in place (i.e., if the child was likely to be adopted if termination should occur). Therefore, these three factors were the anti-termination facts.

In the sibling condition, participants were told that the mother had another child during the course of the case, and since the mother was in compliance at the time that the

child was born, the child remained in the home with the mother. It is not uncommon in child abuse cases for the parent to have another child during the course of open investigations. The second factor was a support fact. In this condition, participants were told that the mother had recently joined Narcotics Anonymous and had found significant social support with a church group. In the final anti-termination condition, participants were told that the child was eight years old and had been in multiple placements. They were also told that the probability of adoption for a child his age was slim. These factors were decided upon based on conversations with expert judges who have years of experience in termination of parental rights trials. Two judges, each with more than 15 year experience in juvenile dependency, conducting termination of parental rights trials also assessed the case scenario and determined that it was an appropriate case scenario for the given project.

Final Instructions and Outcome Decision

At the conclusion of the case scenario, respondents were given final jury instructions, a modified version of Arizona's termination of parental rights jury instructions, and asked to make an outcome decision. The outcome decision was phrased as: "Considering all the testimony and evidence presented at the hearing, please respond with a verdict decision to the best interest allegation." Participants were asked to check a box, with the choices of *Proven by clear and convincing evidence (i.e., Terminate parental rights) or Not proven by clear and convincing evidence (i.e., Do Not Terminate parental rights).*

Decision Making Factors

Following the outcome decision, participants were asked to make several

decisions regarding the case (see Appendix B). First, participants were asked (open-ended) to indicate which factors they relied upon most heavily in making their outcome decision. Participants were allotted adequate room to write as much as they needed.

Risk. Following this, participants were asked to determine their assessment of risk to the child. Participants were asked to evaluate risk on an eight point scale, from no risk to high risk for three different scenarios: returning the child home right now, returning the child home in the future, and leaving the child in foster care.

Complexity. Participants also were asked to evaluate their perceptions of case complexity. An eight point scale ranging from *very easy to understand* to *very difficult to understand* was used to assess complexity on three variables: testimony of parties, case law, and jury instructions.

Specific Decision Making Factors. Participants also were asked to evaluate the factors that went into their decision making process. An eight point scale from *did not consider* to *heavily weighed in my decision* was used to ascertain which factors the participants weighted the heaviest in the decision making process. These factors included testimony from parties, and key factors from the case, such as age of the child, adoptability of the child, compliance with the case plan, current placement of the child, and perception of risk to the child.

Emotion. Respondents were asked to indicate their current levels of negative emotion (see Appendix C for emotion and cognitive processing questions). Using condensed version of the JUNAS scale (Bright & Goodman-Delahunty, 2006), participants rated the extent to which they felt specific emotions *in response to the case scenario* they had just read. Responses were on a five point scale ranging from *not at all*

to *extremely* for 10 negative emotions, including angry, sad, disgusted, upset, and helpless.

Cognitive Processing. Two measures of cognitive processing were utilized. The first measure included two of Epstein et al.'s (1992) vignettes which ask participants to make decisions regarding the actions of two individuals. Participants who are processing rationally will identify the two actors as equal in their decision making. The second set of cognitive measures was taken from a recent study (Guthrie et al., 2007) which examined judicial decision making in mathematical problems designed to invoke heuristic errors when processing experientially. These three simple math problems have a rational (correct) and experiential (common heuristic error) response.

REI. Participants were also given the Rational-Experiential Inventory (Epstein et al., 1996)**.** The REI measures perceived personality traits related to preference for rational and experiential processing. Specifically, it includes a short version of the Need for Cognition (NFC) scale and a constructed Faith in Intuition (FI) Scale. The FI scale measures individual's tendency toward experiential processing while the NFC scale measures tendency toward rational processing.

Demographics. Finally, participants were asked to answer a few demographic questions (see Appendix D). Demographic factors which may influence the decision included age, gender, parental status, and jury eligibility.

Judicial Expertise Factors. In addition to demographics, judicial officers were asked to answer some questions regarding their level of expertise. These questions included years of experience overseeing dependency cases, number of different dependency trainings attended, total estimated hours of dependency trainings, interest in

overseeing dependency, choice in overseeing dependency, and current oversight role.

Procedure

Community members were recruited to serve as potential mock jurors and represented the non-experts in the study. Community members were recruited via flyers which were handed out at local shopping centers and online ads posted on Craigslist requesting volunteers to participate in a study. Community members who participated were entered into a drawing to win one of three $100 visa gift cards. Because of the low response of community members, some students were also recruited to serve as potential mock jurors. These students were recruited from introductory psychology and criminal justice courses at a mid-size western University and were given course credit for participation.

In addition to community member mock jurors, judges were recruited to participate in the research. Because the study focuses specifically on expertise, judges with varying degrees of expertise related to juvenile dependency case processing were recruited. Judges were recruited via an email sent to the National Council of Juvenile and Family Court Judges membership list serve, serving more than 1500 judges with varying degrees of experience in juvenile and family law. Judges were sent an email requesting participation in the study. Using the suggestions from prior research (Dobbin et al., 2001), the study was constructed to be as similar as possible to an actual case and the email sent to the judges articulated the importance and relevance to the research. Judges were also sent a follow-up reminder email message several weeks after the first message, requesting participation.

Once participants agreed to be in the study, they were directed to an internet site

to complete the survey. The internet site had a link which randomly sent the participant to one of eight survey conditions. The survey consisted of a case scenario with testimony from all parties, questions regarding the termination decision and factors related to the decision making process, a cognitive processing measure, the REI, and demographics.

Coding and Analysis of Variables of Interest

Before analyzing the decision making factors, several items needed to be properly recoded. In order to examine negative affect as evidenced by scores on the modified version of the JUNAS scale (Bright & Goodman-Delahunty, 2006), it was first necessary to calculate an average negative affect score. All of the negative affect items were significantly correlated with one another so scores on the JUNAS scale were summed into a total negative affect score.

Measures of experiential and rational processing also needed to be scored. Three separate rational processing measures were examined. The first rational processing measures included two short vignettes which asked participants to evaluate the behaviors of the individual in question. In the first question, participants read a short paragraph in which one actor's behavior was an act of commissioner and the other actor's behavior was an act of omission (Epstein et al., 1992). Both actors had the same outcome. The participant was then asked to indicate which actor was more foolish on a scale of 1 (Actor 1 was more foolish) to 9 (Actor 2 was more foolish). In the second question, the participant was asked to read a vignette with two actors, one whose behavior was constrained and one whose behavior is unconstrained (Epstein et al., 1992). As with the first vignette, participants were asked to indicate which actor was more foolish. The rational response to both of these items was to choose answer 5, which indicates that both

actors are equally foolish. If the participants chose 5, they were given a score of "1" for rational. All other responses received a score of "0" for experiential.

The second set of rational measures included questions from a recent assessment of judicial decision making. Three "mathematical" questions were posed. These three questions have intuitive (heuristic/experiential) responses as well as deliberate (rational) responses (Guthrie et al., 2007). The first question asked participants to assess the cost of a ball (A bat and a ball costs $1.10 in total. The bat costs $1.00 more than the ball. How much does the ball cost?). If participants were thinking experientially, they would respond $1.00. However, deliberate processing would culminate in the correct response of $1.05. The other two mathematical questions had similar response sets. Responding with the correct answer was scored as a "1" for rational and incorrect answers were scored as "0" for experiential. These five measures were all significantly correlated and were thus combined to indicate an average rationality measure, so that responses varied between 0 (experiential on all measured) and 1 (rational on all measures).

A third rationality measure was taken from a qualitative coding of important decision making factors. Immediately after making the decision to terminate or not terminate parental rights, respondents were asked to identify the factors which most influenced their decision. These open-ended responses were coded to determine whether the participant indicated one of the expectancy inconsistent factors. As prior research indicates expectancy inconsistent factors encourage rational processing (Maheswaran & Chaiken, 1991), individuals who noted an expectancy inconsistent factor were coded as "1" for rational and those who did not were coded as "0" for experiential. This measure was not correlated with the CEST measures, but was correlated with the mathematical

heuristic processing measures (rs < .2), and was thus kept as a separate variable. It was postulated that the CEST and mathematical heuristic measures, because of the question location near the end of the survey were capturing "typical" cognitive processing, while the expectancy inconsistent measure was capturing processing during the actual decision (as it was asked immediately following the outcome decision question). Thus, both measures will be used in the analysis to determine what impact they might have. The process measure will be called the expectancy inconsistent (EI) rational processing measure and the CEST measure will be referred to as CEST processing measure.

The final cognitive processing measure consisted of the REI (Epstein et al., 1996). The REI is a dispositional measure of the individual's self-reported tendency toward either rational or experiential processing. This measure included 10 items, five of which addressed need for cognition (rational disposition) and five which addressed faith and intuition (experiential disposition) questions. Responses to the NFC questions were averaged for an REI-Rational score and responses to the FI were averaged for an REI-Experiential score. Both subscales demonstrated good reliability with the REI-NFC a = .87, and the REI-FI a = .68. A correlation table for all the cognitive processing measures is presented in Table 1.

Computations were also conducted on the decision making factors. Results from open-ended questions regarding which factors most impacted the termination decision were coded to indicate the number of factors the participant identified. Factors were assessed based on the number of different items the participant identified. For example, discussion of the mother's compliance with the case plan was coded as 1 item listed, even if they talked about compliance with counseling and compliance with drug treatment. If

the participant said, "the mother complied with drug testing and she went to counseling," this was not seen as two separate items. However, it the participant said, "the mother complied with her case plan and she was able to take care of another child" this counted as two factors that they considered.

Coding of Anti-Termination Factors

Each anti-termination factor was coded as dichotomous present/absent variable. That is, dummy coded condition variables were created so that each anti-termination factor (i.e., sibling presence, support, and adoptability) was represented as a "0" absent or "1" present for inclusion in analyses. Anti-termination factors were coded as such to facilitate the examination of the 2 x 2 x 2 research design when examining the impact of the experimental manipulation (of anti-termination factors) on the decision making process and outcome measures.

CHAPTER 8: RESULTS

Results of these analyses focused specifically on four research questions centering around the dependent variable categories of: expertise factors, decision making process, decision making outcome, and cognitive processing. Phase I analyses were conducted first in order to ascertain level of expertise among judicial officers and to determine if an added expertise variable (i.e., expert versus non-expert judges) needed to be added to the phase II analyses. Results will be assessed by phase and research question. While the interest of the study is expertise, this is conceptualized as judges compared to mock jurors and will be discussed as such.

Before examining the research questions, an initial examination of the sample groups was conducting, comparing judges and mock jurors. Judges were significantly older (M = 54 years) than mock jurors (M = 30 years; t (272) = 18.9, p < .001). They were also significantly more likely to be male (65%) than mock jurors (41%; χ^2 = 16.41, p < .001) and more likely to be parents (90%) than mock jurors (40%; χ^2 = 73.01, p < .001). Further, all of the judges indicated that they had an advanced degree (beyond Masters); whereas, 90% of mock jurors indicated education below a Bachelor's degree. Judges also differed from mock jurors in their cognitive processing, which was postulated to explain much of the differences in decision making. As cognitive processing is posited as a potential explanatory variable regarding the impact of expertise in decision making process, analyses were also conducted to examine expertise differences in rational and experiential processing. Linear and logistic regression analyses, controlling for age, gender, and parent status, examined the impact of expertise on the three measures of cognitive processing. Results indicated that judges differed significantly from mock

jurors in the CEST rational processing measure (b = -.15, p < .01), the REI-NFC (rational) measure (b = -.37, p < .01), REI-FI (experiential; b = .38, p < .01), and the EI rational processing measure (b = -.88, p < .01). Judges were more rational and less experiential than mock jurors across measures. Expertise differences in cognitive processing and cognitive style are presented in Table 4.

Another area where judges and mock jurors differ is in their expertise. Only 20% of mock jurors indicated that they had some training or experience working with the child abuse and neglect system. However, all of the judges, at a minimum, have advanced degrees and legal knowledge. In order to further examine the judges' expertise, several questions were asked to judges to determine their degree of expertise.

These included their years of experience in child abuse and neglect, the number of trainings they have attended, the number of hours of training they have attended, the current oversight role, their interest in the field, and their choice to work in the field. Results indicate that all of the judges had overseen child abuse and neglect cases at some point in their career, and 88% currently oversee child abuse and neglect cases. However, the majority of these judges oversee multiple case types, as only 14% are strictly devoted to child abuse and neglect cases (i.e., they have no other case types). The majority of judges (70%) indicated that it was their choice to oversee dependency, and 90% indicated a high interest in child abuse and neglect cases. Judges also indicated that they have worked for an average of nine years in child abuse and neglect (SD = 6.64, Range 0 to 32 years). They had had an average of 18 different trainings specifically devoted to child abuse and neglect (SD = 31.33, Range 0 to 300), with an average of 105 hours of trainings (SD = 134, Range 0 to 1000 hours).

Because judges were better educated and had multiple years of trainings and experience overseeing juvenile dependency cases, they were considered experts in the field, particularly in comparison to the mock jurors. The next step in the analysis process was to determine which of these expertise factors (mentioned above) impacted the outcome in order to determine if judges should be further categorized based on degrees of expertise. This was addressed in research question one.

Phase I: Expertise Factors

The first set of results assessed research question one: Which judicial expertise factors influence outcomes? Because prior research has failed to delineate the specific factors which make one an expert, multiple expertise factors were assessed. An exploratory factor analysis was used in order to assess which variables best illustrated expertise among judges. The majority of communalities were over .6 (one was .49), indicated that the items were factorable. A principal component analysis with varimax rotation indicated the first three factors explained 23%, 18%, and 15% of the variance respectively. The first component had an Eigen value of 2.062 and consisted of three variables. The second component consisted of two variables, with an Eigen value of 1.609. The third component had an Eigen value of 1.353 and consisted of only one factor, indicating that it might be an individual variable and only indirectly related to expertise. The final three variables, which included type of court the judge worked in, interest in working in the field, and if the judge only oversaw child abuse and neglect cases, failed to load on a component with an Eigen value over one and were thus no longer included in the analysis. These six variables explained 56% of the total variance of the expertise items. The factors loadings for these items are located in Table 2.

The first component consisted of items which focused on experience and training (i.e., how many years experience, the number of different trainings, overall hours of training related to child abuse and neglect). The second component assessed past and current role (i.e., do you now oversee juvenile dependency cases). The third component consisted of a single question assessing choice in presiding over juvenile dependency cases. This question appeared to be only indirectly related to expertise.

These six items were extracted and used to examine if judicial expertise impacted decisions. A binary logistic regression analysis was conducted to examine the impact of the expertise variables on the decision to terminate. The analysis revealed that none of the expertise variables impacted outcome decisions (ps > .1). Further, multiple linear regression analyses examined the impact of these expertise factors on varying aspects of the decision making process. Again, none of the expertise factors significantly impacted the decision making factors (ps > .05).

The expertise literature clearly indicates that experience alone is rarely sufficient to create expertise (e.g., Phillips et al., 2004). In fact, most of the literature agrees that expertise is a combination of factors. Therefore, in addition to examining these variables individually for their impact on outcomes, it was also essential to examine possible additive and interactive effects. To facilitate this, all of the expertise variables were converted into dichotomous variables. Most of the variables were already dichotomous and could easily be distinguished as novice/expert variables. The remaining continuous variables were examined using histograms and descriptive analyses to examine where an appropriate novice/expert cut off would be. Then, these items were transformed into dichotomous variables. After conversion was complete for all nine variables, the

variables were summed into a "sum expertise" variable. This variable was added into the logistic regression equation in order to determine if it impacted outcome. The additive expertise variable also had no impact on outcome ($p > .05$).

A final examination was conducted to examine the interactive effect of expertise variables and the manipulated anti-termination factors on outcome. Since it was postulated that these anti-termination factors would impact the decision outcome, particularly for experts, it was necessary to see if there was an interaction. Therefore, a logistic regression was run which included all three anti-termination factors, the sum expertise variable, and all possible interaction terms. No main effect or interaction emerged for the sum expertise variable ($p > .05$). Because no significant results were found, the judicial expertise factors were not included in future analyses, and expertise remained the dichotomous judge-juror distinction.

<div align="center">Phase II: Legal Decision Making Process & Outcomes</div>

As judicial expertise factors had no impact, phase II analyses focused primarily on the role of expertise (judge versus mock juror) and other variables on the outcome decision, the legal decision making factors, and cognitive processing. Hypotheses are summarized in Table 3.

Preliminary Analysis

Preliminary analyses were conducted to ensure the integrity of the data. First, analysis determined if the participant answered the outcome (termination) decision. Participants who did not answer this question were removed from the data set ($n = 33$). Frequencies and descriptive statistics of the variables of interest indicated that all data fell within the normal range (i.e., no coding errors were noted). Further, EXPLORE analysis

of continuous variables of interest indicated no outliers.

In order to make comparisons between judges and jurors, it was first necessary to determine if differences existed between the recruited students and community members. Students and community members were significantly different in terms of age and parent status, but did not differ significantly terms of outcome decisions ($p > .1$). Students decided to terminate 41% of the time, compared to community members, who chose to terminate 29% of the time. Because there was no statistically significant difference in outcome, students were combined with community members into the mock juror sample for analysis. A priori analyses also revealed that judges and mock jurors differed on several demographic variables, including age, gender, and parent status. Table 4 displays demographic differences in judges and mock jurors as well as community members and students.

A final preliminary analysis consisted of examining the *voir dire* questions. *Voir dire* questions are typically asked to determine if a person should be on the jury. 'Yes' responses to the questions typically result in consideration for possible removal from the jury. These questions were included in the case scenario for authenticity purposes only. No hypotheses were predicted for the *voir dire* questions. Additionally, the majority of participants indicated no to the questions, with percentages of yes responses ranging from 9% to 47%. Because some of the questions had relatively high percentages of yes responses, an exploratory analysis was conducted to determine if these factors impacted decisions to terminate. A binary logistic regression analysis revealed that responses to the *voir dire* questions had no impact on outcome decisions to terminate (all ps $> .11$). Because there was no statistically significant impact on outcomes, no participants were

excluded based on *voir dire* responses.

<center>*Termination Decision*</center>

The primary dependent variable was decision to terminate or not terminate

parental rights, a dichotomous 0 (terminate) or 1 (do not terminate) scoring. Logistic

regressions were conducted in order to assess the impact of expertise, decision making

factors, and rational processing on the decision to terminate or not terminate in three

different models. Because a priori differences existed, gender, age, and parental status

were entered into all logistic regression equations. The first assessment that was

necessary was to determine the impact of the experimental factors on outcome decision.

Hypothesis 2a predicted that the experimental anti-termination factors would

decrease the likelihood of terminating parental rights. Further, it was postulated in

hypotheses 2c through 2f that expertise would interact with the anti-termination factors in

that judges in the anti-termination conditions would be less likely to terminate than mock

jurors.

In the first model, all three anti-termination experimental variables were entered

into the equation along with expertise in step one. In addition, all possible interactions

between the experimental factors and expertise variable were also entered into the

equation in the second step. Examining the main effects of the logistic regression (via

step one) found that only the sibling factor was a significant predictor of outcome

decision. Those in the sibling factor were much less likely to terminate (see Figure 3 for

illustration). The overall model was significant (-2 Log Likelihood = 388.28, $\chi^2(4) =$

9.45, $p = .51$) and correctly identified 66% of cases. When the interactions were added

into the equation, the model became a slightly better fit (-2 Log Likelihood = 372.77,

$\chi^2(15) = 24.96$, $p < .05$) and correctly identified 68% of cases. In the second step, which included all main effects and interactions, only the adoptability by sibling by judge interaction was significant ($b = 2.91$, Wald $= 4.02$, $OR = 18.427$, $p < .05$). Judges were more likely to terminate when there were no anti-termination factors (56%) compared to mock jurors (37%). In the adoptability condition, mock jurors were more likely to terminate (42%), while judges were less likely to terminate (32%). In the sibling only condition, both judges (16%) and mock jurors (32%) were less likely to terminate. However, when the two anti-termination factors were combined (i.e., when both the sibling and adoptability factors were mentioned), judges (21%) and mock jurors (33%) were more likely to terminate than in the sibling condition alone. These results are presented in Figure 1. These results indicate that judges' termination decision is more likely to be impacted by the anti-termination factors than is the decision of mock jurors, who had some reduction in termination due to the factors, but not a large decrease. Therefore, expertise does impact the outcome decision. The only variable which had no impact on outcome decision and no interactive effects was the support variable ($p = .53$). Figure 4 illustrates the percentages of decisions to terminate by anti-termination factors and expertise. Because additional analyses confirmed that support had no appreciable influence on the dependent variables of interest, this support variable was removed from all future analyses. A summary all of the logistic regression analysis is presented in Table 6.

After determining that the anti-termination factors and expertise impact outcome decisions, it was important to assess whether the inclusions of participants' background characteristics improve the accurate prediction of outcome decisions? Based on the

results of the first logistic regression model, the sibling, adoptable, and judge factors, as well as the three-way interaction factor were entered into all subsequent logistic regression models for analyses. In the second model, the first step included the adoptable, sibling, expertise, and three-way interaction term. The second step included demographic variables, including age, parenting status, and gender. In the third step, interactions were entered for each of the demographic variables and the expertise factor.

Step one of the model was significant (-2 Log Likelihood = 356.11, χ^2 (4) = 10.52, $p < .05$). Step two of the model proved to be a better fit (-2 Log Likelihood = 340.81, χ^2 (7) = 25.82, $p < .001$), likelihood ratio test, Δ -2LL = 15.30, $\Delta df = 3$, $p < .001$. In step two, two main effects arose for demographic variables. Parents were less likely to terminate than non-parents ($b = .90$, $Wald = 4.62$, $p < .05$, $OR = 2.47$). Older adults were also less likely to terminate than younger adults ($b = .06$, $Wald = 11.79$, $p < .001$, $OR = 1.06$). There were no gender differences in outcome decisions ($p > .05$). When the demographic variables were entered into the equation, the three-way interaction was no longer significant, but a main effect reemerged for the sibling factor ($b = .84$, $Wald = 7.55$, $p < .01$, $OR = 2.31$). Analysis revealed that there were no significant interactions between demographics and expertise (all $Walds < 1$, all $ps > .8$, and $ORs < 1.2$). Thus, hypotheses 2g and 2h were not supported.

Decision Making Process Variables

A third logistic regression model examined the specific decision making factors that participants self-identified as factors which influenced their decision to see if decision making variables improved the predictive ability of the model. Expertise, demographics, the sibling factor, adoptability, the judge by sibling interaction, and the

three-way interaction between judge, adoptability, and sibling were entered into the

logistic regression equation in step one. In step two, perceptions of risk and negative

emotion were entered into the equation. In step three, interaction between the sibling

factor and the decision making factors were entered into the equation. Step one of the

model (-2 Log Likelihood = 323.65, χ^2 (8) = 27. 42, $p < .01$) was improved upon greatly

by the inclusion of the step two variables (-2 Log Likelihood = 177.06, χ^2 (15) = 174.02,

$p < .001$). The third model was also significantly better than step one, but not a

significant improvement over step two (-2 Log Likelihood = 170.87, χ^2 (22) = 180.21, p

$< .001$). Results are described in detail by decision making factor below.

Risk. Main effects emerged in step two for all perception of risk factors. Perceived

risk of returning the child to the mother right now ($b = -.50$, *Wald* = 11.14, $p < .01$, *OR* =

.60) and perceived risk of returning the child home at a later date ($b = -.97$, *Wald* = 30.89,

$p < .001$, *OR* = .38) were related to decisions to terminate, while perceived risk of leaving

the child in foster care ($b = .54$, *Wald* = 18.28, $p < .001$, *OR* = 1.71) were related to

decisions not to terminate. Individuals who reported higher level of perceived risk of

returning the child to the home ($M = 5.29$) and at a later date ($M = 4.39$) were more likely

to terminate parental rights than those who reported lower perceived risk of returning the

child to the home now or at a later date ($M = 3.84$, $M = 2.87$ respectively). Individuals

who chose to terminate also perceived less risk to the child of staying in foster care ($M =$

3.36) than those who did not choose to terminate ($M = 4.78$). Hypothesis 2i was

supported. No interactions emerged between the anti-termination factor and perception of

risk, indicating that anti-termination factors did not impact perceived risk, when making

outcome decisions. Further, the lack of interactions indicated that perception of risk was a

good predictor of outcome regardless of expertise. In fact, it made no difference whether the individual was a judge or a mock juror.

Emotion. It was predicted that negative emotion would impact the outcome decision. The overall negative affect score had no impact on the decision outcome. There was also no impact of the sibling experimental factor on emotion. However, prior research had indicated that anger is one of the most common reactions to child abuse and may influence decision making. Thus, anger was added to the equation as a separate indicator. Results indicated that anger ($b = -.76$, *Wald* $= 5.59$, $p < .05$, *OR* $= .46$) significantly predicted the decision to terminate. Participants who experienced more anger were more likely to choose to terminate parental rights, which partially supported hypothesis 2j.

Decision Making Factors

In addition to examining the outcome decision, it was also important to address the decision making factors which may have influenced the decision making process. Therefore, the next step in the analyses was to examine research question three: which variables (e.g., expertise, cognitive processing, demographics) impact specific decision making factors? To that end, a series of analysis of variance (ANOVAs) were conducted to examine the impact of the experimental anti-termination factors, as well as expertise, cognitive processing and demographics and appropriate interactions on each of the specific decision making factors.

Number of Decision Making Factors Considered

It was predicted that there would be main effects for expertise and rational processing in terms of number of factors considered. Experts were predicted to list fewer

factors. Rational processors were predicted to list more factors. It was also predicted that there would be would be an interaction with expertise and rational processing, in that experts who process rationally would list more factors than experts who process experientially, but that there would be no impact of rational processing for non-experts. In order to assess this, an ANOVA was conducted to determine the impact of expertise and rational processing on the number of factors listed as important in the decision making process. Therefore, the experimental variables (sibling, adoptability) were entered into the equation, along with expertise, EI rational processing, CEST rational processing measures, and demographics. Age, gender, and parenting status were also entered into the equation to control for pre-existing differences between groups. None of the anti-termination factors impacted the number of factors individuals listed ($ps > .05$). Although there was a trend for a main effect of expertise (i.e., judges listed more factors than mock jurors), this trend was not significant ($p = .14$). Results did indicate, however, that there was a main effect for EI rational processing on the number of factors identified (F [1, 286] = 24.94, $p < .001$), indicating that rational processors identified more factors ($M = 2.27$, $SD = 1.14$) than experiential processors ($M = 1.48$, $SD = .81$), supporting hypothesis 3b. There was no impact of CEST rational processing. There was no interaction between expertise and EI or CEST rational processing. Therefore, hypotheses 3a and 3c were not supported. These trends are displayed in Figure 2.

Anti-Termination Factors

Hypotheses 3d through 3f predicted that experts would weigh the anti-termination factors more heavily in their decisions than non-experts, when they were in that specific anti-termination condition (i.e., judges in the sibling condition would weigh the sibling

factor as more important than mock jurors in the sibling condition). To assess this, cases which included the specific factor were first selected so that only those in that specific condition were in the analysis. Then, t-tests assessing differences in expertise and the weighting of the factor were conducted. That is, for the sibling factor, only participants who read a version of the trial scenario with the presence of the sibling anti-termination fact were selected for inclusion in the analysis. Then, a t-test was run examining the difference between judges and mock jurors regarding how heavily they weighed this fact on the continuous rating scale (i.e., *did not consider* to *heavily weighed in my decision*). This analysis was also conducted for the adoptability factor and the support factor. Results indicate that, within the sibling condition, judges weighted the presence of a sibling more heavily ($M = 5.62$) than mock jurors ($M = 4.59$), $t (157) = 3.16, p < .01$. There was no difference for the adoptability factor or support factor ($p > .5$), indicating that expertise did not impact the weighing of case factors related to adoptability. Therefore, hypothesis 3d was supported, while hypotheses 3e and 3f were not.

Perception of Risk

A series of ANOVAs were conducted to assess the impact of expertise on three perceptions of risk questions (i.e., risk of returning home now, risk of returning home in the future, risk of staying in foster care). The experimental anti-termination variables, expertise, and demographics were examined to determine their impact on perception of risk. Because it was predicted that expertise would interact with age and gender, these interaction terms were added to the equation.

Anti-Termination Factors. It was predicted that the presence of anti-termination factors would decrease perception of risk for returning the child home and increase

perception of risk for returning the child to foster care. One main effect emerged for presence of the sibling factor. Participants in the sibling condition (i.e., those who were given information that the parent had another sibling in the home), perceived less risk (*M* = 4.18) of returning the child home now than participants who were not in the sibling condition (*M* = 4.87; *F* [1, 286] = 7.99, *p* < .01). This supports hypothesis 3g. No other main effects for termination factors emerged, nor did any interactive effects of anti-termination factors.

Expertise. It was predicted that expertise would impact perception of risk. Specifically, it was predicted that experts would perceive less risk to the child than *non*-experts. Results indicate that expertise did impact perception of risk, specifically risk of returning the child to the home, both now and later. Judges perceived more risk of returning the child to the home right now (*M* = 5.07) than mock jurors (*M* = 3.97; *F* (1, 286) = 7.74, *p* < .01). Judges also perceived more risk of returning the child home at a later time (*M* = 3.60) than mock jurors (*M* = 2.82; *F* [1, 285] = 4.20, *p* < .05).

Demographics. Only one demographic difference emerged. Females perceived more risk to the child of staying in foster care (*M* = 4.89) than males (*M* = 4.31; *F* [1, 286] = 5.75, *p* < .05). There were no interactions between expertise and demographic factors, so hypotheses 3h, 3i, and 3j were not supported.

Perception of Case Complexity

A series of ANOVAs were used to examine which factors impacted perceived case complexity. Anti-termination factors along with expertise were entered into the equation as the main predicted independent variables. Age, gender, and parenting status were added to the equation to control for their effect. Further, the sum of anti-termination

facts was added to the equation, as it was predicted to increase perceived complexity.

Anti-termination Factors. The experimental manipulation had no impact on perceptions of case complexity. That is, there were no differences in perceived complexity based on the condition the participant was in ($ps > .05$).

Expertise. Analysis revealed that expertise impacted perceptions of case complexity only for perceived complexity of the law (F [1, 280] = 5.08, $p < .05$). Judges found the case law less complex ($M = 1.68$) than mock jurors ($M = 2.79$). This partially supports hypothesis 3k.

Addition of Case Facts. Although it was postulated that adding additional case facts would increase perceived complexity of the case, hypothesis 3l was not supported. The addition of case facts had no impact on perceived complexity ($ps > .05$).

Emotion

The final decision making factor that was examined was emotion. An ANOVA was conducted to determine if the experimental manipulation had any impact on emotion. Further, the ANOVA also included expertise, to determine if there were differences in the experience of negative emotion in direct relation to the case summary between judges and mock jurors. Demographic variables were entered into the equation as it was predicted they might influence emotion as well. Further, as interactions between expertise and demographic variables were expected, interactions for expertise and parent status and expertise and gender were entered into the equation.

Anti-Termination Factors. The experimental conditions had no impact on perceived emotion in relation to the case ($ps > .05$).

Expertise. A main effect appeared for expertise. Judges reported significantly less

negative affect ($M = 9.68$) in response to the case scenario than mock jurors (M=15.34; F [1, 286] = 9.44, $p < .01$). Thus, hypothesis 3m was supported.

Demographics. It was anticipated that there would be interactions between expertise and parents and expertise and gender. For non-experts, parents and females were predicted to experience more negative affect than non-parents and males. No main effects or interactions were found for the relationship between demographics and emotion ($ps > .05$). Thus, hypotheses 3n and 3o were not supported.

It was predicted that perception of risk, perception of case complexity, and experienced negative emotion would mediate the relationship between expertise and outcome decision. However, one of the assumptions necessary for mediation analysis is that the independent variable has a significant impact on the outcome variable (Baron & Kenny, 1986). Expertise had no direct impact on the outcome variable, except via the interaction with sibling and adoptability. This interaction term, however, was not a significant predictor of perceptions of risk, complexity, or negative emotion. Therefore, mediation analyses were not conducted.

In sum, it appears that the experimental variables had minimal impact on the decision making factors, although the sibling factor did impact perception of risk, which was a good predictor of outcome. However, expertise, regardless of condition, did appear to impact perceived risk, perceived case complexity, and perceived negative emotion in response to the case. The next step in the analyses was to determine why this difference might occur. It was postulated that cognitive processing was the means by which judges and mock jurors differed. This was addressed in research question four: can cognitive processing (CEST) explain the differences in decision making between experts (judges)

and non-experts (mock jurors)?

Cognitive Processing

As noted above, three measures of cognitive processing were used. The first

measure was a process measure of cognitive processing, the expectancy inconsistent

measure. Individuals who indicated that they used one of the expectancy inconsistent

factors in their decision making process were considered rational processors, and those

who did not were considered experiential processors (see Maheswaran & Chaiken, 1991).

Because only seven of the eight conditions had an opportunity to identify an expectancy

inconsistent factor (condition 8 had no anti-termination factors), only these seven

conditions were used in the following analyses. Further, the specific anti-termination

factors and sum total of anti-termination factors presented were assessed to determine if

they impacted EI rational processing. A logistic regression analysis was used to

determine how the specific anti-termination factors, as well as the sum total of anti-

termination factors present impacted EI processing. Only the sibling factor significantly

predicted EI rational processing ($b = 1.25$, *Wald* $= 9.32$, $p < .05$, *OR* $= 3.51$). Participants

in the sibling condition were much more likely to indicate at least one of the expectancy

inconsistent factors. The number of expectancy inconsistent factors present in the

conditions had no impact on the EI rational processing ($p = .99$). In order to control for

the impact of sibling factor on EI rational processing, sibling was added to all the

analyses so that the impact of EI processing would have to be demonstrated on top of the

presence of the sibling factor to ensure that the rational processing is actually influencing

the outcome rather than the presence of sibling.

In addition to the EI rational processing measure, which was considered the

measure of the actual processing during the decision making, two other cognitive processing measures were used. The first was a sum of two CEST rational processing measures and three mathematical rational processing measures. These measures were correlated and thus combined for an average rationality measure. This measure represents the typical cognitive processing of the individual. The other measure was the REI, which has subscales representing experiential and rational processing dispositions. These measures represent the internal personality dispositions of the individual, (i.e., their self-reported preference for rational or experiential thought). A correlation matrix of the cognitive processing measures is presented in Table 1.

Because individuals who were rational processors should be more likely to indicate the EI rational processing factors (indicating they are rational processors), preliminary analyses were conducted whereby the other cognitive processing and disposition variables were regressed on EI to determine if they predicted rational processing. The REI-NFC subscale (rational processing disposition) significantly predicted EI rational processing ($b = .63$, $Wald = 7.90$, $p < .01$, $OR = 1.88$). Individuals who scored higher on the need for cognitive subscale (indicating a disposition towards rational processing) were more likely to notice the EI factor and be coded as rational processors. Further, the CEST average rationality measure also successfully predicted EI rational processing ($b = 1.34$, $Wald = 7.28$, $p < .01$, $OR = 3.82$), indicating that people who were more likely to be typical rational processors also were more likely to notice the EI factors. These results support the use of the EI rational processing measure as an accurate cognitive processing measure.

The first set of analyses were conducted to determine if cognitive processing had

an impact on the decision making factors and if there was an interaction between cognitive processing and expertise. To assess this, a series of linear regressions were used. Sibling, EI cognitive processing, average rationality processing, both REI subscales, and expertise were entered into the equation, as well as computed interaction terms between expertise and cognitive processing. These analyses examined the perception of risk, perception of case complexity, and negative emotion factors.

Risk

It was predicted that cognitive processing would impact perceived risk to the child in the sense that rational processors would perceive less risk to the child of returning home. Results indicated that EI rational processors perceived less risk of returning the child to the home right now ($M = 3.54$) than experiential processors ($M = 3.54$; $b = -.80$, $p < .01$), and also perceived less risk of returning the child to the home at a later date ($M = 2.53$) than experiential processors ($M = 2.98$; $b = -.77$, $p < .001$). EI rational processors also indicated greater perceived risk of leaving the child in foster care ($M = 4.72$) than experiential processors ($M = 4.11$; $b = .56$, $p < .05$). These results provide support for hypothesis 4b. There was, however, no impact of the average rationality measure or the REI measures on perception of risk. Nor were there any interactions between cognitive processing and expertise.

Complexity. It was also postulated that rational processors would perceive all aspects of the case as less complex. The linear regression analysis indicated that none of the cognitive processing measures predicted perception of case complexity ($ps > .12$), nor were there any interactions between expertise and processing, providing no support for hypothesis 4c.

Negative Emotion. EI rational processing, CEST rational processing and both REI measures were all predicted to impact negative emotion. It was hypothesized that rational processors would experience less negative emotion than experiential processors. The personality – dispositional measure of cognitive processing proved to be the only significant predictor of negative emotion. Individuals who scored high on the REI-FI scale (experiential cognitive style) were more likely to experience negative emotion ($b = 1.82, p < .01$), while those who score high on the REI-NFC (rational cognitive style) were more likely to experience less negative emotion ($b = -2.764, p < .001$). EI rational processing and average rationality processing had no impact on negative emotion. These results support hypothesis 4d.

It was also predicted that cognitive processing might play a role in the outcome decision. First, main effects for cognitive processing were examined. A logistic regression analysis (model 4) was used to determine if cognitive processing had an effect. For the first step, adoption, sibling, expertise, and the sibling by judge interaction, as well as the sibling by adoptability by judge interaction were all entered into the equation, along with parenting status, age, and gender. In step two, the cognitive processing measures were all entered into the equation. In step three, interaction terms were entered which examined the interaction between cognitive processing and the experimental variables. Step one of the model was not a bad overall fit (-2 Log Likelihood = 290.96, x^2 (8) = 24.77, $p < .01$), and correctly identified 69% of the cases. Step two, which added the rational processing measures, showed an improved model (-2 Log Likelihood = 240.51, x^2 (12) = 75.22, $p < .001$), and correctly identified 74% of the cases. In step two, a main effect emerged for EI rational processing ($b = 3.98, Wald = 14.79, p < .001, OR =$

53.37) indicating that rational processors were much less likely to terminate than experiential processors. This supports hypothesis 4a. Cognitive style, as measured by the REI-FI and REI-NFC subscales had no impact on the outcome decision, nor did average rationality (ps > .12). Further, none of the interaction terms entered into step three were significant. Therefore, no interactions existed between the experimental variables and cognitive processing. It was further postulated that the relationship between expertise and cognitive processing might be best represented as a meditational relationship.

Mediations

According to Baron and Kenny (1986), a mediating relationship exists when it meets the following criteria: (1) the independent variable must be related to the outcome variable, (2) the independent variable significantly accounts for variations of the mediating variable, (3) the mediating variable significantly accounts for variation in the dependent variable, and (4) when controlling for both the independent and mediating variable, any relationship between the independent and dependent variable in no longer significant. The relationship is the strongest when the path between the independent and dependent variable is reduced to zero.

Cognitive processing was thought to mediate the relationship between expertise and outcome decision. However, expertise's impact on the outcome decision was only through interactive effects with the experimental variables. These interactive effects had no impact on EI rational processing. Therefore, the mediation relationship could not be tested.

Despite the inability to determine if cognitive processing mediated the relationship between expertise and outcome decisions, it was still postulated that

expertise might have an indirect relationship on outcomes via the cognitive processing mechanism. Earlier results indicated that judges do differ significantly from jurors on EI cognitive processing. As it was discovered that EI rational processing does significantly impact outcome decisions, several factors were postulated to mediate the relationship between rational processing and outcome decisions, including perceptions of risk, perceptions of case complexity, and negative affect. Again, for all of these analyses, only conditions one through seven (those conditions which had anti-termination factors from which the individual could consider) were used for the analysis. Further, the sibling factor was entered into all equations to control for its impact on the EI cognitive processing measure.

    Risk of Returning the Child Now. It was predicted that perception of risk would mediate the relationship between rational processing and outcome measures. Rational processors would pay more attention to the anti-termination factors, making it more likely that they would perceive less risk of returning the child home and more risk of leaving the child in foster care, which may impact the decision to terminate. In order to assess this, a combination of logistic and linear regressions was run (see Figure 4 for illustration). In the first step, logistic regression was used to predict outcome decision based on EI rational processing. In step two, a linear regression analysis was used to predict EI rational processing's impact on perception of risk (the proposed mediator) for returning the child to the home now. In step three, both perception of risk for returning the child home now and EI rational processing were entered into a logistic regression equation to determine their combined impact on outcome decision (Baron & Kenny, 1986).

The first step indicated EI rational processing (controlling for sibling) was a significant predictor of outcome decision ($b = 3.99$, *Wald* $= 15.37$, $p < .001$, *OR* $= 54.46$). Rational processors were less likely to terminate. In step two, EI rational processing also successfully predicted perception of risk of returning the child the home now ($b = -.94$, $p < .01$). In step three, when inclusion of perception of risk for returning the child right now ($b = -.81$. $p < .001$) and EI rational processing ($b = 4.11$, *Wald* $= 15.52$, $p < .001$) were simultaneously predicting outcome, both factors were significant. However, perception of risk appeared to have some impact on EI rational processing's effect. A Sobel test confirmed that perception of risk partially mediated the effect of EI rational processing on outcome decisions, ($z = 3.02$, $p < .001$). See Figure 5 for an illustration of the mediation.

Risk of Returning the Child Home in the Future. It was also predicted that perceived risk of returning the child home at a later date would mediate the relationship between EI rational processing and outcome. The same analysis as above was conducted, except for inclusion of the new perception of risk variable (see Figure 6). In the first step, logistic regression analysis was used to predict outcome decision based on EI rational processing. In step two, a linear regression analysis was used to predict EI rational processing's impact on perception of risk (the proposed mediator) for returning the child to the home at a later date. In step three, both perception of risk for returning the child home at a later time and EI rational processing were entered into a logistic regression equation to determine their combined impact on outcome decision.

The first step indicated EI rational processing (controlling for sibling) was a significant predictor of outcome decision ($b = 3.99$, *Wald* $= 15.37$, $p < .001$, *OR* $=

54.46). Rational processors were less likely to terminate. In step two, EI rational

processing also successfully predicted perception of risk or returning the child the home

at a later date ($b = -.67, p < .01$). When both perception of returning the child home at a

later date ($b = -.95, p < .001$) and EI rational processing were used to predict outcome,

both measures remained significant ($b = 4.95, Wald = 18.79, p < .001, OR = 141.46$). A

Sobel test revealed a significant mediated effect ($z = 2.83, p < .001$), indicating

perception of returning the child home at a later date might partially mediate the impact

of EI rational processing on outcome.

Risk of Leaving the Child in Foster Care. A third mediation analysis examined the

impact of perceived risk of leaving the child in foster care on the relationship between EI

rational processing and outcome (see Figure 7). In the first step, logistic regression was

used to predict outcome decision based on EI rational processing. In step two, a linear

regression analysis was used to predict EI rational processing's impact on perception of

risk (the proposed mediator) for leaving the child in foster care. In step three, both

perception of risk for leaving the child in foster care and EI rational processing were

entered into a logistic regression equation to determine their combined impact on

outcome decision.

The first step indicated EI rational processing was a significant predictor of

outcome decision ($b = 3.99, Wald = 15.37, p < .001, OR = 54.46$). Rational processors

were less likely to terminate. In step two, EI rational processing also successfully

predicted perception of risk of leaving the child in foster care ($b = .52, p < .05$),

indicating rational processors believed there was more risk to the child if they stayed in

foster care than experiential processors did. When both risk of remaining in foster care (*b*

$= .52, p < .001$) and EI rational processing ($b = 4.11, p < .001$) were entered into the equation, both remained significant predictors of outcome decisions. The Sobel test was also significant, indicating that perception of risk for leaving the child in foster care may partially mediate the relationship between EI rational processing and outcomes ($z = 2.05$, $p < .05$).

Perception of Case Complexity. It was also predicted that perception of case complexity would mediate the relationship between EI rational processing and outcome decisions. However, EI rational processing had no impact on any of the perceived complexity variables. Therefore, mediation analyses could not be conducted.

Emotion. A final predicted relationship was that of emotion as a mediator between rational processing and outcome decisions. However, EI rational processing (the only cognitive processing variable to impact outcome decisions) did not successfully predict overall negative emotion. Therefore, a mediation analysis could not be conducted which examined the overall negative affect.

However, because anger is specifically noted as a commonly experienced reaction to child abuse, it was analyzed separately. Individuals who feel angry should be more likely to experientially process. Thus, it was postulated that EI rational processing would mediate the relationship between anger and outcome decisions.

Anger. To assess the mediating relationship of EI rational processing on anger and outcome, a combination of logistic and liner regression was used (see Figure 7). In the first step, logistic regression was used to predict outcome decision based on anger. In step two, a linear regression analysis was used to predict perception of anger's impact on EI rational processing (the proposed mediator). In step three, both anger and EI rational

processing were entered into a logistic regression equation to determine their combined impact on outcome decision.

Step one indicated that anger was a significant predictor of outcome decisions ($b = -.513$, $p < .01$). Participants who expressed more anger where more likely to terminate parental rights. Step two indicated that anger was also a significant predictor of EI rational processing ($b = -.308$, $p < .05$). Participants who expressed more anger were more likely to be experiential processors. When both anger ($b = -.464$, $p < .001$) and EI rational processing ($b = 3.95$, $p < .001$) were entered into the equation to predict outcome, both were significant. A Sobel test determined that EI rational processing does mediate the relationship between anger and outcomes ($z = -2.18$, $p < .05$), although it is only a partial mediation.

In sum, it appears that rational perception of risk does partially mediate the relationship between rational processing and outcome. Rational processors perceive less risk of returning the child home both now and later, and more risk of leaving the child in foster care, both of which are relating to outcome decisions. Further, rational processing mediates the relationship between specific negative emotions (anger) and outcomes. Anger is related to experiential processing, which in turn is related to decisions to terminate parental rights.

Overall, the results indicate that expertise directly impacts decision making factors and the decision making process, although expertise's impact on outcomes is very contextualized. The interaction between the anti-termination factors and expertise demonstrates that judges pay more attention to the factors, and that they influence their decision more so than for mock jurors. Further, expertise also *indirectly* impacts other

decision making factors and outcome decisions. That is, expertise impacts EI rational

processing, which impact several factors including perception of risk, as well as directly

impacts the outcome decision. A descriptive model of decision making is presented in

Figure 9.

CHAPTER 9: DISCUSSION

The current study sought to examine the role of expertise in legal decision making specific to termination of parental rights trials. Prior research had indicated that judges and jurors make similar decisions in criminal cases (e.g., Eisenberg et al., 2005) but failed to address if this similarity applied to civil cases, particularly cases such as child abuse trials in which the use of a jury trial is somewhat controversial. This study was able to begin to explore differences in decision making of judges and mock jurors in a civil child abuse case, by examining both outcome decisions (i.e., terminate or not) *and* factors which impacted the decision making process (e.g., perception of risk). Further, in order to explain anticipated differences, researchers examined the role of cognitive processing, focusing specifically on Epstein's (1992) CEST, which distinguishes between rational and experiential processing. Results indicated differences in expertise do exist, and both directly and indirectly impact the decision making process and decision outcomes. These results are discussed below by research question.

Which Judicial Expertise Factors Influenced Outcome Decisions?

One of the primary purposes of this study was to examine the role that expertise plays in decision making. Prior research (e.g., Klein, 1997) has failed to ascertain what factors best portray expertise. Thus, for this study, multiple factors were examined. While these factors ultimately did not have unique impacts on outcome decisions, researchers were able to determine that expertise may have multiple dimensions, outside of experience and training. Even summative exploration of expertise variables yielded no significant outcome results. One possible reason that these factors may have had no impact is that all of the judges recruited were members of the National Council of

Juvenile and Family Court Judges. Most of these judges reported high interest in juvenile law, which may be why they pay to be members of the organization. Therefore, the sample may have already included individuals with a higher level of expertise than the general population of judges, making them more similar than different. Further, it may be that the measures included did not accurately assess legal expertise of judges (i.e., their knowledge and ability to apply law related to child abuse cases). If measures specific to understanding of child abuse laws were included, this may have impacted expertise. On the other hand, it may be that legal expertise (i.e., knowledge of the legal system and relevant laws), is the most important expertise factor. As judges already have this knowledge, that alone may be what distinguishes them from jurors. Therefore, other factors, such as experience and trainings may have little impact on the decision making.

Which Variables (e.g., expertise, demographics, anti-termination factors) Impact

Outcome Decisions in TPR Trials?

The primary interest of this study was to ascertain if judges (as experts) and mock jurors (as non-experts) make different outcome decisions. The research indicated that there was not a main effect for expertise, which supports earlier findings of the similarity of judge and jury decisions (e.g., Eisenberg et al., 2005; Kalvin & Zeisel, 1966). However, this result does not provide an adequate assessment of differences in expertise. In order to properly assess this, it was important to examine the role the anti-termination (i.e., experimental) factors played in determining outcomes. The sibling factor was the best predictor of outcome. When a sibling was present, it significantly reduced the likelihood of termination. This proved less significant when interactions were calculated. An interaction between the experimental manipulations and expertise emerged during this

analysis. Specifically, there was a three way interaction between expertise, the sibling factor, and the adoptability factor. Results indicate that the anti-termination factors had much more of an impact on judges than on jurors. The presence of these factors significantly reduced the likelihood of termination for judges (particularly the sibling factor), a trend that was less pronounced in mock jurors. The addition of the anti-termination factors, however, did not further reduce the likelihood of termination, as might be expected. In fact, the presence of the adoptability factor actually increased the likelihood of termination when the sibling factor was also present. These results support the notion that judges may rely on only a few factors (e.g., Ebbesen & Konecni, 1975), particularly the legally relevant factors (Drury-Hudson, 1999) when making their decisions, a trait commonly seen in experts (Shanteau, 1992). These results clearly indicate that judges are better at picking up on expectancy inconsistent (i.e., legally relevant) information when making their legal decision.

Results were further assessed to determine if demographics and other decision making variables further added to the predictive power of the model. Demographic differences did emerge. Parents and older adults were less likely to terminate than non-parents and younger adults, regardless of their expertise or experimental condition. This finding directly contradicts earlier research indicating that parents seem to be less lenient than non-parents (Golding et al., 2007). That is, across judges and mock jurors, these demographic differences were better predictors of outcome decision than expertise alone.

In addition to demographic differences, specific decision making factors also influenced the outcome decision. As predicted, the perception of risk significantly impacted the decision to terminate. If participants felt there was great risk in returning the

child home, they were more likely to terminate; whereas, if they felt that there was high risk to the child if he stayed in foster care, they were less likely to terminate. Perception of risk was the best predictors of termination decision. Another significant predictor was the anti-termination factor about the presence of a sibling in the home. Above all other anti-termination factors, the presence of the sibling appeared to have the most impact on decisions. Despite the legal regulations requiring a termination petition if the child had been out of the home for more than 15 of 22 months (and he had in the case used in this study), if there was a sibling in the home (i.e., the mom was pregnant and had another child during this time), then participants were very concerned about terminating rights. There are many reasons that this could have impacted decisions so profoundly. Qualitative assessment of the responses indicates that some people were concerned about separating siblings. Others felt that if the court did not take away this sibling then the mother must be doing better (i.e., used it as a sign of progress). Either way, the presence of a sibling did have a major impact on decisions.

Which variable (e.g., expertise, cognitive processing, demographics) impact specific

decision making factors?

The third research question regarded which variables impacted the decision making factors considered. It was expected that expertise would have an impact on multiple decision making factors including: number of case factors considered; weight of specific factors; identification of expectancy inconsistent factors; perception of risk; perception of case complexity; and emotional reaction to the case. The results, however, found only partial support for the direct impact of expertise on decision making factors. Three main effects of expertise were noted: differences in weighting of one of the anti-

termination factors, perception of case complexity, and emotional reactions.

Judges failed to identify more factors than mock jurors, and rarely weighted decision making factors differently than mock jurors. One difference to emerge regarding the specific case facts considered was in the anti-termination factors. Judges who were in the condition where the case facts indicated that there was a sibling who had not been removed from the home and remained at home with the mother weighed this information more heavily than mock jurors. Because this was a manipulated variable meant to encourage rational processing and lead participants to not terminate parental rights, it is important that experts did notice it. Further, the significant three-way interaction between expertise, the sibling condition, and the adoptability condition also indicated that judges were better at paying attention to the anti-termination factors than mock jurors and relied on these factors when making decisions. This indicates that experts, although not different in selection of many case facts, may be more likely to identify important factors in a case which should impact outcome decisions.

A second difference to emerge was in perception of risk. Across conditions, experts perceived more risk to the child of returning home, both now and in the future, than did mock jurors. Although, judges in specific anti-termination conditions were less likely to terminate, there was no interaction between expertise and conditions as it related to perception of risk. This indicates that judges did not see risk differently when in different conditions. They merely perceived risk differently overall. This may be because the perception of risk variable could be interpreted in different ways. Judges are trained to examine multiple risks to the child. It may be that their perception of risk included not only perception of the child's physical safety, but also perception of the risk of emotional

harm that might bestow the child should he be returned home. Mock jurors may not define risk in such terms. This may be particularly true because judges are used to handling child abuse cases from the onset (i.e., when the child is removed from the home). Risk assessments early on in the case focus on child safety. Judges have to make decisions regarding where the child should be placed, if returning home is in their best interest and what the risk is of re-abuse. At the termination of parental rights phase of the case (as was the case scenario presented), the judges must now focus on the long-term impacts on the child. The risk distinction is different. They now consider the emotional, psychological, and physical risks of returning the child to the home, particularly after he has been in foster care for so long. Therefore, it may be that the definition of risk impacts how risk is perceived and would account for these variations.

A third difference to emerge, as predicted, was that judges found the child abuse laws less complex than jurors. This supports earlier research indicating that jurors typically consider the cases more complex than judges (Carlson & Russo, 2001). Other predicted differences in perceived case complexity (i.e., complexity of testimony and legal instructions), were not found. Because earlier work found jurors had difficulty understanding instructions (e.g., Hastie et al., 1998), it was expected that jurors would find the instructions more complex than judges. Contradictory to earlier findings, this difference was not noted in the current study. This may be because both judges and jurors indicated that the instructions and testimony were easy to understand. With simplistic instructions, it is likely that no difference would emerge.

The final expertise difference to emerge was related to emotional reaction to the case. It was postulated at judges and jurors would reaction differently to the case. This

was true. Judges experienced less negative affect in response to the case than did mock jurors. While this has not been explicitly studied in the research, this supports earlier findings that jurors become emotional after seeing certain evidence (Bright & Goodman-Delahunty, 2006) and may respond emotionally in reaction to child abuse cases (Ward, 1996).

In addition to expertise, demographic differences were postulated to impact the decision making factors. It was expected, based on prior research that differences in the decision making process would arise due to differences in gender, parent status, and age. However, it was predicted that these differences would only emerge for non-experts. This was not the case. No interactions between expertise and demographics occurred for any of the predicted relationships. Age and gender differences were noted in the weighing of specific case factors, indicating that older adults and females may weigh case facts differently than younger adults and males. This difference was noted across expertise. It was also expected that there would be interactions between expertise and age, expertise and gender, and expertise and parent status related to perception of risk. These predictions were not supported. There was, however, a notable difference in perceived risk of the child staying in foster care. Older adults and females perceived more risk to the child if he stayed in foster care than did younger adults and males. This supports earlier findings that age may impact perceptions of risk (Steinberg, 2007). These differences were also noted regardless of expertise. It appears, then, that gender, age, and parenting status are better predictors of the specific decision making factors than whether the individual is a judge or mock juror.

Can Cognitive Processing (CEST) Explain the Differences in Decision Making between

Experts and Non-Experts?

It was postulated that cognitive processing might explain differences in expertise. However, expertise was only a significant predictor of outcome when it interacted with sibling and adoptability factors and this was not a significant predictor of cognitive processing, making mediation analyses impossible to conduct. On the other hand, there were significant differences between judges and mock jurors on all cognitive processing measures. Therefore, it was posited that cognitive processing might offer some explanation for some direct impacts that expertise might have. It was predicted that experts would be more likely to process information rationally in comparison to non-experts. All three measures of rational processing confirmed this. Self-reports on the REI indicated that judges consider themselves more rational processors than experiential processors, indicating this might be a personality level difference between judges and mock jurors. CEST rational processing measures indicated that judges are typically more likely to be rational processors than jurors. This was further confirmed when judges were more likely to be EI rational processors than jurors. These results indicate that judges differ significantly from jurors in the way that they process information. This processing difference may explain many of the differences that arose in outcome and consideration of decision making factors which were not explained directly by expertise.

Cognitive processing was postulated to mediate the relationship between expertise and outcome. Yet, expertise did not directly impact outcome decisions, so this assumption could not be assessed. However, cognitive processing did significantly impact several of the decision making factors as well as the outcome decision. Therefore, mediation analyses were conducted examining the role of rational processing on

perceived risk, perceived complexity, and emotional reaction to the case. Rational processing was found to impact perceptions of risk, although it only partially mediated the relationship between risk and outcome. Rational processing had no impact on perception of case complexity or overall negative emotion experienced.

Rational processing's partial mediating effect on cognitive processing might be best explained by the perceived experience of uncertainty. As noted above, uncertainty can be experienced either from a probabilistic or nonprobabilistic mindset (Rottenstreich & Kivetz, 2005). Probabilistic mindsets occur when an individual estimates the likelihood of events (e.g., risk perception). This is posited to be an effortful systematic process. Therefore, EI rational processors may have been engaging in risk assessment when they made their decision, making the risk analysis a primary factor in the decision making process and best predictor of outcome. Experiential processors, on the other hand, would be more likely to engage in nonprobabilistic reasoning, looking for explanation instead of prediction, and would therefore rely less on the risk assessment.

Because prior research had indicated that anger was one of the most frequently expressed negative emotions in reaction to child abuse cases, anger was assessed individually. It was postulated that anger, because it is a certainty oriented emotion (Tiedens & Linton, 2001) would predict rational processing, which in turn would predict outcome decisions. This mediation was significant, although EI rational processing only partially mediated this relationship. These results indicate that the role of expertise in decision making related to termination of parental rights trials is complex, and may be mostly *indirect*. Judges definitely process more rationally than jurors, and are less likely to experience negative emotion in relation to the case. Rational processors are less likely

to terminate. Further, rational processors perceive risk differently than experiential processors, a factor which also impacts the decision to terminate. Therefore, it can be assumed that the fact that judges will be more likely to rationally process and thus less likely to terminate, especially in this particular case when there were multiple factors against termination.

Of course, knowing that judges and jurors are similar in some ways and different in others does not tell us which one is correct. In the current scenario, there is no right or wrong answer because the outcome for the child is not known. That is, it is not known whether the child would be re-abused if returned to the home. However, because the scenario was set up with anti-termination factors, it should be noted that it would have made more sense to *not* terminate parental rights in this case, which actually indicates judges were closer to a 'correct' decision than jurors. Judges were much more likely to take the anti-termination factors into consideration, indicating they are better at paying attention to legally relevant information. Regardless of the accuracy of the decision, the current study does offer a better understanding of the decision making process and outcomes, and provides an important foundation from which to build future research.

Implications

The results of this study have multiple implications. These will be discussed as they relate broadly to the fields of decision making, expertise, and the legal system, as well as more specific implications for the use of juries in child abuse trials and implications for judicial training and decision making models.

Decision Making

One of the most profound discoveries in the current study was the variation in

cognitive processing measures. The dual process theories are frequently cited in the decision making literature, with Epstein's CEST as one of the primary models (Epstein, 1990, 1992). For this particularly study, three different measures were used. The first was a combination of two CEST measures (Epstein et al., 1992) as well as three mathematical problems known to evoke heuristic errors (Guthrie et al., 2007). These five items were correlated and combined into a single CEST rational processing measure.

The second was an expectancy inconsistent measure of rationality. This measure was created specifically for use within this study. According to Maheswaran and Chaiken (1991), individuals, when faced with expectancy inconsistent information, will process information rationally and thus pay more attention to the expectancy inconsistent factors. To assess this, respondents were asked, immediately following the termination decision, to indicate which factors they most relied upon when making their decision. This factor was coded based on whether participants noted an expectancy inconsistent fact or not, and was called the EI rational processing measure.

The final set of questions consisted of the REI, which measures cognitive style, or personality type traits of how the individual prefers to think: either rationally or experientially (Epstein et al., 1994). While all these measures do contain aspects of cognitive processing, they were all different in terms of their impact on other case factors. In fact, the EI factor appeared to be the best predictor of rational processing, and also appeared to have the most impact on other variables. It was postulated that this difference occurred because the item immediately followed the outcome decision, and perhaps represents cognitive processing *at the time of the decision*. The CEST rational processing measure was placed near the end of the instrument, and was less correlated with the

expectancy inconsistent factor. As the dual processing theory clearly indicates that individuals switch between various forms of processing (Epstein, 1992), it stands to reason that the processing style may have changed between the first assessment of rationality and questions that occurred later (even if only 10 minutes later). Although this was a somewhat surprising finding, it does add validity to the measure of rational processing within the decision making process, instead of capturing processing at a later time. This could have serious implications for the field of decision making. If there is a difference in rational processing, even within a few short minutes, then assessing rational processing at the time of the decision may require more in-depth methods that just the use of measures such as the CEST measure. Epstein et al., (1992) agree that processing may be rational or experiential, and that individuals may switch between the two. Therefore, it can be assumed that this switch can occur at any time. It may be that when faced with a difficult decision and having to rationalize it, participants would be processing more rationally than later when asked to indicate their emotion or their typical cognitive style. At this point they may have switched back to experiential processing. Therefore, these measures may not be able to determine processing during the key decision. EI rational processing might also be the best predictor because it is clearly related to the termination decision. Determining which factors went into the decision making process is a closer measure of termination than the CEST measures which assess the foolishness of two actors.

On the other hand, it may mean that the EI rational processing factor may not be accurately assessing what it was meant to assess. Although somewhat correlated with the mathematical heuristic problems, it was not correlated with the CEST measures.

Therefore, it may be that EI rational processing may be measuring something other than rational processing.

As a measure of general tendencies, it might be expected that the REI would be a good predictor of cognitive processing in relation to other variables. However, this was also not noted in the current study. The REI was correlated with both measures of cognitive processing, indicating that all the measures had some similarity. Yet, it failed to achieve any predictive power. This may be because the REI assesses general tendencies, and participants may have been switching between processing styles throughout the case. Or, it may be that general tendencies are not as important as the actual type of processing that the individual is partaking in at the current moment.

Another finding of note was that overall negative emotion did not predict rational processing. According to Epstein (1990, 1992), experiential processing is equitable to emotional processing. Therefore, it might be assumed that individuals who experienced negative emotion in reaction to the case would be more likely to experientially process the case. However, this link was not found when examining overall negative affect. This could be explained by Tiedens and Linton's (2001) work which discusses certainty and uncertainty oriented emotions. A specific examination of anger, a certainty-oriented emotion that is posited to elicit experiential processing, found that anger did in fact impact EI rational processing. Individuals who expressed more anger were more likely to be experiential processors than rational processors. This research supports earlier findings that certainty orientation may explain the role of emotion in cognitive processing (Tiedens & Linton, 2001). Of course, experiential processing involves more than just emotional processing; it also entails effortless, heuristic processing, which may have been

the case in this study. Future research should seek to determine the extent to which experienced emotion actually elicits emotional processing, and to ascertain which specific emotions lead to more experientially processing.

Expertise

The extant literature to date has failed to adequately ascertain what it means to be an expert. The current study tried to fill this gap, at least with respect to the judicial expertise. Several possible expertise variables for judges were posited, including experience, training, choice, and interest. While these variables were not significant in terms of predicting the decision making process or outcomes, they do provide some insight into the nature of expertise. A factor analysis of expertise variables indicated multiple dimensions of expertise. In addition to the more typical factors of experience and training (Phillips et al., 2004), the participants current role, and choice appeared to be significant expertise factors. Identification of potential expertise factors may impact future research which examines the role of the expert.

Even though the specific expertise factors were not good predictors that does not mean that judges were lacking in expertise. At a minimum, judges have years of schooling directly relating to the legal system and an intricate knowledge base of legal proceeding as well as the relevant laws. Therefore, it was expected that differences would emerge. The study of expertise might have been enhanced had there been specific questions which tested the participants understanding and ability to apply the law.

The current study also provided support for the notion that experts are better at gleaning relevant information than non-experts, which supports earlier research on expertise (Shanteau et al., 2002). Judges were much more likely to identify the anti-

termination factors, and take them into consideration when making their outcome decisions than were jurors. Because no other dimensions proved to be as relevant in the current study, this may mean that expertise is best defined by discriminatory decision making practices. Further research should examine this distinction.

One expected difference that did emerge was a difference in relation to perception of risk. Specifically, experts were different from non-experts in assessing risk to the child. As judges typically see hundred of these cases every year, it might be assumed that they would make different assessments. In fact, earlier research indicated that experts might vary from non-experts in their ability to use their experience to fill in gaps in knowledge (Phillips et al., 2004). It might be assumed that this experience would make a difference in perception of risk, a common uncertainty. This difference may be because judges are looking at risk differently than mock jurors. Their years of experience on the bench dealing with child abuse cases may have led them to examine risk as a multi-faceted concept, instead of merely identifying it as a physical safety measure. However, the research failed to make distinctions as to the type of risk that was being evaluated. Therefore, it is difficult to determine how experts and non-experts differed in their perception and definition of risk. Clearly, more research is needed on the nature of expertise and how it impacts the decision making process.

Legal System

Lastly, the current study has serious implications for the legal system. The literature on both judges and mock jurors with respect to the child abuse system is rare. Therefore, results of this study can be used to inform ongoing debate regarding how good juries are, as well as inform other key aspects of the legal decision making literature

specific to jury functioning in child abuse cases, and how to help judges to make better decisions.

How good are juries? Researchers have been trying to determine 'how good are juries' for years, with mixed results (e.g., Levine, 1991). Several studies have indicated that judges and juries make similar decisions (Eisenberg et al., 2005; Kalvin & Ziesel, 1966). The current study makes a similar assertion. There were no significant differences between judges and jurors in the decision to terminate parental rights. However, this does not mean that the use of jury trials in juvenile dependency cases is a 'good' idea. The current study also indicates that jurors are less rational decision makers than judges. They tend to pay attention to different factors in the case, experience more negative emotion in response to the case, and indicate fewer factors which influence the decision making process. Determining how well juries function in termination cases depends largely on which side of the line one thinks jurors should err. If one thinks it is better to err on the side of returning a child home when they might be abused again, then these results suggest juries should not be used. However, if one thinks it is better to err on the side of leaving the child in foster care without a permanent/adoptive home, then the results support the use of juries.

This is further complicated by the fact that jurors may not be equipped to understand the nature of this dilemma. Returning a child home to a mother who has a serious substance abuse problem might seem worse than leaving the child in foster care without a permanent home. Yet, many judges cited 'no permanent placement' as a major reason for their decision, while few jurors even considered that fact. On the other hand, some jurors did identify these concerns. Specifically, parents and older adults perceived

the risk of being in foster care as higher than non-parents and younger adults. These mock jurors were less likely to terminate parental rights. This picture is further complicated with the addition of anti-termination factors. Three specific factors which should have decreased the likelihood of termination were manipulated in the case facts. Although jurors should have given considerable weight to these specific factors, they were much less likely to do this than were judges. Judges were more likely to note the factors as a major part of their decision making process. Therefore, just because jurors and judges came to similar conclusions the majority of the time does not mean that jurors are capable of making the best decisions, particularly if they fail to identify key facts in the case that should influence their decision. Further, this study only assessed a few case facts in relation to a specific TPR trial. Given more and different case facts, jurors and judges may come to completely different decisions. The lack of ability to notice these key factors, coupled with the increased likelihood to experience negative emotion and process experientially, indicate that using jurors may not be a good idea in child abuse cases.

If states continue to use juries in child abuse trials, it may be important to ensure that jurors are made aware of these consequences of their decisions, and how these decisions will impact the future of the case and the future of the family. Jurors should be informed of the repercussions of leaving a child in foster care without a permanent home, and what impact that may have on the child's development and future. This can help them to be better informed, and increase the chances of making better decisions.

Economic Implications. In addition to understanding if juries would be a good idea from a decision making standpoint, it is also important to examine the economic impact of juries. Typically, jury trials are lengthier and more costly than bench trials.

Judges are already paid to oversee cases and have time in their schedules for trials. Jury

trials, on the other hand, may take hours to days of jury selection, followed by the trial,

and then more time in deliberation. During this time, states must pay for the jurors' time.

Therefore, this is an increase on the time and resources of the court staff, legal actors, and

the state. In child abuse cases, the use of juries seems to have no practical value. The

research indicates that jurors may not be that good of decision makers. Therefore, it

would be more costly to the state to use jurors, and it would be less beneficial to the

parties, particularly if jurors are making flawed decisions and not accurately considering

the evidence presented.

Influencing the jury in a termination of parental rights trial. Despite the notion

that jurors may not be as good of decision makers as judges, juries are a part of the child

abuse and neglect system in some states. The current study can provide some insight into

which factors are most influential in a termination of parental rights trial. In terms of jury

selection, the results indicate that parents and older adults are less likely to terminate

parental rights. There was no impact of gender. Therefore, older adults and parents

appear to be more in favor of giving the parent another chance. In jury selection, it would

be important to understand this. Older adults and parents might be more lenient toward

the mother, and therefore would be ideal choices for the defense.

Results of this study also indicate that there are several evidentiary factors which

may influence the decision making process. For example, older adults weighed the social

worker's testimony, the testimony of the mother, and the placement of a sibling (when

applicable) more heavily than did younger adults. Therefore, these aspects of the trial are

most likely to heavily influence older adults' decisions. Females also view evidence

differently than males. Females weigh information regarding the adoptability of the child, the guardian *ad litem*'s testimony, and the long term placement plan for the child more heavily than did males. Further, both older adults and females perceived more risk to the child of staying in foster care, which impacted later decisions to terminate. Therefore, after jury selection, it is important to understand how the evidence will be weighed. If the guardian *ad litem's* testimony is particularly persuasive, this might heavily impact a female's decision, but may not influence a male.

A final consideration is that jurors are more likely to experience negative emotion as a result of the case. Emotional reactions may make the participant process information experientially (Epstein et al., 1992) and this may bias attempts at rational processing (Chaiken & Maheswaran, 1994). This means that jurors may miss key information presented in the case which should impact their decision making. Therefore, for attorneys, it will be important to ensure that this information is adequately portrayed to the jury, perhaps using techniques such as repetition, to ensure that the message gets across. Understanding these expertise and demographics differences can help to influence the decision making of jurors in child abuse cases and potentially lead to better informed jurors and better outcome decisions.

Implications for judges. The study also has implications for judges. Judges, unlike most jurors, do tend to notice anti-termination factors and consider them, exhibiting rational processing. Judges also tended to consider factors that were not mentioned. When provided with an opportunity for an open ended response (i.e., the question regarding which factors were most heavily relied upon), several judges mentioned the parent-child bond when discussing the factors that led to their decision. This was either

mentioned as an item on which they wanted more information, or as a speculation that a bond would be present or absent. This might be an example of one of the heuristics that judges typically rely on in these cases. If testimony is presented regarding the mother-child bond, judges might weigh this more heavily than other case factors. However, even though they mentioned this, they still mentioned the expectancy inconsistent factors, indicating rational processing. Therefore, judges may have these heuristics in place, but when the information is not available, engage in more systematic processing, and look for other factors on which to make their decision. It is also important to note that judges scored more rational than jurors on *all* cognitive processing measures. Most importantly, though is the fact that they appeared to be processing rationally (at least more frequently than jurors) when making the decision to terminate or not. This may mean that judges are just as biased as everyone else on a typical day, but are better capable of systematic processing when required to make important decisions. This supports earlier work regarding motivated systematic processing (Maheswaran & Chaiken, 1991).

A second consideration with judges relates to how judges make ambiguous decisions. In this particular case, the mother had made some progress on her case plan, albeit late in the case. Some judges viewed this as partial compliance and perceived that the mother should be given more time, while others viewed this as non-compliance and indicated that the mother had sufficient time to change and was not likely to do so. As case plan compliance is essential and often part of state level laws regarding factors to consider in making best interest and reasonable efforts findings, it is important to understand how judges view compliance. Perhaps future research can examine how much compliance (and at what point in the case) is still considered an appropriate amount to

determine that the parent has complied versus has not complied. Of course, that is not to say that compliance should not be considered on a case by case basis. It may just mean that a better understanding of the ambiguous nature of some of these predictor variables is needed and may indicate that judges have a hard time with these decisions as well.

One of the most important implications for judges arose with the discovery that judges and jurors make different risk predictions. This may be because judges are viewing risk differently than mock jurors. The inclusion of anti-termination factors appeared to have little impact on perception of risk, even for the judge. This has serious implications for the legal system. Results indicate that judges are clearly viewing risk differently than mock jurors but do not determine where this difference lies. It may be that judges and jurors define risk differently. Judges may define risk based on perceptions of physical safety, but may also consider child well-being factors, such as the emotional or mental health of the child when making their decision. Jurors may not consider these factors and only focus on a safety assessment of risk. Without further determination of how participants were defining risk, it is impossible to determine where the differences lie. Identification of this deficit can help to begin a more in-depth assessment of perceptions of risk. Studying risk perception specifically may provide insight into which factors judges are using to assess risk, how good these factors are, and what other factors might need to be assessed in order to better make these judgments. From this assessment, it should be possible to provide trainings and technical assistance tools to judges so that they can make better, more informed decisions.

A final consideration is involves consideration of what it means to be an expert judge. The current study found no impact of multiple expertise factors on judicial

decisions. Large amounts of resources are expended every year to train judges on the

nuances of the child abuse and neglect cases and case processing. Does this mean that all

the training is for naught? Not necessarily. It could be that the current research does not

adequately capture the expertise of judges. One particular thought is that the judges might

be exerting an expertise which comes with following a case from beginning to end.

According to the National Council's *RESOURCE GUIDELINES* (1995), judges develop

expertise in child abuse and neglect cases by following a one judge/ one family model

whereby the judge follows a case from beginning to end, and allows for a development of

"expertise" regarding the family. This in-depth knowledge of the causes and

consequences of decisions throughout the life of the case may have been an ideal

expertise variable, but was not assessed in the current study. Future research should focus

on the use of one family/ one judge as an expertise factor to determine how this may

impact the decisions of judges, specifically to determine if judicial officers that follow

this model in their own courtrooms make different decisions than those who do not.

Limitations

The current study has several limitations that should be noted. First, as with most

research on the judiciary, the study is an artificial representation of a case. A common

complaint among this type of research is that it is not in a naturalistic setting, which may

make it less applicable to the real world (Ebbesen & Konečni, 1982). Real termination

trials are often lengthy and include massive amounts of information, testimony and

interaction with all parties involved in the case. It is reasonable to assume that decisions

made in a similar case that had an actual termination trial may differ from those made in

this study. In particular, it was noted by several judges that they would like to have had

more information on which to base their decision in this case. More information specific to what the judges were looking for may have changed the outcomes. Many judges will oversee all of the hearings in a child abuse case, garnering years of information on the parents that may allow them to make more informed decisions.

Also, in a real case testimony of the parties may have evoked more emotion than just reading about the testimony on a piece of paper, which could have influenced processing and outcome decisions. However, the case scenario was drawn from several sources and created to be as close (albeit limited) to a real termination scenario as possible. It was reviewed by experienced judges and found to be an adequate description from which to base decisions. Therefore, although a "real" termination might have resulted in different results, it is likely that the above noted differences in decision making would have occurred. Further, this analysis provides a good first step in assessing the decision making process, as well as in examining differences that might have arisen in outcomes of these types of cases.

Another potential concern, as with most juror studies, is that the study failed to address the group process that occurs with all juries, thus making it impossible to fully ascertain possible jury-judge differences. This is noted as a weakness, and is why all findings are reported as individual differences on the juror level, instead of as what a jury would find. Specifically, this is of concern because the deliberation process has the potential to allow jurors to bring up facts which they considered important in the case. Jury deliberation has been shown to increase memory for trial items (Ruva, McEvoy, & Becker Bryant, 2007). Therefore, deliberation may have significantly impacted the outcomes of this case. If one juror brought up the anti-termination factors in the case, this

may have caused other jurors to consider this information more thoroughly, and may thus have resulted in few terminations. In fact, as a group, jurors may have been just as competent as judges in identifying the key factors which should have impacted the decision making process. While ascertaining individual and group level differences would be ideal, it is also more costly. The group dynamics of jury deliberation may, indeed, have impacted outcomes. Discussion within the group may have impacted the processing styles, and lead to greater rational processing, or it may have led to more experiential processing, as discussion may have led to heated arguments. As either is a possibility, it is safe to assume that juror level findings are a useful first step in analyzing differences that may arise in expertise.

Another concern is that the given case scenario may have missed items that are specific heuristic cues for judges. Judges did pick up some of the expectancy inconsistent factors more often than jurors, indicating a difference in processing, but also indicating they may be more aware of what factors to look for. Many of the judges noted, in their open-ended responses, that they would like to see more information on the parent-child bond. This was not addressed in the case scenario, and may represent another factor on which judges and jurors may differ. As judges were looking for this information, inclusion of relevant bonding information may have seriously impacted the decision making process and outcomes. As it was, the relevant information suggested by the expert judges (i.e., adoptability, support, and siblings) did impact the decision making process, and were considered valid manipulations of anti-termination factors. While the bonding issue would have been interesting to examine, the current scenario did have some predicted effects.

A final concern is that of the final sample. Community members were needed to make assessments of mock jurors, in order to account for age, gender, and parent status differences that were expected to occur. While a large portion of the "jury" sample did consist of community members (61%), the remainder of the mock jurors were students. Despite assertions that students and community members do not differ in their mock juror decisions and the fact that there was no statistically significant difference in outcome decisions the validity of the study may have been improved if the entire mock juror sample had consisted of only community members.

There is also some concern that the judge sample may have been different from the population of judges. Judges were recruited from the National Council's membership list. Judges who are members of the National Council may differ from the general population of judges. Specifically, these judges are actively expressing an interest in juvenile and family law, which may make them different from judges who are not expressing this interest or are not part of this organization. However, it should also be noted, that among the recruited judges, there was diversity regarding the expertise factors, in terms of experience, types of courts they work in, interest in child abuse cases, choice to preside over these cases and number of training. These judicial similarities may have been a limitation, particularly for phase I of the study when differences in expertise were being identified. In fact, their shared interests and experiences and may have made it difficult to ascertain a clear influence of expertise. However, this may not be the case for phase II. In fact, because the focus was on differences in judges versus mock jurors, the similarity of judicial officers may have been a strength of phase II. Less variability among the judges may have made it easier to make comparisons across the group as w

whole. Therefore, it may be that the use of the National Council's membership served as a limitation of phase I and a strength of phase II, possibly increasing the validity of the results.

Conclusions

The current research provided a good first step in assessing judge and juror differences in decision making related to termination of parental rights trials. The decision making literature specifically focused on child abuse and neglect cases is particularly sparse, and needed more research in order to move forward. This study discovered that judges and jurors may make similar decisions, but the decision making process is very different. Experts rely on different factors when making their decision, and are more likely to process rationally, which increases the probability that they will identify key information in the case when making their decision. Further, the differing decision making factors actually make judges less likely to terminate, indicating jurors may be harsher toward parents. Combining this information with the fact that jurors typically have more negative emotional reaction to the case may argue for discontinuation of the juries in termination cases.

This is an area in need of much more research. Future research should focus more on determining which factors judges rely on most heavily, and then deciding if jurors view this information in a similar fashion. In particular, identified areas, such as the parent-child bond, perception of risk, and compliance with the case plan need to be assessed in further detail. Information from these future studies can be used to help train and inform judges, making them better decision makers, which can lead to positive outcomes for children. It might also be interesting for future research to have judges

make comparisons for a given case, in contrast to their typical case. It might be that judges see cases where the abuse or the parental non-compliance is much worse than in the present scenario. If their frame of reference is a worse case, then they may be more lenient on this one. Jurors would not have this frame of reference. Therefore, it would be important to identify this information to control for its impact in future studies.

In sum, expertise does impact directly decision making in termination of parental rights trials. Jurors and judges may come to similar conclusions, but the decision making process has distinct differences. Most importantly, judges are more likely to identify and consider important case factors that jurors tend to overlook. This not only demonstrates that judges are better equipped to understand the unique complexities of the case, but also shows that judges are more capable of switching to a rational processing mode, indicating that they are more likely to consider all the information, as their decision making should not be biased by the experiential process. When considering cases like child abuse and neglect cases these differences (no matter how seemingly small) can influence the outcome of the case, and thus the outcome of the lives of children and families across the country. Serious consideration should be given to the implications of these findings, particularly in determining if a jury trial is a "good idea" in child abuse cases.

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Appendix A

Case Scenario

Introduction/Instructions
For a termination of parental rights case, there are many questions that might arise during
the jury selection. Please respond to each of the following questions before continuing to
the case scenario:

Voir Dire Questions
1. Have you or any of your immediate family or close friends ever been involved in
   a dependency action where CPS has removed a child from the home?   Yes
       No
2. Do you, any of your immediate family or close friends work for child protection
   services?   Yes   No
3. Do any of you have any strong feelings about CPS? Yes   No
4. Do of any of you think that the state should not have the ability to remove a child
   from a parent or to seek the termination of parental rights no matter what the
   circumstances?   Yes   No
5. Do any of you believe that a parent should automatically lose their parental rights
   for any reason? Yes   No   [If Yes]→If so, for what reason?
6. Have you, your immediate family or close friends ever:
       a. Adopted a child?   Yes   No
       b. Been involved in Foster Care or group homes?   Yes   No
       c. Had any contact with CPS?   Yes   No
       d. Been involved with a CASA program?   Yes   No
       e. Been involved with the Foster Care Review Board? Yes   No
       f. Had any exposure to child abuse or neglect?   Yes   No
       g. Had the care and custody of a child not your own for a significant period
          of time?   Yes   No
7. Have any of you ever been in foster care, lived in a group home, been adopted, or
   cared for by someone other than you biological parent for a period of time while a
   child? Yes   No

Instructions:
Below you will find instructions to proceed in a termination of parental rights jury trial.
Then you will be given a short case scenario. While we recognize that this may not fully
reflect the entirety of information and process at a typical hearing, it is meant to provide
the necessary information to make a decision. Please read everything carefully and make
decisions according.

Jury Instructions
This is a fact-finding proceeding on a petition to terminate parental rights. It is a civil, not
a criminal, proceeding. This hearing is part of the process that was started when CPS

filed a petition asking that the parental rights of Debra Burngs to Carl Burns be terminated. The petition alleges that it is the best interest of Carl Burns to severe his mother's parental rights. The petition alleges two legal grounds for termination: first that Debra Burngs has neglected her son Carl, and second, that Carl has been in court-ordered out-of-home care for 15 months or more during which time Debra Burns has failed to remedy the conditions that caused her son Carl to be placed in out-of-home care. **The grounds for termination have been established in a previous hearing, it is up to you to determine if termination is in the <u>best interest</u> of the child.**

It will be your duty to decide the facts. You must decide the facts only from the evidence produced in court. You must not speculate or guess about any fact. You must be influenced by sympathy or prejudice.

The state has the burden of proof and must persuade you by clear and convincing evidence that the allegations are true. This means that they state must convince you by the evidence that its allegations are highly probably. This standard is more exacting than the standard of more probably true than not true, but is less exacting than the standard of proof beyond a reasonable doubt. In determining whether the state has met its burden of proof, you will consider all the evidence, no matter by whom it was presented.

At the end of the trial you will be asked to determine whether the state has proven by clear and convincing evidence that termination of parental rights is in the best interest of the child.

Some of the factors you may consider in determining the best interest of the child include:
1. The emotional and physical needs of the child now and in the future
2. Any emotional and physical danger to the child now and in the future
3. The parenting ability of Debra Burns
4. The programs available to assist Debra Burns to promote the best interest of Carl Burns
5. The plans Debra Burns and the state have for Carl's future
6. The stability of Debra Burns home and proposed placement
7. The acts or omissions of Debra Burns that may indicate that the existing parent-child relationship is or is not a proper one
8. The adoptability of the child; and
9. Any additional factors you find relevant to the determine of the best interest of Carl Burns

Here is how the trial process works. You will be given a list of case facts. These facts are those in which all parties are in agreement. You can take these facts as truths. Following this, you will be given a copy of the termination petition that was filed by the state. Then you will hear testimony from the petition (i.e., state), the guardian *ad litem*, who represents the interests of the child, and from the respondent mother's counsel. Following testimony, you will be given closing instructions.

Case Facts
Case Facts. (these are facts which are not in dispute and have been agreed upon by all parties).
The child was found abused and neglected as to the mother on March 5, 2007. The child has been in foster care for the last 17 months. No relatives, other than the mother, have been identified who might be able to care for the child.

The mother has been in partial compliance with the case plan. She has finished two parenting classes, underwent a drug and psychological evaluation.

[Some combination of the following facts will also be included in the case facts, depending on which scenario each is given]
<Fact 1>During the course of the case, the mother has had another child. She delivered a healthy baby girl two months ago. Because the mother was in compliance at the time the child was born, and the child did NOT test positive for drugs, the child has remained in the care of the mother. The mother also has a 16 year old daughter who was not removed and is currently residing with the mother in the home.

<Fact 2>The mother has recently begun NA meetings and joined a church group. She feels that the church provides her with a strong support group. Several members of the church group are present at the hearing for moral support.

<Fact 3>The child is eight years old. He has been multiple foster care placements since he was removed from his mother. No relatives have been found to serve as a placement for the child. The foster family with whom the child resides is not interested in adoption. At age 8, the probability that he will be adopted is slip. Statistically, the majority of foster children who are adopted are adopted prior to age 8.

Petitioner's Case
Evidence: Petition

Testimony from Social Worker:
We have given the respondent mother every opportunity to rectify her home situation which has placed her in that situation. She has not successfully resolved the problems which brought Carl to the attention of CPS. She has not consistently complied with the case complied with the case plan, although she has completed some of the requirements. In June of 2007, she completed one of the required parenting class. In September of 2007, she completed a second parenting class.
In July of 2007, she completed her psychological assessment. Weekly individual counseling and monthly family counseling was recommended. Since July of 2007, Debra Burns has not consistently attended her counseling appointments.

In September of 2007, she completed her drug and alcohol assessment. The assessment

indicated that Ms. Burns has a substance abuse problem, specifically with methamphetamines. Based on these results, it was recommended that she undergo treatment for substance abuse including daily drug screenings, a 6-week intensive substance abuse treatment, and bi-weekly meetings of Narcotics anonymous. She has not fully complied with the recommendations of her substance abuse assessment. She has not appeared regularly for her drug screenings, which has resulted in loss of visitation on more than one occasion.

She did not have consistent visits with Carl early on in the case. Her visits in the last 6 months have been more consistent, although not very frequent.

Since March of 2007, Debra Burns has not demonstrated that she can maintain stable housing or employment. She has lived in 6 different locations and changed jobs 5 times, sometimes going for months without work.

Guardian *ad litem's* Case
Testimony from the Guardian ad litem:
The child, Carl Burns, has been having a hard time with his placements. He has not had much stability in the last year and a half. As a result, he has exhibited some behavior problems and has done poorly at school. The family that he is currently placed with is not interested in adoption at this time, which means that Carl has no permanent home planned at this time. I would be remiss if I didn't mention my concern regarding lack of a permanent home for Carl. At present, I am not sure that his mother could provide a stable home either. Whether she could provide one in the future, I could not speculate.

Mother's Case:
Testimony from the Mother:
I love my son. I know that I haven't always made good choices. I had a problem with drugs and it took over my life. But I am working to fix it. I have been seeing a substance abuse counselor for the last 3 months. I know it wasn't the treatment they wanted for me, but I did not feel like they were helping me at that facility, so I left. The new counselor is helpful and supportive of me and I feel he is making a difference. I have been clean and sober for the last 72 days and I am learning to take things one day at a time. It has taken me longer to get on track than it should have, I know, but I really want to make a better life for myself and my son. I just need a little more time. While I was on the drugs, I had trouble keeping a job, but I have had the same job and the same apartment for the last 2 months, and I plan on keeping it up. I love Carl and I don't want to lose him.

Testimony from her Narcotics Anonymous Sponsor:
I have been Debra's sponsor for a few months now. When she first came to the NA meetings, I could tell she was really struggling with staying sober. But she did it. She worked really hard and she has been able to maintain sobriety. I know she loves her son and she really wants to work this out. I think it would be a mistake to take him away from her permanently and not give her another chance to fix the situation.

Final Jury Instructions

You have heard all sides of the case. The state seeks to terminate the parental rights of Debra Burns. In order to succeed, the state has to provide by clear and convincing evidence that either the mother neglected the child, meaning she was unable or unwilling to provide the child with supervision, food, clothing, shelter and medical care, or that the child has been in out of home placement for 15 of the last 22 months, or both **AND** that termination of the parental rights of the mother is in the best interest of the child. The first part of this has already been established. You must decide whether termination of parental rights would be in the best interest of the child.

Considering all the testimony and evidence presented at the hearing, please respond with a verdict decision to the best interest allegation.

     Termination of Debra Burn's parental rights is in the best interest of the child, Carl Burns. (check one)
     ___ Proven by clear and convincing evidence (**Terminate parental rights)**
     ___ Not proven by clear and convincing evidence (**Do NOT terminate parental rights)**

How confident are you that this is correct decision?

Not at all confident   Very Confident
       0   1   2   3   4   5   6

Appendix B: Decision Making Factors

In addition to your verdict decision, we would like you to answer a few more questions about your decisions in this case, including factors which you considered in the decision making process. Following this, we have a few short demographic questions and the survey will be complete. Thank you for your patience.

Decision-making Factors
Please indicate what factors you considered when determining if termination was in the best interest of the child:

_____

_____

_____

_____

When thinking about the case, which facts, or information, stand out the most in your mind?

_____

_____

_____

_____

Perception of Risk
When you were considering the facts of the case, please indicate your evaluation of risk to the child on the following scale:

   No Risk   Moderate Risk   High Risk
    0   1   2   3   4   5   6   7

If the parent's parental rights are not terminated, there is a change he will be returned to the home. How risky is it to the child's welfare for him to be returned to the home at this point?
    0   1   2   3   4   5   6   7

How risky do you think it would be for the child to be returned at a later time?
    0   1   2   3   4   5   6   7

If the parental rights are terminated, the child will remain in foster care for the time being. How risky is it to the child's welfare for him to be in foster care?
    0   1   2   3   4   5   6   7

Perception of Case Complexity

Thinking about the complexity of the previously decided case, please indicate your perception of the complexity of different aspects of the case based on the following scale.

Not at all Complex		Moderate Complexity			Extremely Complex	
0	1	2	3	4	5	6	7

Testimony of parties:	0	1	2	3	4	5	6	7
Case Law:	0	1	2	3	4	5	6	7
Jury Instructions:	0	1	2	3	4	5	6	7

Decision-making Factors

When making your case decision regarding termination, several factors may have been considered. Please read the following list of case factors and indicate how heavily you relied on each factor in making your decision. You may choose as many or as few factors as necessary. We understand that you may not use all of these factors, so please be as honest as you can in your responses.

Evaluate each factor using the following scale:

Did Not Consider		Considered Slightly			Heavily Weighed on Decision	
0	1	2	3	4	5	6	7

Testimony of the social worker	0 1	2	3	4	5	6	7
Age of the child	0 1	2	3	4	5	6	7
Adoptability of the child	0 1	2	3	4	5	6	7
Testimony of guardian *ad litem*	0 1	2	3	4	5	6	7
Testimony of respondent mother	0 1	2	3	4	5	6	7
Mom's compliance with case plan	0 1	2	3	4	5	6	7
The mother's substance abuse	0 1	2	3	4	5	6	7
The child's current placement	0 1	2	3	4	5	6	7
The long term placement goal	0 1	2	3	4	5	6	7
Placement of sibling	0 1	2	3	4	5	6	7
Mother's support system	0 1	2	3	4	5	6	7
Perception of risk to the child	0 1	2	3	4	5	6	7
Understanding of case law	0 1	2	3	4	5	6	7

Appendix C: Emotion & Cognition Questions

Emotion (Junas)
Below is a list of words that describe feelings people have. Please read each one carefully. Then circle the response that best describes How your feel in RESPONSE to the CASE you just read.

		0	1	2	3	4
1.	Angry	not at all	a little	moderately	quite a bit	extremely
2.	Disgusted	not at all	a little	moderately	quite a bit	extremely
3.	Frustrated	not at all	a little	moderately	quite a bit	extremely
4.	Sad	not at all	a little	moderately	quite a bit	extremely
5.	Disturbed	not at all	a little	moderately	quite a bit	extremely
6.	Shocked	not at all	a little	moderately	quite a bit	extremely
7.	Discouraged	not at all	a little	moderately	quite a bit	extremely
8.	Helpless	not at all	a little	moderately	quite a bit	extremely
9.	Furious	not at all	a little	moderately	quite a bit	extremely
10.	Upset	not at all	a little	moderately	quite a bit	extremely

Rational Experiential Inventory

Please use the following scale to answer these questions.

completely false				completely true
1	2	3	4	5

1._____I don't like to have to do a lot of thinking.
2._____My initial impressions of people are almost always right.
3._____I prefer to do something that challenges my thinking abilities rather than something
    that requires little thought.
4._____When it comes to trusting people, I can usually rely on my "gut feelings."
5._____I can usually feel when a person is right or wrong even if I can't explain how I know.
6._____I prefer complex to simple problems.
7._____Thinking hard and for a long time about something gives me little satisfaction.
8._____I trust my initial feelings about people.
9._____I try to avoid situations that require thinking in depth about something.
10._____I believe in trusting my hunches.

Mr. Paul, who has an average income, owned shares in company A. During the past year he switched to stock in company B., He has just learned that the stock in A has

skyrocketed, and he would now be $100,000 ahead if he had kept his stock in company A.

Mr. George, who also has an average income, owns shares in company B. During the past year he considered switching stock to company A, but decided against it. He has just learned that stock in A skyrocketed and he would now be $100,000 ahead if he had made the switch.

Who do you think was more foolish, Mr. Paul or Mr. George?

Mr. Paul   Both Equally Foolish   Mr. George
       1   2   3   4   5   6   7   8   9

Tom parked his new car in a parking lot that was half empty. His wife asked him to park in a spot where she wanted to shop, but he parked, instead, in a spot closer to where he wanted to shop. As luck would have it, when he backed out after shopping, another car opposite to him backed out at the same time and both cars sustained damage over $1,000.

Robert parked his new car in the same parking lot when there was only one parking place, so he took it. As luck would have it, when he backed out after shopping, another car opposite to him backed out at the same time and both cars sustained damage over $1,000.

Who do you think contributed more to the likelihood of the accident, and therefore is more foolish, Tom or Robert?

       Tom   Both Equally Foolish   Robert
       1   2   3   4   5   6   7   8   9

A bat and a ball cost $1.10 in total. The bat costs $1.00 more than the ball. How much does the ball cost? _____cents

If it takes 5 machines 5 minutes to make 5 widgets, how long would it take 100 machines to make 100 widgets? _____minutes

In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes 48 days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake? _____days

Appendix D: Judicial Expertise and Demographic Questions

[Judge Specific Demographics]

Do you currently preside over juvenile dependency hearings?   Yes   No

How many years have you (or did you) presided over juvenile dependency (i.e., child abuse and neglect) cases? ____Years ___Months

Have you every received any trainings specific to juvenile dependency cases?   Yes
        No
        [If Yes] How many different trainings (i.e., different topics) have you had? _____
        Approximately how many hours of trainings have you had related to juvenile
        dependency? ____Hours

Do you *only* oversee juvenile dependency cases?   Yes   No

What type of court do you (or did you) work in when you oversee juvenile dependency (i.e., child abuse and neglect cases)?
        o General jurisdiction court
        o Juvenile court
        o Family Court
        o Other-Please Explain:_____

Was it your choice to preside over child abuse and neglect cases? ____Yes ___No

As a judge, you may have oversight in many different types of cases. Thinking about all the types of cases you have overseen, please indicate your level of interest in child abuse and neglect cases?
        o I am not at all interested in continuing to oversee to child abuse cases
        o I am only marginally interested in continuing to oversee child abuse cases
        o I am very interested in continuing to oversee child abuse cases

Demographics:

Age_____   Gender: ___Male   ____Female

Ethnicity (circle one): Caucasian   Hispanic   African American
                        Asian/Pacific Islander   Native American
                        Other-Please Explain:_____

Are you a parent (i.e., do you have any biological, step, or adopted children)? Yes
        No

[Mock jurors only]: Have you ever served on a jury before? Yes   No

Table 1

Correlation of Cognitive Processing and Processing Disposition Measures

	CEST1	CEST2	Mth1	Mth2	Mth3	REI-FI	REI-NFC	EI
CEST1	----							
CEST2	.374**							
Mth1	.091	.175**						
Mth2	.085	.345**	.290**					
Mth3	.116*	.253**	.444**	.518**				
REI-FI	-.187**	-.119*	-.186**	-.128*	-.137*			
REI-NFC	.050	.104	.040	.159**	.277**	-.049		
EI	.084	.089	.218**	.171**	.151**	-.104	.198**	----

*p < .05, **p < .01

Table 2.

Principal Component Analysis of Expertise Variables

		Loadings		
	Factor 1: Experience/ Training Role	Factor 2: Current	Factor 3: Choice	Communality
How much experience (in years) do you have overseeing juvenile dependency cases?	.675	-.168	-.181	.666
How many different trainings have you had specific to juvenile dependency?	.795	.104	.138	.665
How many hours of training have you had specific to juvenile dependency?	.818	-.052	.110	.693
Have you ever overseen child abuse and neglect cases?	-.074	.802	-.157	.674
Do you currently oversee child abuse and neglect cases?	.219	.634	.171	.495
Was it your choice to preside over child abuse and neglect cases?	-.077	.021	.857	.640
Eigenvalue	2.062	1.609	1.353	
% Total Variance	22.906	17.874	15.033	
Total Variance			**55.814%**	

Table 3

Table of Hypotheses & Main Research Questions

	Findings
Research Question 1 Which **judicial expertise** factors influence outcome decisions?	
Research Question 2 Which variables (e.g., expertise, cognitive processing, demographics, presence of anti-termination factors) impact **outcome decisions** in termination of parental rights trials?	
Expertise	
Hypothesis 2a. The presence of any of the anti-termination factors will decrease the likelihood of termination.	Supported
Number of Anti-Termination Factors	
Hypothesis 2b. The number of case facts against termination will impact the termination decision. More anti-termination case facts will lead to decreased likelihood of terminating.	Not supported
Hypothesis 2c. Experts who are in the sibling condition will be more likely to terminate than non-experts in the sibling condition. There will be no impact of expertise among participants in the non-sibling condition.	Supported
Hypothesis 2d. Experts who are in the adoptability condition will be more likely to terminate than non-experts in the adoptability condition. There will be no impact of expertise among participants in the non-adoptability condition.	Not supported
Hypothesis 2e. Experts who are in the support condition will be more likely to terminate than non-experts in the support condition. There will be no impact of expertise among participants in the non-support condition.	Not supported
Hypothesis 2f. There will be a four way interaction between expertise and the three anti-termination variables, in that experts will be more likely to terminate when they are in the condition with all three anti-termination factors, particularly in comparison to when they are in the no anti-termination condition. Non-experts may exhibit a similar trend, but not to the same degree.	Partially Supported
Interactions with Expertise and Demographics	
Hypothesis 2g. Non-experts who are parents will be more likely to terminate than non-experts who are not parents. Expert parents will not differ from expert non-parents in terms of termination decisions.	Not supported
Hypothesis 2h. Non-experts who are women will be more likely to terminate than non-experts who are men. There will be no gender difference among experts.	Not supported
Perception of Risk	
Hypothesis 2i. Perception of risk will impact the termination decision. Those who perceive risk for returning the child home will be more likely to terminate and those who perceive higher risk of the child being in foster care will be less likely to terminate.	Supported
Emotion	

Hypothesis 2j. Expressed negative emotion will impact the decision to terminate. Higher negative emotion will lead to greater probability of terminating.	Partially supported
Mediations	
Hypothesis 2k. Perception of risk will mediate the relationship between expertise and the termination decision. That is, experts will perceive less risk and therefore be less likely to terminate.	Not supported
Hypothesis 2l. Perception of complexity will mediate the relationship between expertise and the termination decision. That is, experts will perceive the case as less complex and therefore be less likely to terminate.	Not supported
Hypothesis 2m. Expressed negative emotion will mediate the relationship between expertise and the termination decision. Experts will experience less negative emotion and therefore be less likely to terminate.	Not supported
Research Question 3 Which variables (e.g., expertise, cognitive processing, demographics) impact specific **decision making factors**?	
Number of factors	
Hypothesis 3a. Experts will list fewer factors than non-experts.	Not supported
Hypothesis 3b. Rational processors will list more factors than experiential processors.	Supported
Hypothesis 3c. Experts who process rationally will list more factors than experts who process experientially. Non-experts will exhibit this trend, but not to the same extent as experts.	Not supported
Hypothesis 3d. Experts in the sibling condition will weight the sibling factor more heavily than non-experts in the sibling condition.	Supported
Hypothesis 3e. Experts in the support condition will weight the support factor more heavily than non-experts in the support condition.	Not supported
Hypothesis 3f. Experts in the adoptability condition will weight the adoptability factor more heavily than non-experts in the adoptability condition.	Not supported
Perception of Risk	
Hypothesis 3g. Presence of the anti-termination factors will lead to less perceived risk of returning the child home.	Partially Supported
Hypothesis 3h. Females who are non-experts will perceive more risk than males who are non-experts. Females who are experts will not differ from males who are experts	Partially supported
Hypothesis 3i. Parents who are non-experts will perceive more risk than non-parents who are non-experts. Parents who are experts will not differ from non-parents who are experts.	Not supported
Hypothesis 3j. Older adults who are non-experts will perceive more risk than younger adults who are non-experts. Older experts will not differ from younger experts in perception of risk.	Partially Supported
Perception of Case Complexity	
Hypothesis 3k. Experts will find all aspects of the case less complex than non-experts.	Partially Supported
Hypothesis 3l. The addition of anti-termination case facts will increase the perceived complexity of the case.	Not supported

Emotion	
Hypothesis 3m. Experts will experience less negative emotion following the case than non-experts.	Supported
Hypothesis 3n. Non-expert parents will experience more negative emotion than non-expert non-parents. Expert parents will not differ from expert non-parents.	Not supported
Hypothesis 3o. Non-expert females will experience more negative emotion than non-expert males. There will be no gender difference among experts.	Not Supported
Research Question 4 Can **CEST (cognitive processing) explain** the differences in decision making between experts and non-experts?	
Hypothesis 4a. The inclusion of anti-termination factors will increase the probability of rationally processing.	Supported
Hypothesis 4b. Rational processors will be more likely to not terminate than experiential processors.	Supported
Hypothesis 4c. Rational processors will perceive less risk to the child than experiential processors.	Supported
Hypothesis 4d. Rational processors will perceive the case as less complex than experiential processors.	Not Supported
Hypothesis 4e. Emotion, as measured by a modified version of the JUNAS scale, will impact the type of processing. Those who experience anger (certainty oriented emotion) will be more likely to process experientially as compared to those who are not experiencing anger.	Partially supported
Mediations	
Hypothesis 4f. Cognitive processing will mediate the relationship between expertise and outcome decisions. Judges will be more likely to process rationally, which will in turn impact outcome decisions.	Not supported
Hypothesis 4g. Perception of risk will mediate the relationship between cognitive processing and outcome decisions. Rational processors will perceive less risk and this perception of risk will influence outcome decisions.	Partially supported
Hypothesis 4h. Perception of case complexity will mediate the relationship between cognitive processing and outcome decisions. Rational processors will perceive the case as less complex and this perception of complexity will influence outcome decisions.	Not supported
Hypothesis 4i. Cognitive processing will mediate the relationship between negative emotion and outcome decisions.	Partially supported

Table 4

Means and Percentages of Demographic & Cognitive Processing Differences Among Judges and Mock Jurors

	Judges (*n* = 133)	Community Members (*n* = 99)	Students (*n* = 79)	Mock Jurors (*n* = 178)
	Means (standard deviations)			
Age	54 (7.6)	42(13.4)	22(5.2)	31(13.8)*
Gender (% Male)	58%	34%	42%	39%*
Racial/Ethnic Background (% Caucasian)	85%	83%	73%	78%
Parent (% Yes)	80%	67%	16%	40%*
REI – FI	3.06 (.68)	3.45 (.72)	3.45 (.81)	3.45 (.77)*
REI – NFC	4.10 (.55)	3.70 (.77)	3.64 (.68)	3.67 (.72)*
Average Rationality	.56 (.32)	.35 (.28)	.31 (.25)	.33 (.26)*
Expectancy – Inconsistent Rationality (% Rational)	34%	16%	20%	18%*
Outcome Decision (% Terminate)	31%	29%	41%	36%

* *p* < .05 for comparison between judges and mock jurors

Table 5

Means & Correlations for Significant Differences in Decision Making Process Factors

	Mean (Standard Deviation)	

	Expert	Non- Expert
Child Placement	4.81 (1.9)	5.12 (1.8)

	Male	Female
Adoptability	4.48 (2.2)	5.18 (2.1)
Guardian *ad litem* testimony	4.56 (1.5)	4.97 (1.6)
Long term placement decisions	5.11 (1.8)	5.65 (1.6)
Risk to the child if staying in foster care	4.05 (1.7)	4.58 (1.7)

	Rational	Experiential
Age of the child	5.49 (1.5)	4.86 (1.8)
Adoptability of the child	5.90 (1.8)	4.43 (2.1)
Child's current placement	5.59 (1.7)	4.79 (1.9)
Sibling Placement	5.19 (2.3)	3.26 (2.6)

	Age (Correlation)
Social worker testimony	.22
Testimony of the mother	.17
Sibling placement	.20
Risk to the child if staying in foster care	.18

All factors are significant at $p < .05$. Higher numbers indicate greater reliance for the decision making factor and greater perceived risk for the risk factor.

Table 6

Summary of Logistic Regression Coefficients for Prediction of Termination Decision
Based on Anti-Termination Factors and Expertise

Variables	*B*	*SE*	*Wald*	*p*	*OR*
Sibling	1.54	.852	3.27	.07	4.67
Support	-.16	.72	.05	.82	.85
Adoptability	1.45	.86	2.88	.09	4.28
Expertise	.44	.71	.39	.53	1.56
Two-Way Interactions					
Sibling x Support	.72	1.23	.34	.56	2.06
Sibling x Adoptability	-2.07	1.18	3.06	.08	.13
Adoptability x Support	-.85	1.11	.58	.48	.43
Expertise x Sibling	-1.52	1.04	2.14	.14	.22
Expertise x Support	.64	.96	.44	.51	1.89
Expertise x Adoptability	-1.65	1.06	2.42	.12	.19
Three-Way Interactions					
Sibling x Adoptability x Support	1.41	1.69	.70	.40	4.10
Adoptability x Expertise x Sibling	2.91	1.45	4.02	.04	18.43
Adoptability x Expertise x Support	.88	1.45	.37	.54	2.42
Sibling x Support x Expertise	-.12	1.54	.01	.94	.88
Four-Way Interaction					
Sibling x Adoptability x Support x Expertise	-3.12	2.13	2.14	.14	.04

Figure 1

Termination Decisions of Mock Juror and Judges, Based on Interaction of Sibling and Adoptability Groups
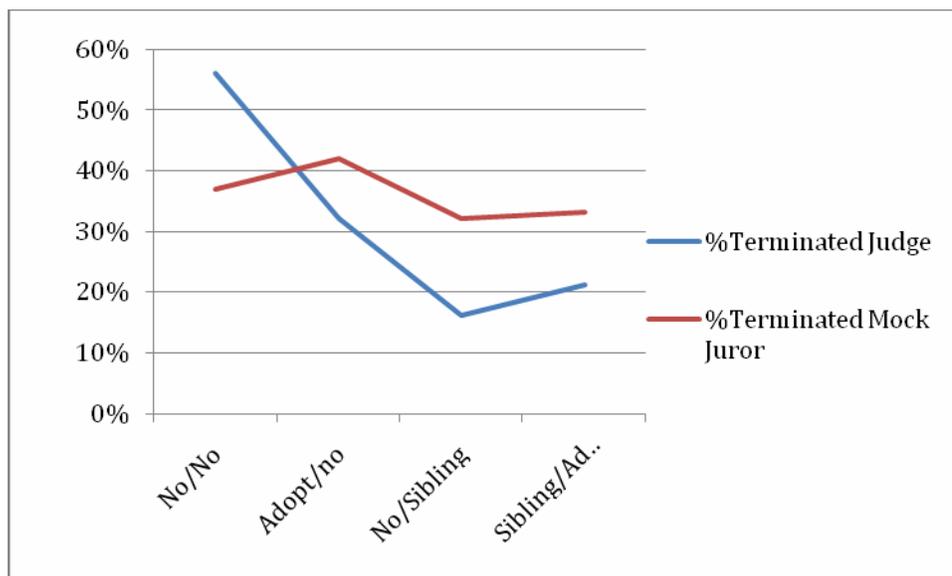
Figure 2

Average Number of Decision Making Factors Identified Based on Expertise and Rational
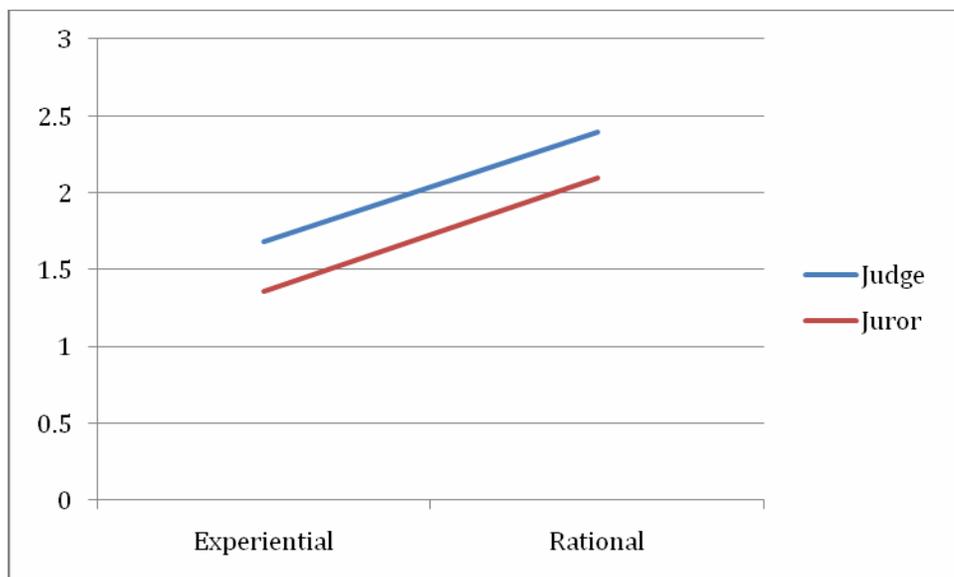Processing

Figure 3

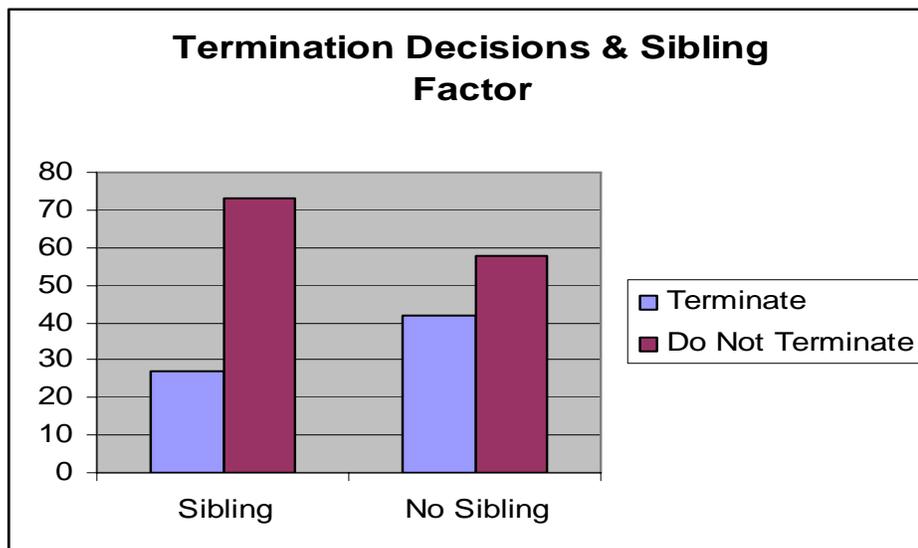Comparing Sibling to Non-sibling Groups in Termination Decisions

Figure 4

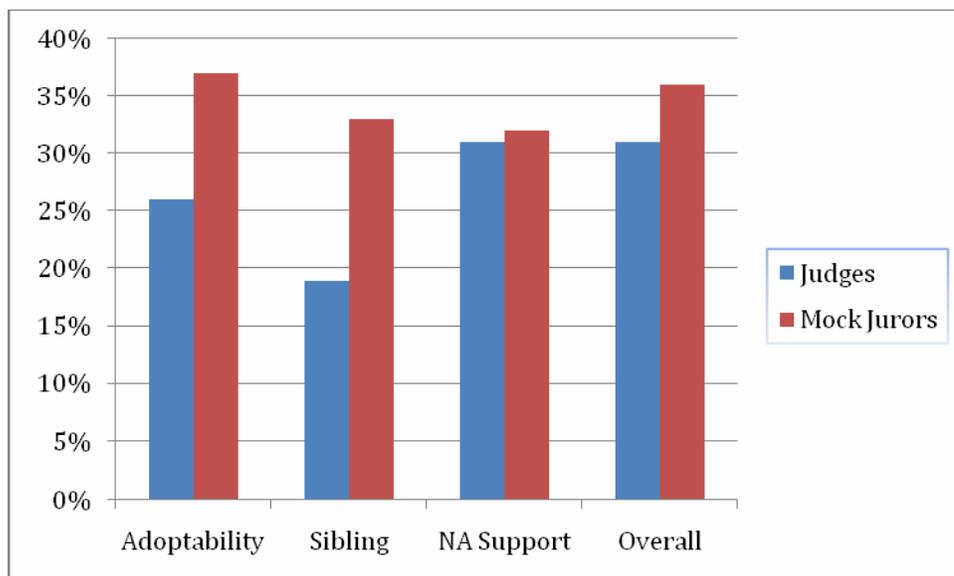Percentage of Participants who Decided to Terminate by Expertise and Anti-Termination Factor & Overall

Figure 5

Mediation Analysis for Risk of Returning the Child Home Right Now as a Mediator between EI Rational Processing and Termination Decision
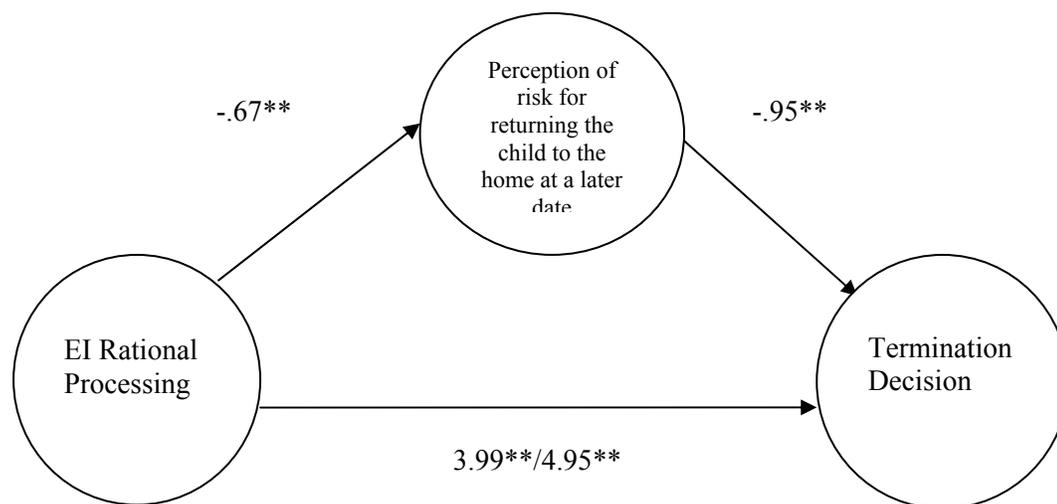

* $p < .05$

$z = 3.08, p < .001$
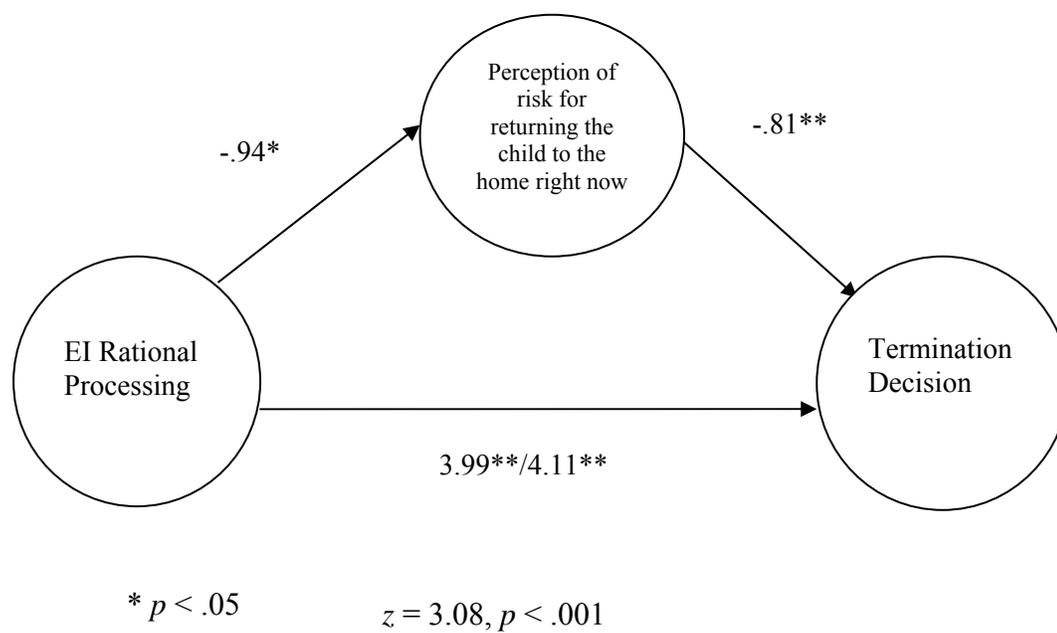
Figure 6

Mediation Model for Risk of Returning Child to the Home at a Later Date as a Mediator between EI Rational Processing and Termination Decision
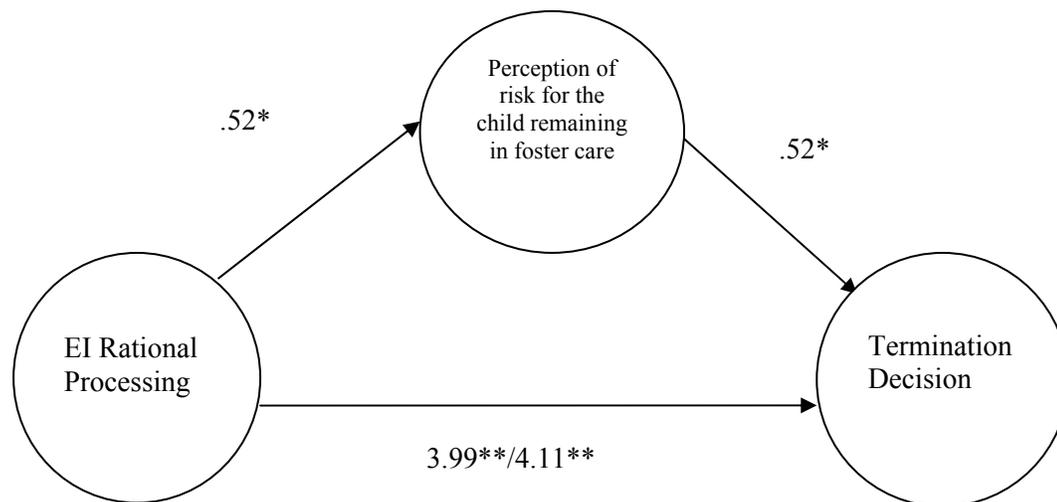

-.67**

Perception of risk for returning the child to the home at a later date

-.95**

EI Rational Processing

Termination Decision

3.99**/4.95**

$z = 2.83, p < .001$

* $p < .05$

Figure 7

Mediation Model for Risk of Leaving the Child in Foster Care as a Mediator between EI
Rational Processing and Termination Decision

* *p* < .05

z = 2.05, *p* < .05

Figure 8

Mediation Model of the EI Rational Processing as a Mediator between Anger and
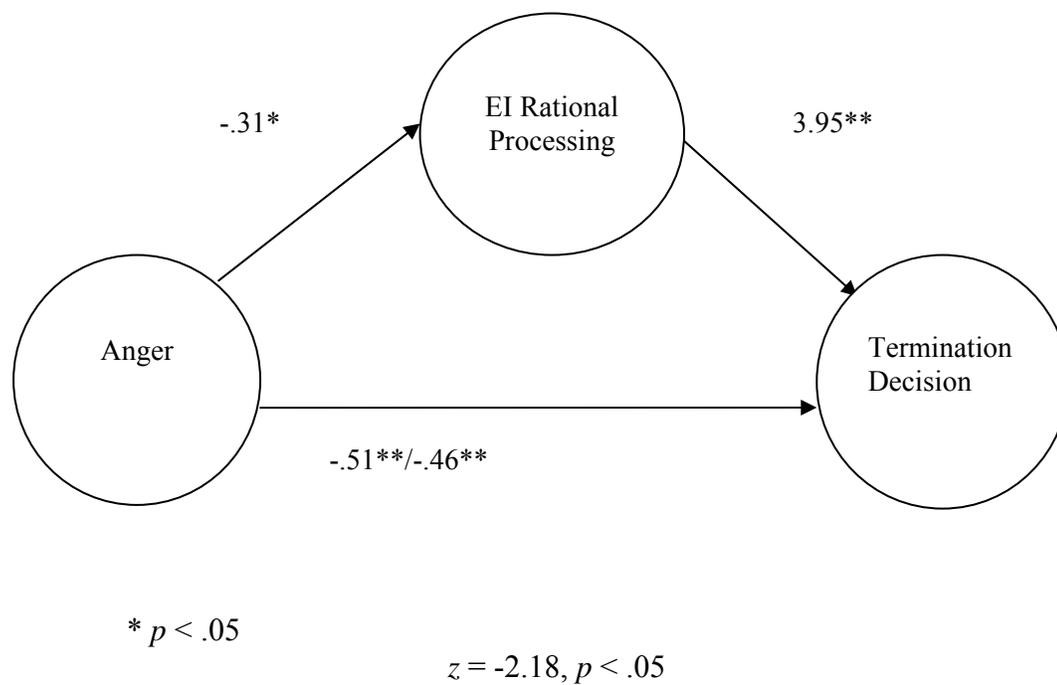Termination Decision

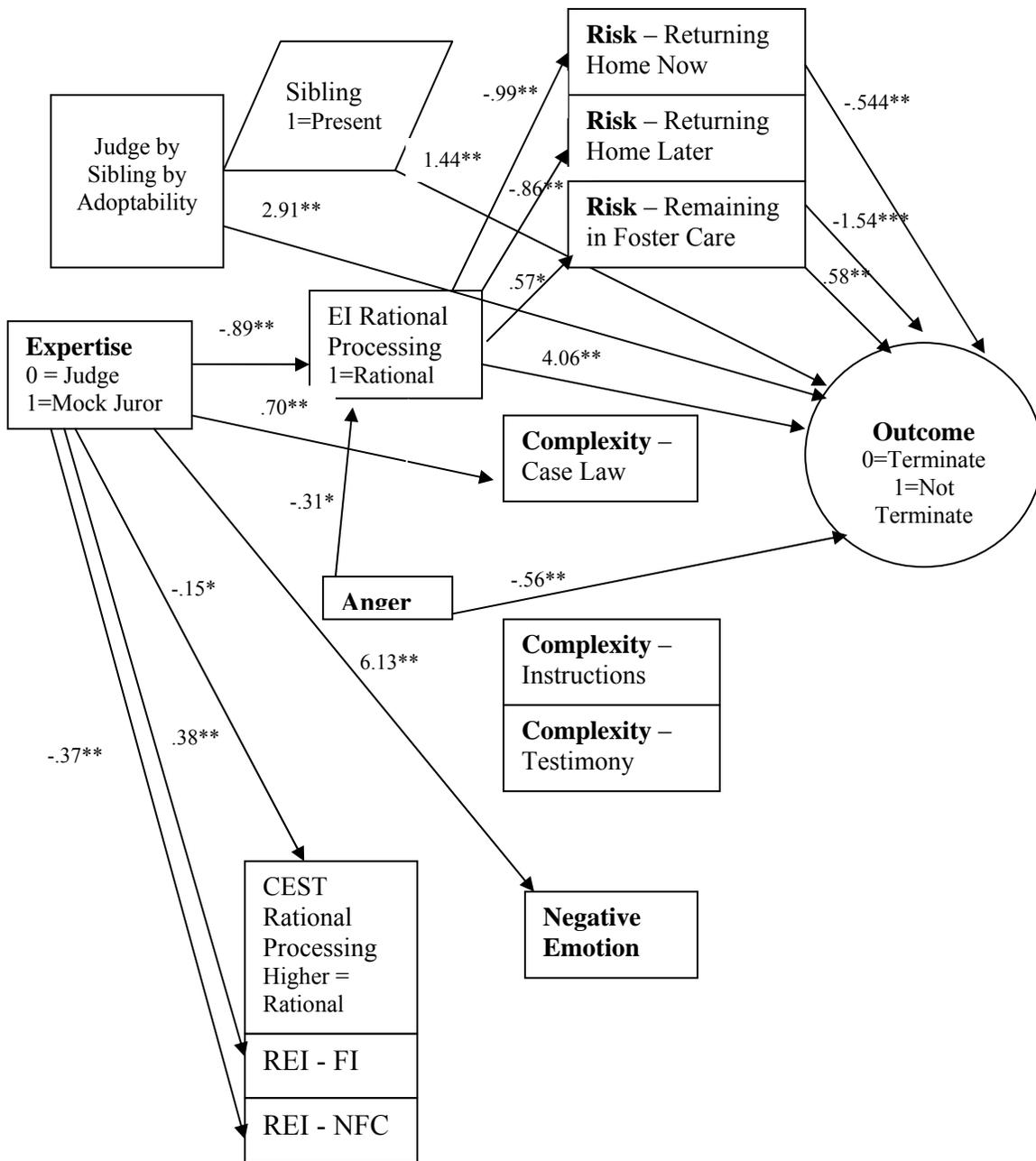
p < .05

z = -2.18, p < .05

Figure 9

Final Decision Making Model of Relationship between Expertise and Decisions in
Termination of Parental Rights Trials

* *p* < .05