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## The Relationship between Legal and Extra-legal Factors: How Judges Come to Make their Decisions in Domestic Violence Cases

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The Relationship between Legal and Extra-legal Factors: How Judges Come to Make their  
Decisions in Domestic Violence Cases

A Dissertation

Submitted to the Graduate Faculty of the  
University of New Orleans  
in partial fulfillment of the  
requirements for the degree of

Doctor of Philosophy  
in  
Urban Studies - Urban Planning

by

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## Table of Contents

Acknowledgements.....	ii
List of Tables .....	vii
Abstract.....	viii
Chapter 1 .....	1
Introduction.....	1
Significance of the Study .....	5
Chapter 2.....	6
Literature Review .....	6
Major Legislation Affecting the Adjudication of Domestic Violence Cases .....	6
How Changes in Domestic Violence Laws Impact Outcomes .....	9
Deficiencies in Current Research .....	15
Chapter 3.....	16
Theoretical Framework.....	16
Theories of Adjudication: Formalism, Skepticism, and Realism .....	16
Formalism. ....	17
Skepticism.....	19
Realism. ....	21
Models of Judicial Decision-Making.....	22
Legal model. ....	23
Attitudinal model. ....	24
Strategic model. ....	26
Institutional model. ....	27
Personal attributes model.....	28
Research Questions .....	31
Chapter 4.....	32
Research Design: Case Study .....	32
Qualitative Research .....	33
Methods: Observations, Interviews, and Analysis of Court Documents .....	34
Observations. ....	35
Scheduling of observations.....	37
Court observation protocol. ....	37
Interviews.....	39
Analysis of court documents.....	40
Sampling frame.....	42
Data. ....	43
Creating categories.....	45
Validity and reliability. ....	45
Triangulation.....	48
Ethical Considerations .....	49
Data Analysis.....	50
Data Processing.....	50
Background characteristics.....	51
Expectancy factors.....	52
Data description. ....	52

Context.....	53
Process.....	53
Classification.....	53
Coding and developing category systems.....	54
Summary.....	55
Analysis .....	56
Chapter 5.....	58
Setting .....	58
Brief Overview of the Structure of the Louisiana Court System.....	58
District court jurisdiction.....	59
Parish courts.....	59
City courts.....	60
Organization of the Court: Jefferson Parish: The Twenty Fourth Judicial District Court....	61
Domestic cases.....	61
Description of the 24th Judicial District courtrooms.....	62
Appointment of domestic commissioners.....	62
Appointment of domestic hearing officers.....	63
Structure discussion from the court observations and interviews.....	65
Organization and Description of the Court: Orleans Parish Courts.....	67
Orleans Parish Civil District Court.....	67
Orleans Parish Criminal District Court.....	67
Orleans Parish Municipal Court.....	68
Tension between Orleans Municipal and Criminal Courts.....	70
Summary.....	75
Chapter 6.....	76
Context of Judiciary.....	76
Judicial Socialization .....	76
Judicial Role Orientation .....	85
Chapter 7.....	90
Theoretical Analysis .....	90
Judges and the Theories .....	90
Judicial belief systems.....	90
Through the "eyes" of formalism.....	91
Through the "eyes" of skepticism.....	94
Through the "eyes" of realism.....	102
“Hunches” and fluidity in judicial decision-making: Realism accounts.....	108
Biases.....	113
Realism and Sentencing: Extra-Legal Factors (Personal Factors) Matter? .....	121
Judges and the Theories.....	126
Common Emergent Themes Across all Theoretical Perspectives .....	127
Contradictions of the Bench.....	127
“The God of the Courtroom”.....	127
Experts.....	132
Chapter 8.....	142
Conclusions.....	142
Structure and Adjudication of DV Cases in Both Parishes.....	152

The Relationship between Legal and Extra-Legal Factors .....	153
Diversity in Judges' Daily Practice Styles.....	154
Successes, Challenges, and Innovation in the Decision-Making Process of Adjudication of Domestic Violence Cases .....	155
Training and Feedback.....	156
Implications for Policy and Practice .....	157
Study Strengths and Limitations.....	159
Recommendations for Further Research.....	160
References.....	161
APPENDIX A: Twenty-Fourth Judicial District Court.....	171
APPENDIX B: Orleans Criminal and Municipal Courts .....	172
APPENDIX C: Judicial Interview Questions .....	173
Appendix D: IRB Approval.....	175
Vita.....	176

## **List of Tables**

Table 1. Coding Data (Tesch, 1990) .....	54
Table 2. Coding Process .....	55
Table 3. Summary of Structure.....	70



## **Abstract**

The purpose of this research is to understand how Trial Court Judges in state and city courts make decisions in domestic violence cases. The researcher examined the relationship between legal (e.g., evidence) and extra-legal factors (e.g., preconceived biases and behaviors related to judicial decision-making) using a qualitative research design. A case study of multiple locations in Orleans and Jefferson Parishes was used whereby a purposive sample of 17 current civil, municipal, and criminal court judges were interviewed. Judicial decision-making strategies were studied via face-to-face interviews, courtroom observations, and content analysis of courtroom communications (e.g., speech, written text, interviews, images, etc.). The researcher discusses future applications of the study as well as the application of findings to assist in exploring judicial decision-making processes. This qualitative research may be beneficial to policy planners, practitioners, and sociologists in gaining insight into the complexity of the judges' decision-making processes.

**Key Words:** Judicial Decision-making, Domestic Violence Court, Domestic Violence Court Cases in LA, Judges' Rulings in Domestic Violence Cases

## **Chapter 1**

### **Introduction**

On the topic of judicial decision-making, Hon. Alex Kozinski (1993), U.S. Court of appeals for the Ninth Circuit stated,

Under our law judges do in fact have considerable discretion in their decisions-making findings of fact, interpreting language in the Constitutions, statutes, and regulations; determining whether officials or the executive branch have abused their discretion; and, fashioning remedies for violations of the law, including fairly sweeping powers to grant injunctive relief. The larger reality, however, is that judges exercise their power subject to very significant constraints. (p. 993-994)

Sociologists and psychologists have tried to describe, understand, and discover how humans make judgments and decisions. Additionally, researchers have studied and analyzed court cases in an effort to establish a theory of judicial decision-making. Everson (1919) identified what he called the remarkable degree to which the cases he studied reflected the temperament and personality of an individual judge. His work highlighted the richness and complexity of the appearance of justice, which refers to the notion that a trial judge's appearance, conduct or behavior must never indicate that he or she believes the accused party is guilty (Blanck, Rosenthal, & Cordell, 1985; Everson, 1919). Everson (1919) observed judges who exhibited,

The warm human attributes of our ministers of justice... their peculiarities of temperament, their chance of prejudice, their warm open-heartedness or their petty tyrannies, their leniencies or their severities are all supposed to be charmed away by the donning of judicial robes and the justice they dispense is supposed to be an abstract thing as immutable as the law of gravitation. (p.90)

Everson (1919) concluded that his findings were startling because the appearance of justice seemed to be grounded more so in the personality of the judges than in any legally principled approach. Everson (1919) also summed that, regardless of the law, its actual enforcement and accountability depend on judges' attitudes toward the allegedly guilty party.

Baum (2007), Segal (2000) and Cross (2007) found support for Everson's position and the above conclusion.

Courts, legal scholars, practitioners, and social scientists acknowledge that judges' views and experiences significantly affect trial and case outcomes (Baum, 1997; Posner, 2010). Additional research, based on the observation of judges in courtrooms, has revealed that unintentional non-verbal behaviors and other extra-legal factors alone might predict trial outcomes. For example, *State v. Hamilton* (1987) warned that the jury looked to the judge for guidance and attributed great weight to his interactions during the trial of *Marino v. Cocuzza* (1951), which supported the notion that the jury could be influenced by the judge's suggestions.

Research on judicial decision-making in the United States indicates that judges refer to legal facts, extra-legal facts, and empirical facts (general facts about the world, society, institutions, and human behavior) as a part of their judicial decision-making (Baum, 2008; Posner, 2010; see for example, *Cattanach v Melchior*, 2003; *Stack v Dowden*, 2007). Additionally, rules of evidence in all jurisdictions govern the formal use of empirical data and legal factors (Hoffman, Izerman, & Lidicker, 2007); however, not all empirical data and legal factors are fairly used in judicial decision-making (Brown & Halley, 2002). Rather, empirical data and legal factors are summed within judicial judgments (e.g., extra-legal factors); therefore, the way judiciaries use empirical data, legal factors, and extra-legal factors, as a part of their decision-making processes, rest upon individual judicial discretion (Kennedy & Fisher, 2006). As such, judges must recognize the direct effect of their decision-making on the appearance of justice and fairness in the trial process (Blanck, 1990). Judge Hallows stated during the trial of *Bruenig v. American Family Ins.* (1970), "The responsibility for an atmosphere of impartiality during the course of a trial rests upon the trial judge." In addition, a judge's behavior can affect a

jury as they “can be easily influenced by the slightest suggestion from the court, whether it be a nod of the head, a smile, a frown, or a spoken word” (*State v. Wheat*, 1930). Considered together, courts recognize that the appearance of justice, as reflected in judges’ behaviors alone, may have important effects on trial processes and outcomes (Shoretz, 1995). However, limited empirical information is available that addresses the extent of judges’ decision-making in terms of extra-legal behaviors of fact finding, recusal, trial outcomes, or sentencing patterns (Cordell & Keller, 1993). The few existing empirical studies suggest that important opportunities exist for better understanding the relationship among the appearance of justice, courtroom behaviors, and trial outcomes (Everson, 1919; Fitzmaurice & Pease, 1986).

Leubsdorf (1987) stated that practitioners often confuse the concept of trial fairness and judicial impartiality.

Educated by the Legal Realists and their successors, lawyers fear that the values and experiences of judges ultimately shape their decisions. Yet, lawyers also believe that it must mean something to speak of a judge as impartial, and we suspect that the rule of law depends on the belief that the rule of law is more than a masquerade. (p. 245)

Blanck (1991) conducted a series of empirical studies on the appearance of justices’ courtroom behaviors in jury and bench trials in state courts. Specifically, Blanck examined the impact of evidentiary and extra-legal factors, in isolation and in combination, on decision-making by juries and judges. Based on the findings, Blanck developed a research model that offered an empirical framework for a more comprehensive view of the appearance of justice. He concluded that, in close cases, extra-legal behaviors alone (e.g., nonverbal behaviors) have a relatively greater impact on trial outcomes than does evidence presented at trial (Tanford & Tanford, 1988). These studies also identified a variety of relationships among the following: defendant background characteristics (e.g., age, gender, and criminal history), judges’

expectations of trial outcomes, appearance of justice as reflected in the judges' global and micro behaviors, and actual trial outcomes (Blanck, 1991).

Since the late 1940s, American political scientists have analyzed judicial decision-making by researching the decision-making strategies of United States Supreme Court Justices, which has resulted in a substantial body of knowledge on judicial decision-making regarding the influence of extra-legal factors on judicial decision-making (Blanck, 1991; Posner, 2003; Segal, 2000; Schubert, 1974). Overall, findings suggest that extra-legal factors have limited universally applicable answers, as some variables may explain particular judicial behaviors in some situations, but not in others (Segal, 2000).

The current research will advance the prior literature in several important ways. First, the relationship among legal and extra-legal factors was investigated via empirical testing of a theoretical model. Second, this research highlights the independent impact of legal and extra-legal factors on decision-making in domestic violence courts in Orleans and Jefferson Parishes. Third, this research extends the empirical framework to provide a comprehensive view of the nature of judges' decision-making processes in domestic violence cases. Fourth, a better understanding of the above-mentioned processes will help analyze the relationships between judges' legal and extra-legal factors in their decision-making within the studied parishes.

A case study using multiple locations in Orleans and Jefferson Parishes was chosen as the research methodology and 17 current civil, municipal, and criminal court judges were recruited for participation via a purposive sampling method. Data on judicial decision-making strategies were collected via face-to-face interviews, courtroom observations, and content analysis of courtroom communications (speech, written text, interviews, images, etc.). All communications were categorized and classified during the analysis.

Findings of this research can be of use by policy planners, practitioners, and sociologists in uncovering the complexity of judges' decision-making processes in the courtroom.

Additionally, this research may be of interest to practitioners in the field of law, political science, sociology, and psychology, as well as to academicians who conduct research on the psychology of expertise in decision-making. Herein, the researcher demonstrates the variations among judges' decision-making processes and intentions for decisions.

### **Significance of the Study**

The researcher intended to gain an understanding of the contribution of legal and extra-legal factors on judges' decision-making process when adjudicating domestic violence cases in Orleans and Jefferson Parishes in Louisiana. The significance of this research is that it further expands the existing body of research and provides a means to reveal potentially serious ramifications of flawed decision-making, which could lead to increased victimization and harm to the victim.

To achieve these research objectives, the following section provides an overview of the law of domestic violence and deficiencies in existing research. To understand factors that influence judicial decision-making processes, it is important to have some foundational knowledge on the laws relevant to domestic violence. Therefore, the literature review begins with a discussion on the major legislation that has influenced the adjudication of domestic violence cases. This is followed by a discussion on changes in case outcomes because of legislation. Finally, the need for this research is supported in a discussion on deficiencies in the existing literature.

## **Chapter 2**

### **Literature Review**

The simple concept of justice expects that identical misdeeds must be followed by identical punishments (Konecni & Ebbesen, 1982). However, research on judicial decision-making shows that identical crimes are often punished with varied outcomes. Different adjudication outcomes can even result when judges receive identical or similar case information (Konecni & Ebbesen, 1982). Analyzing judicial behaviors carries particular challenges. First, judges are not motivated by material incentives and, second, judges are expected to interpret and enforce the law as defined or enacted by other public and private actors to include statutes, regulations, contracts, and prior judicial decisions.

This research focused on the judicial decision-making processes in domestic violence cases. As discussed in the Theoretical Framework section, various factors and models of decision-making influence judicial decisions in domestic violence cases. However, prior to this discussion, it is important to understand domestic violence from the perspective of the court, legislation, current analytical methods, and sentencing. As such, this literature review focuses on these issues as they relate to domestic violence cases and their influence on judicial decision-making.

#### **Major Legislation Affecting the Adjudication of Domestic Violence Cases**

Legislation affecting the adjudication of domestic violence cases has coincided with domestic violence law reforms and legal institutional responses to domestic violence (Schneider, 2000). Specifically, significant changes have occurred in civil and criminal law provisions in every state that has adopted domestic violence legislation (Schneider, 2000). Changes concerning domestic violence arrests and prosecution policies include Utah Code Ann. § 77-36-

2.2 (1999), which stipulates that a police officer can make an arrest without a warrant if he or she has probable cause that an act of domestic violence has occurred. Similarly, Wis. Stat. § 968.075(2) (1998) mandates that law enforcement personnel can make an arrest if the officer has reasonable grounds to believe an individual has committed domestic abuse. This right to make an arrest also applies if an officer has a reasonable belief that continued abuse is likely or if evidence of physical injury to the alleged victim exists.

Some states have domestic violence criminal statutes that warrant penalties that exceed those for similar crimes against a non-intimate victim. For example, Calif. Penal Code § 273.5 (2000) states that a crime of infliction of injury on a spouse, cohabitee, or parent of a child is committed whenever a person “willfully inflicts...corporal injury resulting in a traumatic condition.” This act is a felony and is punishable by “imprisonment...for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars.”

States have also adopted penalties when domestic violence is accompanied by certain aggravating factors, such as occurring in the presence of a minor. Alaska Stat. § 12.55.155 (18)(C) (1998) notes that committing a domestic violence felony is an aggravating factor and may result in a term of imprisonment greater than the presumptive term when ,

In the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred. (section 2, para. 4)

Concerning federal criminal law, the Violence against Women Act (VAWA) was passed in 1994 and, in 2000, the Victims of Trafficking and Violence Protection Act was enacted (VAWA II). The VAWA enacted the following domestic violence related federal crimes: crossing a state line in violation of a restraining order (Interstate Domestic Violence, 1996); crossing a state line to injure, harass, or intimidate an intimate partner (Interstate Domestic



Violence, 1996); and forcing or tricking an intimate partner to cross a state line and intentionally committing injurious violence against the partner while doing so or as a result (Interstate Domestic Violence, 1996). In addition, federal law requires anyone who is convicted of a domestic violence misdemeanor and anyone against whom a domestic violence restraining order has been issued to surrender all firearms and refrain from obtaining firearms that have been “shipped or transported” via interstate commerce (Unlawful Acts, 1996).

Criminal reforms in domestic violence cases include mandatory arrest and no-drop prosecution policies. Specifically, mandatory arrest policies require that police make an arrest whenever there is probable cause to believe that a crime of domestic violence has occurred, even if the victim opposes the arrest. Utah Code Ann. § 77-36-2.2 (1999) stipulates,

When a peace officer has probable cause to believe that an act of domestic violence has been committed, the officer shall arrest without a warrant any person that he has probable cause to believe has committed an act of domestic violence.

Pro-arrest policies create a presumption for arrest and require that, whenever an officer fails to make an arrest on a domestic violence call, he or she must explain, in writing, the reason for the decision not to arrest. For example, Fla. Stat. Ann. § 741.29(2)(b) (1997) states, “If an arrest was not made, an indication by the law enforcement officer, in writing, must be made of the reasons why an arrest was not made.” Additionally, no-drop prosecution policies require prosecutors to maintain charges against a domestic violence perpetrator when there is evidence that a crime of domestic violence took place, regardless of the victim’s desires regarding prosecution. As illustrated in this section, legislation has focused on domestic violence. With this new legislation, the outcomes, resources, and awareness of domestic violence have changed. The following section will discuss these changes with reference to VAWA and outcomes for survivors.

## **How Changes in Domestic Violence Laws Impact Outcomes**

Senator Joseph R. Biden, Jr. (September 1999) wrote “Safer Streets, Safer Homes: The Success of the Violence against Women Act and the Challenge for the Future.” This paper called for changes in domestic violence laws. Additionally, legislation to support this effort included the VAWA. Concerning the VAWA, Lewis (2004) noted,

In the end, the need for continuation of VAWA legislation should not be measured only by the growth and effectiveness of the work of our advocates and organizations; rather, its importance can be found in the impact of VAWA's legacy to the nation; a legacy that speaks of the profound need to confront violence against women and that demonstrates governmental commitment to a steadfast funded concern for women's safety.

The VAWA was the first federal legislation that focused on violence against women and their children. This Act is also used as a legal tool directed toward domestic violence responses to public attitudes, policy, and law. Other changes in domestic violence laws include domestic violence court adjudication processing reforms, domestic violence awareness programs, and domestic violence service programs. Overall, domestic violence laws have affected victims of domestic violence by providing resource and adjudication services to ensure and enhance safety and justice for battered women and their children. Specific changes in domestic violence law have brought forth the following outcomes for survivors: immediate safety of victims and children (i.e., residential services); increased knowledge about domestic violence; increased awareness of resources and options; decreased isolation; improved community response to battered women and their children; and increased public knowledge about domestic violence (Siskin, 2001).

The impact of long-term outcomes involve increased survivor safety over time, reduced incidence of abuse in the community, reduced incidence of homicide in the community, and a better quality of life for survivors. However, measuring long-term outcomes is laborious, as it

demands time and financial resources. Because research funds are generally required to examine these types of outcomes adequately, service programs more realistically measure short-term outcomes, which include the measurement of proximal change. Measuring proximal change is acceptable because change is immediate and expected outcomes should eventually lead to desired long-term outcomes. For example, a hospital-based medical advocacy project for battered women might be expected to recognize correctly more battered women in the hospital, which would lead to more women receiving support and information about their options. These changes might then be expected to result in more women accessing available community resources to maximize their safety (e.g., shelter, personal protection orders). Overall, these short-term outcomes would be expected to lead to reduced violence and increased well-being. Additionally, such programs could establish, (1) the number of women who are correctly identified in the hospital as survivors of domestic abuse and, (2) survivors' perceptions of intervention effectiveness in meeting their needs (including receiving information and support they perceive to be helpful). Of note, measuring proximal or short-term outcomes requires obtaining the answers to questions such as,

- How effective do survivors feel the (domestic violence) program was in meeting their needs?
- How satisfied are survivors with the program in meeting their needs?
- If this program or service intended to result in any immediate, measurable change in survivors' lives, did this change occur?

No empirical evidence was available for the effectiveness of the original VAWA I.

However, as the September 1999 report issued by Senator Biden stated, "...we have successfully begun to change attitudes, perceptions, and behaviors related to violence against women" (p. 5).

The report also claimed that, "Five years after the Violence against Women Act became law; it is

demonstrably true that the state of affairs that existed before its enactment has changed for the better” (p. 5).

In 1997, domestic violence advocacy organizations and activists met to discuss strategies for continuing the VAWA and formed a committee to draft a new version of the bill. Their attempt resulted in a bill that identified necessary technical amendments, created new grant programs, and increased authorization levels for existing grant programs. During this collaboration, the final version of the bill included a stronger focal point on the needs of victims of domestic and sexual violence and those who work with them (President Clinton signed the VAWA II into law on October 28, 2005).

Ten years following the original VAWA, a small number of evaluations into its effectiveness were conducted. Unfortunately, due to the nature of grant funding provided through the Act, emphasis was placed on local jurisdictions, state control via formula grants, and a variety of discretionary grant programs; therefore, the overall effectiveness of the Act remains difficult to measure (Siskin, 2001, p. 1).

As of 1991, only two studies that attempted to measure the effectiveness of the Act, through individual grant programs were available (Burt, Newmark, Jacobs, & Harrell, 1998). Again, neither offered conclusions regarding the overall effectiveness of the Act (Miller, 2004). While sound empirical evidence that measured the overall effectiveness of the VAWA is limited, progressive signs of positive outcomes do exist. The original Act included a number of laws to initiate changes within the criminal and civil justice systems. For example, the VAWA doubled federal penalties for repeat sex offenders and enhanced federal penalties for sex crimes (Biden, 1999). Additionally, a number of procedural changes were enacted to encourage, rather than deter, victims filing complaints. Other examples of these changes include: (1) clarification that

law enforcement is responsible for payment of collection of the forensic evidence in rape exams, (2) prohibition against assessing charges for filing criminal charges against perpetrators or for serving protection orders, (3) pretrial detention of defendants in federal sex offense and interstate domestic violence cases, (4) the right for victims to be heard at pretrial release hearings, (5) mandatory restitution for victims of sex crimes and interstate domestic violence, (6) and enforcement of restitution orders through suspension of federal benefits to offenders (Siskin, 2001, p. 60). The Act also established a form of “rape shield” in federal civil and criminal cases, which clarified that a victim’s past sexual history is, generally, not admissible (Siskin, 2001). Such changes in Federal legislation spurred similar changes at the state level. For example, all states have changed laws that had previously treated date or spousal rape as a lesser crime than stranger rape (Biden, 1999).

The literature offers that major service, funding, and policy gaps caused the VAWA to direct its efforts in the criminal justice system, at the expense of crisis management and on-going emotional healing, and legal and economic needs of the victims (United States Senate Committee on the Judiciary [USSCJ], n.d.). The Senate Judiciary Committee, led by Senator Joseph Biden, addressed a multi-year review of the status of violence against women in America. The outcome was a report that addressed the Committee’s grounds for introducing the VAWA. As Senator Biden noted,

The report I issue today culminates a 3-year investigation by the Judiciary Committee’s majority staff concerning the causes and effects of violence against women...Through this process, I have become convinced that violence against women reflects as much a failure of our Nation’s collective moral imagination as it does the failure of our Nation’s laws and regulations...Today, the majority staff releases findings of a 6-month investigation of State rape prosecutions. These findings reveal a justice system that fails by any standard to meet its goals – apprehending, convicting, and incarcerating violent criminals.

The VAWA, at its core, relies on a criminal justice response to domestic violence. This narrow focus does not allow for creativity in prevention, intervention, or response efforts, nor does it respond to victims who, for a number of reasons, choose not to engage in the criminal justice system. While advocates have lobbied to continue VAWA funding, some have recognized that a federal effort, heavily focused on the criminal justice system, misses the opportunity for a more holistic approach to preventing, responding to, and ending violence against women. As Patricia Ireland, then President of the National Organization of Women, noted in her 1998 testimony in support of VAWA II, “Law enforcement is not the only solution. A vast array of educational, intervention, training, and research programs is necessary to effectively address the multi-faceted social problems of domestic violence and sexual assault.” Without a doubt, the VAWA has positively affected victims and those working to prevent and respond to such crimes. However, after 10 years of implementation, gaps in public policy, legislation, and funding to address the needs of victims remain.

Information on the oldest and first reported or recorded case of domestic violence differs from one researcher to another. As the definition of domestic violence has changed over time, it may not be an easy question to answer. Cases such as *Bradley v. State*, *Fulgrahm v. State*, and *Harris v. State* are early examples of domestic violence cases brought to the courts. More recently, various states, including Louisiana, have given law enforcement personnel the right to arrest an individual on the reasonable grounds of domestic abuse occurrences. Specifically, if a police officer has probable cause to believe that an act of domestic violence has been committed, he or she can make an arrest without a warrant. This mandate also applies if there is reasonable belief of continued abuse or evidence of physical injury to the alleged victim. Some states,

including Louisiana, have expanded domestic violence laws to include children who are involved in or witness such instances.

Additionally, the VAWA (1994) and the VAWA II (2000) offer victims of domestic violence further protection. Criminal Justice reforms in domestic violence cases have also implemented mandatory no -drop prosecution policies, in which the prosecution cannot drop a case, regardless of the victim's wishes. This information is important in the rationale of judicial decision-making because legislation, as well as the notion of precedence, plays a significant role in decision-making processes.

Other changes in domestic violence laws include domestic violence court adjudication processing reforms, domestic violence awareness programs, and domestic violence service programs. Overall, domestic violence laws have affected victims of domestic violence by providing resource and adjudication services to ensure and enhance safety and justice for battered women and their children. Additional changes in domestic violence laws have also enhanced the immediate safety of and improved community response to victims and children, increased awareness of domestic violence issues, resources, and options; and decreased isolation of battered women and their children (Siskin, 2001).

To stress the importance of examining judicial decision-making in domestic violence cases, the researcher explored the current state of domestic violence legislation and adjudication. As will be discussed in the Theoretical Framework section, this information is necessary to judicial decision-making because of its potential influence on decisions. The following section explains the deficiencies in the literature concerning judicial decision-making processes as they relate to domestic violence cases. These deficiencies are important to support the rationale of the current research.

### **Deficiencies in Current Research**

The current body of literature on judicial decision-making identifies various models of judicial decision-making matrixes; however, existing research lacks a quantitative examination of the administration of justice in domestic violence cases. Kulik, Perry, and Pepper (as cited in Green & Heilbrun, 2011) discussed age, race, and gender-based biases in judicial decision-making; however, they did not differentiate decisions on courtroom cases that are specific to domestic violence adjudication. Although they admitted that these variables influence the decision-making processes of individual judges, they did not detail the weight of these biases or their direct or indirect influences on final judicial decisions.

The deficiencies in the literature provide an opportunity to address the vacancy of research on judicial decision-making processes in domestic violence cases. Using qualitative research, this study provides a mechanism to explore the judicial decision-making processes specific to domestic violence cases as well as explore those situations in which interventions being evaluated have unclear outcomes.

Before addressing the deficiencies in the literature, it is important to develop a basis upon which general judicial decision-making is processed. The following section provides a discussion of the theoretical framework used in this study. Specifically, judicial decision-making is discussed in terms of judicial adjudication theories (formalism, skepticism, and realism) and the five methods of judicial decision-making. After reviewing the main aspects of each theory of adjudication, the researcher explains the differences in the structure and argument of each. These theoretical explanations can assist in determining the sources of preferences in judicial decision-making.



## **Chapter 3**

### **Theoretical Framework**

#### **Theories of Adjudication: Formalism, Skepticism, and Realism**

The following section reviews theories of adjudication, which include formalism, skepticism, and realism. The description of each theory is provided to examine decision-making processes and establish judicial preference in making decisions. According to formalism (Schauer, 1988), the judge closely studies law or rules and applies them to facts. The law is a closed set of logically organized rules that constrain the final judicial decision in adjudicating a case. According to skepticism, the judge can explain or justify any possible outcome or resolution. The judge can also make, ignore, or change a law per his or her wishes because this theory suggests that men make their own laws (Tamanaha, 2008). Finally, realists argue that both legal and non-legal factors have casual effects on judicial behaviors and decision-making (Leiter, 2005). In other words, law is not based on what is written (formalism) or what a judge can rationalize (skepticism); rather law is based on what is actually practiced in the courtroom (realism).

Researchers (Posner, 2003; Tamanaha, 2008) have established five models of judicial decision-making; the legal model, attitudinal model, personal attributes model, strategic model, and institutionalist model. These five models explain the basis of judicial decision-making. The legal model focuses on statutes and law while the attitudinal model focuses on the judges themselves. Interacting with the attitudinal model, the personal attributes model broadens the scope of the research by explaining personal factors in judicial decision-making (e.g., influence of a judge's background). The institutional model addresses the judge's behaviors in the institutional setting and court policies that affect judicial decision-making processes. The

strategic model of judicial behavior addresses the strategic interactions among judges and non-judicial actors within an institution.

**Formalism.** According to legal formalism, judges view the law as autonomous, comprehensive, logically ordered, and determinate. Additionally, formalism suggests that judges engage in pure mechanical deductions from this body of law to produce a single correct outcome. Tamanaha (2010) noted that,

In the 1920s and 1930s, building upon the insights of Oliver Wendell Holmes, Roscoe Pound, and Benjamin Cardozo, the legal realists discredited legal formalism, demonstrating that the law is filled with gaps and contradictions, that the law is indeterminate, that there are exceptions for almost every legal rule or principle, and that legal principles and precedents can support different results. (p. 1)

Formalists argue that judges should be constrained within the interpretation of the law by precedence only. Following this theory, judges would not base their decisions on any factor other than precedence because formalism is a closed normative system. This means that decisions are based on a relatively closed set of organized rules that are independent of other political and social institutions (Schauer, 1988). U.S. Supreme Court Justice Antonin Scalia (1998) described formalism as follows,

A commitment to a set of ideas that more or less includes the following (1) the law consists of rules; (2) legal rules can be meaningful; (3) legal rules can be applied to particular facts, (4) some actions accord with meaningful legal rules, other actions do not; and (5) a standard for what constitutes following a rule that can be publicly known and the focus of intersubjective agreement. (p. 26)

According to Posner (2001), if a formalist judge follows the plain meaning of a statute it could lead to its application in cases where it would be harmful and contrary to the intentions of its drafters. Posner (2001) stated that this application of the law is known as unthinking or mechanical jurisprudence.

Formalism operated as the dominant legal thought during the late nineteenth century. According to formalism, the law is a collection of rules that consists of a well-defined set of source materials, statutes regulations, contracts, and prior judicial decisions (Schauer, 1988). Under formalism, every legal question has one right answer, which an experienced lawyer or judge can deduce from the law by correctly applying the canonical legal materials to the facts of the case (Tamanaha, 2008).

The second theory of adjudication is skepticism. To better understand and transition to the theory of skepticism, the following explanation depicts the differences between formalism and skepticism, which stem from the way law is viewed. General rules, standards, and principles are the main instrument of control used by judiciaries; such is a nature of law. The law is designed to refer to the classes of persons, classes of actions, and circumstances; therefore, the law should not only recognize these classes of occurrences, but also apply the instrument of control to them. To understand this generalization, I would like to give a non-legal example. While growing up in Russia, when I entered the Orthodox Church, my grandmother would say, “When you are walking into a church (anywhere in Russia), you must have your head covered with a scarf, as every girl or a lady must.” My grandfather would say, “This is the right way to behave/do it when entering the church, have your scarf on your head.” The distinguishing features of these non-legal examples are clear; the communication and teaching standards of behavior can take different forms of address and explanation. My grandmother’s example closely resembles the case of the precedent in her address of how I should enter the church, while my grandfather addressed a fact of authority on proper behavior or legal church entrance behavior. Communication and adjudication of this situation have an open range of possibilities via communication of general standards. Formalism gives an explicit form of command that is

clear and concise (formalism in my grandmother's example) as a task of fashioning rules that are adapted to facts. Skepticism uses the authoritative language of the rule and offers the result of how to legally behave, but has an open -ended structure on how to get to the rule (e.g., peer pressure, learned behavior as in my grandfather's example). My grandfather's technique used a form of control, but in a way that it was impossible to identify a class of specific actions (skepticism) or a range of circumstances through which the result would be adjudicated. In this example, the recipient (myself) would walk into the church with a scarf on my head; his explanation covered the same outcome as my grandmother's adjudication (formalism). The acknowledgement of precedent in my grandfather's example, as a criterion of legal validity is skepticism; however, it is open in structure or open in texture, which allows creative judicial activity and brings the recipient to the same legal result, although with different possible paths to that result. The open structure of law in skepticism means that there are areas of conduct to be developed by the judiciary striking a balance in light of individual circumstances. I will explore such examples in detail in the following discussions of skepticism.

**Skepticism.** Skeptics believe that judges "make their own laws" (Biddle, 1961); therefore, following this theory, judges use an open structure and do not necessarily look at precedence when making decisions. For example, in a domestic violence case when one parent is found guilty, formalism would dictate that the child goes with the other parent. However, if the other parent is not a legal citizen, the judge must determine custody without the full benefit of precedence. This refers to skepticism and the judge would adjudicate with an open structure. While formalism views the law as a closed system that is controlled by a specific set of rules, skepticism views the law as a set of canonical legal source materials, but does not support the notion that such materials determine the same answer to every legal question. Skeptics propose

that the law is always available to explain and justify any possible outcome or resolution. Additionally, skeptics argue that a judge is able to make, ignore, or change a law per his or her wishes (Tamanaha, 2008). Skeptics also advocate that judges have considerable leeway to present the facts in such a way that they can arrive at the preferred outcome regardless of the law (Frank, 1949; Gennaioli & Shleifer, 2007b).

Considering skepticism, Biddle (1961) noted, “It would be a narrow conception of jurisprudence to confine the notion of ‘laws’ to what is found written on the statute books, and to disregard the gloss which life has written upon it” (p. 49). Gray (1909), a well-known American Jurist who shared the skeptic point of view, commented on the open-ended structure of law,

It has been sometime said that the Law is composed of two parts, legislative law and judge-made law, but, in truth, all the Law is judge-made law. The shape in which a statute is imposed on the community as a guide for conduct is that statute as interpreted by the courts. The courts put life into the dead words of the statute. (p. 169)

Skepticism suggests that judges have discretion to make law and interpret its open structure (Tamanaha, 2010); however, this discretion has two limitations. First, judges only have discretion to make law in some cases. Second, even in the cases where a judge has discretion to make law, it is a bounded discretion. As formalists regard mechanical deduction from a determinate body of rules as an attainable ideal and skeptics consider law an open structure of adjudication, realists view law as pie-in-the-sky (Tamanaha, 2010, p.35). Thus, while formalists acknowledge that actual judging involves precedent, thus, judicial legislation and codification, realists argue that this is an escapable state of affairs. This would explain why Judge John Dillon (as cited in Tamanaha, 2010) stated,

[c]oncerns about rampant legal uncertainty provided fuel for the debate over codification that codification – the replacement of common law with comprehensive legislation – was supposed to correct. The uncertainty of our law, its confusion, its startling bulkiness, redundancy and prolixity, increased annually by some 20,000 new statutes and thousands of new reported cases, [which] make[s] our law today the most intolerable in the world

and perhaps the worst ever known to human history – all because its form and lack of uniformity are so objectionable. (p. 36)

Solum (2007) noted that American judges eschew neutrality and the real basis of decisions on their ideology sometimes reflects partisan grounds and judicial socialization of the court they preside over or their background. It is also true that judges are limited human creatures (Solum, 2007) and, consequently, good faith efforts at neutrality can be subverted by powerful biases. With this, it must also be noted that the sources of law (legal texts such as constitutions, statutes, and judicial opinions) frequently determine outcomes.

**Realism.** According to realism, a main factor in the theory of adjudication is that the law adjusts to the real world and human factors. For example, in a domestic violence case, a judge might be biased, which could influence the outcome. Realism challenges the Orthodox view of U.S. jurisprudence as being an autonomous system of rules and principles. Specifically, realism views the law as a subjective system with inconsistent results that are deeply rooted in judicial, political, social, and moral predictions. Further, as U.S. Supreme Court Justice Holmes (1897) wrote, “A judge must be aware of social facts. Only a judge or lawyer who is acquainted with the historical, social, and economic aspects of the law will be in a position to fulfill his functions properly” (p. 457).

Realism represents the legal thought of the early twentieth century and was the dominate theory during the 1920s and 1930s. During the height of the realist movement, lawyers, judges, and law professors throughout United States declared that the law rarely had the answers to legal questions and inconsistencies existed between real and legal reasons of how and why judges made particular decisions (Schlegel, 1995). Realists suggest that legal and non-legal factors have causal effects on judicial behaviors and decision-making (Leiter, 2005). Three judicial accounts during courtroom observations depict the theory of realism,

Judge 1<sup>1</sup>: Please don't upset me today; I am sick. Let's move forward very fast.

Judge 2: (*addressing counsel*) Just to let you know, I have a credit hour at 3 pm and I have to leave, so I am planning to finish this today.

Judge 3: I don't think you made a good decision jumping in this case to the last minute, but we are here and, as I said, I will hear it.

Kalman (2010) explained that the realist approach shows how a judge's interest in the outcome of a case affects the degree to which legal sources influence a decision. Overall, realism is not a unified collection of thought. In fact, many realists, (e.g., Pound and Lewellyn) were critical of each other and presented irreconcilable theories. However, the main characteristic of the realism movement focused on power and economics in society, persuasion, characteristics of individual judges, the welfare of society, and a synthesis of legal philosophies.

As seen in this discussion, the way a judge adjudicates depends on the theory that particular judge takes in the interpretation of the law and decision of a case. However, these theories only provide a framework to explain judicial decision-making. In addition to the theories of the decision-making process, specific models of judicial decision-making include the legal, attitudinal, personal attributes, strategic, and institutionalist models. These models are examined in this literature review as an additional resource for the theories of judicial decision-making.

### **Models of Judicial Decision-Making**

Researchers have developed five models of judicial decision-making, which stem from the theories of adjudication and include the legal model, attitudinal model, personal attributes model, strategic model, and institutionalist model (Posner, 2003; Tamanaha, 2008). These five

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<sup>1</sup> Accounts marked by Judge 1, Judge 2, etc were obtained during interviews and accounts marked by Court 1 or simply Court were obtained through observations and court transcripts.

models of judicial decision-making rest upon the three theories of adjudication and offer explanations regarding patterns of judicial decision-making.

Researchers have examined judicial decision-making theories from a psychological perspective and have included judges' motivations in this process. Because motivation is the cornerstone of the study of judicial behavior, legal decision-making choices, relative to the judges' personal interests, must be examined. Herman Pritchett (1948) pioneered the development of models of judicial decision-making in the United States. Specifically, Pritchett conducted a quantitative analysis of disputes and voting blocs by observing and researching U.S. Supreme Court opinions. This, in turn, branched into the development and analysis of models of judicial decision-making.

**Legal model.** According to the legal model, judicial decisions are based on the facts of the case and the rule of law (meaning constitutional clauses statutes, intent of the framers, and precedent). Black's Law Dictionary (1976) defines precedent as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases" (p. 1059). The United States Court of Appeals for the Third Circuit (see *United States Internal Revenue Serv. v. Osborne*, 1996) stated,

A judicial precedent attaches a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar material facts and arising in the same court or a lower court in the judicial hierarchy. (para. 50)

For example, using the legal model, a judge will apply his or her legal training and knowledge to the facts and decide the case in an objective and legal manner. Interviewed judges expressed this as follows,

Judge 1: Precedent dictates my choice of adjudication.

Judge 2: I review previous decisions in this court; in fact, I tell my law clerks to research similar cases and their adjudication beyond this court jurisdiction.



Judge 3: I come from a criminal background; precedent is paramount.

Precedent also plays an important role in the legal model and “is the main determinant of case outcomes” (Posner, 2003, p. 98). Judges are constrained by precedent because it provides an enacting force when new cases are within the scope of precedent and serves as a gravitational force when they are slightly different (Dworkin, 1977). According to Segal and Spaeth (2002), because precedent typically exists for both sides of a case, the legal model is not effective in predicting how the Court will rule. Segal and Spaeth (2002) also argued that the legal model is a poor approach to understanding judicial decision-making processes.

Precedent, viewed over time, can serve to establish trends, which indicate future interpretations of the law. For instance, if domestic violence becomes more restricted under the law, then the next legal decision on that subject may serve to restrict the law further. Recently, scholars have attempted to apply precedent to establish which trends are most important or authoritative and to determine how the court’s interpretations and priorities have changed over time (Sinclair, 2007).

In terms of the current study, the examination of the legal model and precedent, specifically, included reviewing and comparing domestic violence court proceedings with similar precedent of previous proceedings (e.g., previous convictions of domestic violence, previous types of offences, sentences or any other judicial decisions made in similar cases with similar facts). By analyzing court transcripts, a researcher can easily establish whether similar cases (precedent) were adjudicated the same or whether there was a discrepancy in the decision-making adjudication process.

**Attitudinal model.** The attitudinal model claims that judges make decisions based, in part, on their personal policy preferences, rather than solely according to the law. Of note,

building on the attitudinal model, the personal attributes model (discussed later) asserts that judges make decisions under the influence of their personal backgrounds, which also influences their personal policy preferences. While similar, the two models have distinct differences. Segal and Spaeth (1993), who argued forcefully for attitudinal explanations of voting patterns of judges, conducted a quantitative analysis of judicial votes to test the legal model using data on dissents in the U.S. Supreme Court. Specifically, they used patterns of dissents to approximate violations of *stare decisis* based on the rationale that judges who had dissented in cases that became precedents would not agree with such precedents in later cases if the attitudinal model correctly depicted judicial decision-making. Spaeth and Segal found support for the attitudinal model in the U.S. Supreme Court data.

Segal and Spaeth (2002) argued that the most effective way to understand judicial decision-making was by focusing on judges' policy preferences. Segal and Spaeth further noted that court opinions were simple reflections of such preferences. Explanations of judicial decision-making under this model advocate that socioeconomic background, including regional ties and political affiliations, influence how judges decide cases (Trotter, 1997). Different from the legal model, which indicates that judges distinguish cases and discover the law, the main feature of the attitudinal model is the proposition that personal policy preferences motivate a justice's efforts to find supportive precedent and write legal opinions to rationalize his or her positions in light of the case (Segal & Spaeth, 2002).

Epstein (2002) examined death penalty cases from the legal and attitudinal perspectives and found that "the legal model accurately predicts 75% of cases...and the attitudinal model predicts 81% of cases" (p. 61-62). An example of this model in domestic violence cases could involve a judge who is interested in tighter monitoring of domestic violence prosecutorial

processes. Considering domestic violence cases, a judge might push for acceptance of findings that include: (1) identifying domestic violence shortcomings in police investigations, inquest, forensic science, and prosecution; (2) suggesting improvements for better medical treatment for women who are victims of domestic violence; 3) recommending measures and suggesting appropriate institutional arrangements to provide adequate protection for victims of domestic violence; and (4) helping implement a system that is accessible, transparent, and accountable.

With this model, observations, content analysis, and analysis of court documents are the most applicable methods in characterizing judges' decision-making processes. Studying the personal attributes of judges can also help identify their policy preferences or political considerations as well as corresponding trends during the process of adjudication.

**Strategic model.** The strategic model emphasizes the strategic relationship between the court and other branches of government. Pepper (2003) argued that strategic relationships exist within the Court and his interviews with former and current Supreme Court Judges and clerks illustrate relationships between justices that are characterized by bargaining and strategy (Pepper, 2003).

The Supreme Court is a political court. The discretion that the justices exercise can fairly be described as legislative in character, but the conditions under which this "legislature" operates is different from those of Congress. Lacking electoral legitimacy, yet wielding Zeus's thunderbolt in the form of the power to invalidate actions of the other branches of government as unconstitutional, the justices, to be effective, have to accept certain limitations on their legislative discretion...They have to be seen to be doing law rather than doing politics. (p.235)

According to Posner (2003), the primary aspect of the strategic model concerns whether judges behave more like legislators or more like judges. Justices are, as Posner (2003) suggested, human and can be modeled in the same fashion that we model others. Specifically, politicians, activists, and managers are driven by well-defined preferences and they behave in a

purposive and forward-looking fashion (Posner, 2003). As such, the strategic approach seeks to sort out the various competing interests that judges face when making decisions (Posner, 2003). Most of the literature on the strategic approach to judicial decision-making can be traced to the work of political scientists such as C. Herman Pritchett. Pritchett's analysis of Supreme Court Justices is based on the understanding that, "the essential task of a Supreme Court Justice" is "not unlike that of a Congressman" (Pritchett, 1942, p. 491).

According to Pritchett (1942), politicians and judges enjoy substantial discretion in deciding important public policy issues, formulating opinions, and issuing votes. Shepsle and Weingast (1995) agreed that each legislator acts to advance his or her own particular interests via strategic behaviors. Additionally, individuals recognize the interdependency of their actions in a forward-looking way; this is fundamental in furthering the development of Pritchett's notion of the judge as a politician. The strategic model of judicial decision-making is commonly cited when analyzing the decision-making processes of U.S. Supreme Court Justices; however, this model does not always apply in cases such as the current study, which focused on city and state court judges in Orleans and Jefferson Parishes. It is also important to note that political science literature on judicial behaviors discusses the so-called strategic model, which is discussed further in this chapter. The only difference between the attitudinal and the strategic model is whether judges are constrained by other actors (e.g., threat of legislative override) (Segal & Spaeth, 1993; 2002).

**Institutional model.** The institutional model covers the influence of court operations on judicial decisions; therefore, this model is similar to the strategic model. Specifically, the Chief Justice uses policies and procedures to select which cases will be heard and to assign opinion-writing responsibilities (McGuire, 2004). According to the institutional model, Segal and Spaeth

(2002) stated that judicial preferences in the decision-making process depend on judges' legislative preferences. They further stated that "It would be rare, indeed, to find that the President and the Senate consistently nominate and approve people who are well to the left or to the right of their preferences" (p. 47). Additionally, the Court "follows the preferences of the dominant electoral coalition not because of deference, but because the coalition chooses the Court" (Segal & Spaeth, 2002, p.109). The main emphasis of this model is judicial decision-making processes in terms of potential for policy implementation under current legislation versus passing new legislation that accommodates policy. In comparison to the attitudinal model, where political preferences are considered, the institutional model includes political, economic, and social affiliations. Further, the attitudinal model is not concerned with how judges use judicial power to influence legislation. Because the judges interviewed and observed in this study were city and state trial court judges, by default, they did not follow this model of judicial decision-making. The institutional model primarily pertains to the analysis of Supreme Court Justices (Pritchett, 1942).

**Personal attributes model.** According to the explanations of judicial decision-making under the personal attributes model, judges are influenced by their socioeconomic backgrounds, including regional ties and political affiliations, in deciding cases. The list of personal attributes that might influence judicial decision-making include age, gender, race, religion, education, prior judicial experience, prior prosecutorial experience, prior public or elected office, appointing president, and political party affiliation (George, 2001).

Previous research has demonstrated that variances in judicial decisions depend on differences in the personal characteristics of the decision-maker. Nader (1997) stated that judicial decisions stem from the interaction between personal and case characteristics. For

example, in most private lawsuits, the outcome is uncertain; if it were not, litigants would likely settle out of court or no suit would have been brought in the first place. This account points to the subjectivity of all judicial decisions in determining case outcomes. During court proceedings, the judge must interpret, select, evaluate, and combine all relevant facts. Additionally, people are different in the way they enforce and execute such tasks; this includes judges (Mischel, 1973; Nisbett & Ross, 1991).

As previously noted, the attitudinal model is closely interrelated with the personal attributes model. In many cases, it is difficult to separate the attitudinal model from the personal attributes model; therefore, researchers sometimes state that decision-making is consistent with both models (Posner, 2001; 2003) when describing attributes or characteristics of a particular judicial decision. Further, personal attributes that might affect judicial decision-making include judicial attitudes (Blanck, 1991; Cross, 2007; Schubert, 1965), role orientation (Posner, 2003; 2010; Segal & Spaeth, 2002; Tamanaha, 2008), social background (Cordell & Keller, 1993), and aspects of personality, especially self-esteem (Baum, 2007; 2008). Other influencing variables include the need for security (Winick, Gerver, & Blumberg, 1961) and social orientation (Gibson, 1981a). Kulik et al. (as cited in Green & Heilbrun, 2011) investigated the effects of judges' personal characteristics (age, gender, race, religion, education, prior judicial experience, prior prosecutorial experience, prior public or elected office, appointing president, and political party affiliation) and case characteristics on the outcomes of federal cases of hostile sexual harassment. Results showed that judges' personal characteristics influenced case outcomes. Specifically, younger judges and democratic judges were more likely to find for the plaintiff (the alleged victim of harassment). The probability that a decision favored the plaintiff was 16% when an older judge heard the case and 45% when a younger judge heard the case. Additionally,

the probability that the decision favored the plaintiff was 18% when the judge had been appointed by a republican president and 46% when appointed by a democratic president (Posner, 2010).

Also related to personal attributes is Gibson's (1978; 1981b; 1983) discussion on judicial role expectation, role orientation, and role behavior. Role expectation is a reflection of situational constraints that exist because judges believe that those with whom they interact professionally expect them to behave in certain ways. Role orientation reflects judges' perceptions of how they should act professionally. Finally, role behavior refers to the manner in which judges actually perform their role. A person's perceived role expectations and subjective role orientation typically differ. For example, judges will admit to some, but not all of the ideas that they perceive others have about how they (as judges) should behave. When judges receive dissimilar messages, they must choose from these various messages. In other words, the perceived expectations of others are, according to role theory, a powerful situational tool that affects how actors behave (Gibson, 1981a).

The need to adapt between expectations and conflicting personal preferences means that judges' actual behaviors will be positioned somewhere between their role orientation and role expectations. Therefore, the less often judges look to the views of others for measures of self-worth, the more likely they will follow their own inclinations (Gibson, 1981a).

Models of judicial decision-making help explain judicial behaviors. The attitudinal model suggests that judges' characteristics, personalities, and attitudes are more influential in decision-making than is the law. Of note, the personal attributes model refers to personal policy preferences of judges and includes social background. Finally, the strategic institutional models focus on the influence of policies and procedures of the courts in judicial decision-making.

This literature review has provided a wealth of information, including domestic violence legislation of such legislation, and theories and models of judicial decision-making. This review of the literature offers the background and theoretical framework for the current study. Based on the review, the following section presents the research questions and methodology of the current study.

### **Research Questions**

This researcher conducted 51 observations and 17 interviews and analyzed 51 court documents to answer the following research questions.

1. How do judges make decisions during the adjudication of domestic violence cases?
  - a. What is the current court structure in the adjudication of domestic violence cases?
  - b. What factors influence judicial decision-making processes during adjudication?
  - c. What challenges or successes do judges face when adjudicating domestic violence cases?
2. What is the relationship between legal and extra-legal factors in the adjudication of domestic violence cases?
  - a. Do judicial beliefs and biases (if any) influence the adjudication of domestic violence cases?



## **Chapter 4**

### **Research Design: Case Study**

Case studies emphasize a detailed contextual analysis of a limited number of events or conditions and their relationships (Yin, 1984). Researchers have used the case study research method for many years across a variety of disciplines. Social scientists, in particular, have made wide use of this qualitative research method to examine contemporary real-life situations and to provide a basis for the application of ideas and extension of methods. Yin (1984) defined the case study research method as “... an empirical inquiry that investigates a contemporary phenomenon within its real-life context” (p. 23) when the boundaries between phenomenon and context are not evident and in which the researcher uses multiple sources of evidence.

A main characteristic of a case study is in its ability to provide a holistic understanding of cultural systems in action (, 1990). Of note, the unit of analysis is a critical factor in case studies. Additionally, case studies are selective and focus on one or two cornerstone issues to understand the system being examined. Creswell (2003) noted that a case study is a triangulated research strategy. According to Yin (1994), there are three types of case study: explanatory, exploratory, and description, which are used to answer the how and why questions through an in-depth analysis of a situation, event, or location. Further, case study research is designed to focus, in detail, on a given situation rather than merely provide generalizable findings (Yin, 1994). Noted advantages of case studies are that they develop analytic and problem-solving skills, allow for the exploration of solutions for complex issues, and allow for the application of new knowledge and skills.

## Qualitative Research

Qualitative research is a generic term for investigative methodologies described as ethnographic, naturalistic, anthropological, field, or participant observer research. This research methodology emphasizes the importance of examining variables in their natural setting (Kvale, 2007). Additionally, qualitative research methods are particular to the social sciences and humanities (Kirk & Miller, 1986). According to Kirk and Miller (1986), qualitative methods,

Fundamentally depend on watching people in their own territory and interacting with them in their own language, on their own terms. As identified with sociology, cultural anthropology, and political science, among other disciplines, qualitative research has been seen to be 'naturalistic,' 'ethnographic,' and 'participatory.' (p. 9)

In addressing the naturalistic aspect of qualitative research, Kirk and Miller discussed research in a natural context or the field versus the staffed environment by the researcher. By ethnographic, Kirk and Miller mean holistic in an anthropological perspective and, by participatory, they mean that the researcher plays the active part in the research process.

According to Creswell (1998),

Qualitative research is an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The researcher builds a complex, holistic picture, analyzes words, reports detailed views of informants, and conducts the study in a natural setting. (p.5)

Qualitative methods differ from quantitative methods in that qualitative methods identify the existence or nonexistence of factors studied in comparison to quantitative methods, which measure the degree of the studied factor(s) present (Kirk & Miller, 1986). Additionally, qualitative research does not depend on statistical formulation; rather, it captures and categorizes social phenomena and its meaning. According to Bauer and Gaskell (2000),

One needs to have a notion of qualitative distinctions between social categories before one can measure how many people belong to one or the other category. If one wants to know the colour distribution in a field of flowers, one first needs to establish the set of

colours that are in the field; then one can start counting the flowers of particular colour. The same is true for social facts. (p. 9)

To measure the frequency of any social fact, it must be identified and defined. According to May (2001),

In qualitative research, the data are collected through three main methods, which can be used singly or in combination: direct observation, in-depth interviews, and analysis of documentation. (p. 138)

Using this methodology, data can consist of different forms. For example, data can include researcher notes, descriptions, observations, and reactions to text-based sources, video, or images. Data can also be in the form of a transcript or it can be from written sources. Additionally, qualitative research can be used for exploratory, explanatory, or descriptive research and it can draw causal inferences from data (Patton, 2002). Further, qualitative methods rely on inductive reasoning (Patton, 2002), which is the method of understanding meaning, whether it is attached to the researcher's actions or other peoples' actions. Weber (1978) referred to this as *verstehen* and considered this as the method that all social sciences should follow. As such, many qualitative methods draw upon this understanding of social research.

Lofland (1971) suggested that the role of a qualitative researcher is not to add one's own view, rather to describe, accurately, the participant's experience with explanations about what he or she believes or understands and provide quotes as evidence to prove what the participant thought or felt. Therefore, a researcher should collect data by way of describing what he or she has heard in a neutral way and without imposing or placing personal judgment (Lofland, 1971).

### **Methods: Observations, Interviews, and Analysis of Court Documents**

Using a qualitative research method, the researcher strives to make sense of the data as it is collected. Generally, researchers interpret the data through coding, which involves a

systematic searching of data to identify and categorize specific observable actions or characteristics. These observable actions then become the key variables in the study. Merriam (1988) suggested the following analytic frameworks for the organization and presentation of data: role of participants; network analysis of formal and informal exchanges among groups; and critical incidents that challenge or reinforce fundamental beliefs, practices, and values.

**Observations.** An observation is a form of qualitative inquiry that can be used to examine individuals, a small group of participants, or a group as a whole. In the current study, 51 courtroom observations were conducted to collect and present detailed information about a particular participant (e.g., judges, victims, perpetrators, counsel, court employees, etc.) and included the real life accounts of participants within a given context (i.e., domestic violence cases). Exploring and describing the situation through observation reveals the relationship between variables and provides an understanding of an event or situation (i.e., adjudicating domestic violence cases). Observations also help by providing a comprehensive understanding of the observed processes and give the researcher a thick description of the process that is being studied, characteristics of participants, and the nature of the community in which the situation occurs. In this study, the thick description was written out to help interpret the meaning of descriptive data, such as judicial values and attitudes, as well as motives of the judges who adjudicated domestic violence cases. Thus, observations helped the researcher describe the natural setting (courtroom) using a holistic interpretation (i.e., how judges make decisions in adjudicating domestic violence cases). Additionally, observations assisted the researcher in devising and framing new questions for further analysis during interviews and analysis of court documents. For example, during observations, the researcher saw the data in action in the courtroom. Relevant observations were then connected to analyze the data and explain how

judges adjudicate domestic violence cases. Part of the researcher's courtroom observations included transcripts of conversations between parties, off the record judicial statements or questions, and comments about documents. Additionally, protocols (transcriptions of participants talking aloud) were also common recordings by the researcher during the observations of domestic violence cases in Orleans and Jefferson Parishes.

Non-participatory observations offer an advantage because they are not influenced by the biases of the researcher or the behaviors of participants (Manstead, 1996). Such observations help the researcher make connections between a judicial decision-making barometer and judges' behaviors in the adjudication of cases as measured by their previous (archival) patterns of decision-making behaviors in different types of cases. As with the other types of inconspicuous observations, selection bias could have occurred in the selection of archival cases because courtroom records are often inaccessible or organized in ways that require extensive cleansing of desired data (Bray & Kerr, 1982; Creswell & Miller 2000). The current research minimized such biases because research participants, over time, became less affected by the researcher's presence and tended to revert to typically patterns of behavior. Dingwall (1997) stated that observation provides data that cannot be collected via interviews. Further, Becker (1970) stated,

The most complete form of the sociological datum, after all, is the form in which the participant observer gathers it: an observation of some social event, the events which precede and follow it and explanations of its meaning by participants and spectators, before, during, and after its occurrence. Such a datum gives us more information about the event under study that data gathers by any other sociological methods. (p. 133)

The researcher recorded five non-participatory observations in each judge's courtroom (10 judges) prior to the initial interview scheduling. The researcher also employed pattern matching during observations, which refers to the comparison of two patterns to determine whether they matched (i.e., that they are the same) or did not match (i.e., that they differ).

Data collection included the following phases: in-depth court site visits (51) with a purposive sample of established courts in Orleans and Jefferson Parishes, one or two in-person interviews with select judges (17) within both Parishes, and an analysis of court documents from domestic violence hearings (50).

**Scheduling of observations.** The researcher received a schedule for each week of observation that listed selected courtrooms and judges (from the sample of those who participated in the research) and the times at which the researcher was to make her observations in these courtrooms. The schedules were made based on court scheduling information that was supplied by the court clerk the week before the observations took place. The courtrooms were scheduled for observation in contiguous hearing sets of half-hour blocks, either in the morning or in the afternoon, during regular courthouse hours. If the selected courtrooms were scheduled for relatively brief events (e.g., emergency domestic violence hearings, duty hearings, or contempt charge 72 hours hearings), observations in other courtrooms, with other judges, were scheduled to match the available courtroom schedules for domestic violence hearings.

**Court observation protocol.** Courtroom observation protocols were adapted from previous studies of domestic violence courts (Cissner, 2005) and a general approach to multisite courtroom observations developed for a nationwide study of adult drug courts (Gavin & Puffett, 2004). The written protocol for observation of a hearing included a one-page form that the researcher used to record her observations for each half-hour observation period. The form captured information from the courtroom visit and included the name of the judge, plaintiff and defendant; attorneys present, if any; courtroom and date of visit; the researcher's time of arrival at the courtroom; whether the researcher could enter the courtroom and, if not, why (e.g., courtroom locked, proceeding closed to the public); if available, the posted description of the

event scheduled for the courtroom; and researcher notes describing situations that could not be accurately described within the available categories of information.

Additional information from courtroom observations was recorded as well. This included the number of cases that appeared before a domestic violence court judge on a typical court day (researcher observation day); average length of individual appearances; typical criminal charges of defendants; typical status of defendants who appeared (e.g., in custody or not in custody); types of interactions between the judge and defendant; and most common dispositions, sentences, and responses to noncompliance. The researcher recorded a narrative that involved answering a set of questions about what was learned during the visit. Additionally, the court clerk instructed the researcher to draw no attention to herself, in either dress or demeanor. However, if the researcher was asked her purpose for being in the courthouse or in a particular courtroom, she was instructed to oblige and respond that she was there to observe the adjudication of the domestic violence cases as a part of her dissertation assignment.

From the first visit in the natural setting and throughout phases, the researcher gathered a considerable amount of data in the form of initial impressions and observations (Creswell & Miller; 2000). Researcher notes memorialized the impressions of preliminary and entry interviews with judges and lawyers. These field notes helped the researcher to understand the dynamics of the courtroom through courtroom culture, physical character of the courtroom, and sequence of events during the trial.

Each courtroom has a different culture, which reflects, in large part, the judge's view of the trial and his or her role in that process. As such, field notes described judges' formal and informal working styles with attorneys; their degree of patience with witnesses, other parties, and jurors; how often they tended to call for a recess; and the responsibilities required of their clerks

or bailiffs. The physical differences of the courtrooms and courtroom dynamics were studied prior to the field observations (Feldman & Feldman, 1993). Field notes also served as important maps of the courtroom and were complete with floor plans for locating and tracking the movements of trial participants. The researcher also developed a log to document events in the courtroom, which included schedules of judges and trials, charges brought, and the point during the trial when the judge delivered final instructions (Leiter, 2005; Pepper, 2003; Semin & Fiedler, 1996). These notes helped the researcher remember her thoughts and concerns and provided a chronicle of events.

**Interviews.** Interviewing is a critical step in data collection. According to Weiss (1994), “interviewing gives us a window of the past. We can also, by interviewing, learn about settings that would otherwise be closed to us, foreign societies, exclusive organizations, and the private lives of families and couples” (p. 18). Kvale (2007) determined that a qualitative research interview “attempts to understand the world from the subjects’ point of view, to unfold the meaning of peoples’ experiences, and to uncover their lived world prior to scientific explanations” (p. 19).

Structured interviews included individual interviews (e.g., one-on-one interview with judges). Data was recorded in a variety of ways, including audio recording and written notes. The main purpose of the interviews is to probe interviewees about the phenomenon of interest; that is, how judges come to make their decisions in domestic violence cases (Weiss, 1994).

The researcher used a predetermined set of questions to explore the issue during the interviews. This guide served as a checklist and ensured that the same base of information was obtained from all judges. The order and actual presentation of the questions were not determined in advance. Within the list of topic or subject areas, the interviewer was free to pursue certain



questions in greater depth. The researcher paid attention to two underlying principles of the structured interviews, (1) avoid leading the interview or imposing meanings and, (2) create a relaxed, comfortable conversation (Creswell, 2009). The researcher also believed that the structured interview was a good fit for this research because it provided an open framework that allowed for a focused, conversational, two-way communication. This type of interview also allowed participants to give and receive information. Often, the information obtained from structured interviews not only provides answers, but also reasons for the answers. In sum, structured interviews ensured that interviewees had equal opportunities to provide information and ensured that they were assessed accurately and consistently.

Most judges were flexible and often extended their answers to direct questions. As such, they provided additional commentary and clarifying views on the matters discussed. Responses and feedback were useful for modifying future interview questions for the judges who had not yet been surveyed.

**Analysis of court documents.** Content analysis is used to examine text or images of documents or research-generated texts, such as interview transcripts. This type of analysis involves thematic categorization or coding and the frequency with which those codes appear. Content analysis offers several advantages to researchers (Yin, 1994). In particular, content analysis looks directly at communication via texts or transcripts; allows for quantitative and qualitative operations; provides valuable historical and cultural insights over time; allows closeness in the text, which can alternate between specific categories and relationships; and statistically analyzes the coded form of the text. This type of analysis can also be used to interpret texts for purposes such as the development of expert systems (knowledge and rules can be coded in terms of explicit statements about relationships among concepts). Further, it is an

unobtrusive means for analyzing interactions and it provides insight into complex models of human thought and language use (Creswell, 1998). This study included 17 interview transcripts from 17 judges studied for the content analysis (two 45-minute interviews per judge).

Document analysis can provide a wealth of data that ranges from the official to personal and from text-based to image-based. Documentary sources, other than primary legal sources (e.g., cases and statutes), are relatively under-utilized in empirical legal research, even though they provide a rich source of data (Creswell & Miller, 2000). Specifically, Creswell and Miller (2000) stated,

Documents, as the sedimentations of social practices, have the potential to inform and structure the decisions that people make on a daily and longer-term basis; they also constitute particular readings of social events. They tell us about the aspirations and intentions of the period to which they refer and describe places and social relationships at a time when we may not have been born, or were simply not present. (p. 74)

For many researchers (e.g., Bloch, 1992), documents provide evidence of policy directions, legislative intent, understandings of perceived shortcomings or best practices in the legal system, and agenda for change. Additionally, document studies are available locally, are inexpensive, and are grounded in the setting and language in which they occur. Documents are useful for determining value interest, positions, political climate, public attitudes, and historical trends or sequences, and they provide the opportunity to study trends over time. Finally, documents are unobtrusive.

The current investigation included 51 transcripts for analysis. Specifically, analysis of court documents was used to document and understand the legal aspects of the adjudication of domestic violence cases and to verify theoretical relationships. The researcher established that the meaning of information obtained through the analysis of court documents was reflected in various modes of information exchange, format, style, transcript context, and other nuances.

Additionally, the goal of the analysis was systematic and analytic. Although categories and variables initially guide analysis of court documents, no new theoretically related categories are expected to emerge during the analysis. Thus, the analysis of court documents includes pattern matching of relevant situations, settings, images, and meanings (Berelson, 1966; Flower & Hayes, 1984). Further, analysis of court documents is oriented to check, supplement, and supplant prior theoretical claims by simultaneously obtaining categorical and unique data for every case studied to develop analytical constructs that are appropriate for several investigations (George, Unwin, Howard, & Jacobs, 1979). Finally, data are often coded conceptually, so that one item may be relevant for several purposes.

Using multiple sources of evidence to increase the reliability and validity of data can be advantageous. Thus, observations and analysis of court documents (along with interviews; see Appendices) are likely to be more convincing and accurate because they are based on several sources of information and follow a corroborating mode. It can be said that crosschecking data from multiple sources helps provide a multidimensional profile of analytical activities in a particular setting. Merriam (1985) suggested,

Checking, verifying, testing, probing, and confirming collected data as you go, arguing that this process will follow in a funnel-like design resulting in less data gathering in later phases of the study along with a congruent increase in analysis checking, verifying, and confirming. (p. 206)

**Sampling frame.** The research began with visits to the 24th Judicial District Court in Jefferson Parish and the civil, municipal, and criminal courts in Orleans Parish. The site visit sample was developed through a purposive recruitment of the above-mentioned courts that adjudicate domestic violence cases. The researcher solicited judges to facilitate multiple interviews and courtroom observations. Thus, the researcher's selection criteria yielded a pool of potential sites.

Specific courts and judges in both parishes were selected with assistance from key informants from each court's system who considered the researcher's interest in a sample that would include diverse domestic violence court models and practices. The observations from the site visits reflected a snapshot of the courts (judges) at the time of data collection and daily practices and stated opinions of stakeholders of the courts may change over time, per their disclaimer.

Site visit data were recorded in two formats, an Excel file for information that was quantitative or categorical (e.g., staffing, case volume, and check boxes from the structured observation form) and a Word document for descriptions and discussion. Analysis involved generation of basic descriptive data from the Excel database and thematic coding of textual data.

The researcher's goal for qualitative data obtained from courtroom observations, interviews with the judges, and analysis of court documents was to identify themes and findings that emerged from a systematic analysis. The responses were synthesized across sites and sources. Within each theme, the researcher categorized the responses to detect meaningful differences across the role of courts and stakeholders.

**Data.** The research reports the results of a study from the 24th Judicial District Court in Jefferson Parish and Orleans Parish's civil, criminal, and municipal courts. The purpose of the research was to identify and describe judges' decision-making processes in adjudicating domestic violence cases and examine differences, if any, in these decision-making processes. The data were derived from semi-structured qualitative interviews that were conducted with 17 trial judges in the spring, summer, and the fall of 2011, and included non-participatory observations of court proceedings and a content analysis of court and file documents.

The judges in Orleans and Jefferson Parishes serve as general jurisdiction trial court judges. These courts handle both civil and criminal cases. Thirty judges from Orleans and Jefferson Parishes were asked to participate in this research and 17 judges (15 male; 2 female) responded favorably and indicated their willingness to be interviewed. The sampling focus and the unit of inquiry reflected the view that the study was exploratory (i.e., study of a smaller number of trials, total of 50) and descriptive (i.e., in-depth description of the behaviors of 17 judges) (Nader, 1997). Courtroom behaviors, role perceptions, and judicial decision-making when adjudicating domestic violence cases were analyzed. This study was based on a background of case law and discussions with judges about the questions particular to the courtroom cases observed or read in the available individual transcripts. Generic questions were asked using open-ended questions, which allowed the judges to explore the topics discussed in more depth (see Appendix C).

As part of the initial immersion in the courtroom, the researcher contacted the presiding judge of the court targeted for study. In these preliminary discussions, the researcher explained the focus and working model of the study, indicated why empirical knowledge about the decision-making process was needed, and stressed that the development of knowledge in this area could be useful to the court system (Kritzer & Krishnan, 1999).

During courtroom observations, the researcher became more field wise about the subject matter and began adapting preliminary interview questions to meet the in-depth research demands for studying judicial decision-making processes. From the literature, the researcher learned that such field flexibility is crucial for an effective field study (Blanck, 1991; May, 2001).

Gaining entry, trust, and cooperation of participants represent some of the most difficult aspects of field research (Lincoln & Guba, 1985). In stimulating the interest on the research matter, the researcher was fortunate to meet forward-looking members of the law enforcement community who agreed to speed the research and provide access to the field. The members of the law enforcement community served as strategic informants, collaborators, and guides to access the research setting. Thereafter, negotiations began with each participating judge concerning availability, time constraints, caseload, and accessibility to his or her courtroom (McCall, 1975).

**Creating categories.** Creating categories is the process of abstracting features that are most obvious from the vast detail and complexity of the data. For example, a chemist focuses not on water, but on H<sub>2</sub>O; stripping away the many connotations of the term to isolate those characteristics that are essential for analysis (Brooks & Warren 1976). Categories symbolize bits of data to relate theoretically to the wider analysis. On the one hand, the meaning of a category is connected to the bits of data to which it is assigned or to expressed ideas. Additionally, a category is something that evolves during the analysis. To make these decisions, the researcher chose a category and developed a set of criteria to decide when and where to assign the category to the data.

**Validity and reliability.** The purpose of corroboration is not to confirm whether perceptions are accurate or true of a situation, rather to ensure that the research findings accurately reflect the subjects' perceptions. Corroboration helps researchers increase their understanding of the probability that their findings will be seen as credible or worthy of consideration by others (Stainback & Stainback, 1988). Additionally, corroboration seeks to ensure that research findings accurately reflect the interviewees' perceptions.

Creswell and Miller (2000) defined validity as “...how accurately the account represents participants’ realities of the social phenomena and is credible to them” (p. 124). They also noted that procedures for validity include strategies used by researchers to establish the credibility of their study and work under the premise that validity refers not to the data, but to the inferences drawn from the data (Hammersley & Atkinson, 2007). Creswell (2003) added that validity is the strength of qualitative research; it is “...used to suggest determining whether the findings are accurate from the standpoint of the researcher, the participant, or the readers of an account” (p. 196-197). Further, Creswell (2003) provided a roadmap for the application of validity because of data analysis. Depending on the perspective of the researcher, data analysis may vary. Lincoln and Guba (1985) stated that validity should answer the main question of “how can an inquirer persuade his or her audience that the research findings of an inquiry are worth paying attention to?” (p. 290).

Validity refers to the accuracy of a measurement or the extent to which the instrument measures what it intends to measure (Creswell, 2003). In other words, validity is a measure of the extent to which the researcher has captured an accurate reflection of a phenomenon. Reliability refers to the extent to which the measurement procedure would produce the same data were it to be administered at a different time or by someone else (Kirk & Miller, 1986, p.41). Together, reliability and validity determine the extent to which the research, if done by someone else or in similar conditions, would lead to similar data (reliability) and whether the findings that flow from that data show an accurate reflection of the phenomenon being researched (validity). Sometimes, rather than using the concepts of validity and reliability, researchers prefer to address dependability and integrity, which are the same as trustworthiness. Researchers may also decide to determine the extent to which the research and its findings are free from bias, in

terms of the questions asked, methods used, data generated, triangulation, modes of analysis, and whether the evidence supports the findings. Determining whether a particular design rules out threats to internal validity, Cook and Campbell (1979) suggested that “estimating the internal validity of a relationship is a deductive process in which the investigator has to systematically think through how each of the internal validity threats can be ruled out” (p. 55). Threats to external validity include (1) testing effects, (2) selection bias, (3) reactivity or awareness of being studied, and (4) multiple-treatment interference. These threats are greater for experiments conducted under more carefully controlled conditions (Maxfield & Babbie, 2010). The best methods for assessing threats to external validity are replication or the repetition of experiments or studies using the same methodology. By replicating key findings, researchers can be confident that the results observed in one study may not be due to external validity threats. A key example of replication occurred in the late 1980s when the Minneapolis Domestic Violence Experiment was replicated in six cities throughout the United States (Sherman, Schmidt, & Rogan, 1992). These replications yielded similar and contradictory conclusions to those observed in the initial experiment.

Upon completion of data collection for the current study, the researcher submitted the results to the principal participants. This was done for several reasons: an additional check on the external validity, to obtain final clearance for publication, to check for errors of fact (e.g., listings of charges, verdicts, and sentences), and to avoid disclosing information that could be harmful if published in an undisguised form.

Because issues of validity and reliability are an important part of any research, it is essential to identify ways to ensure that results are reliable. To accomplish this, the researcher



balanced the results of the coding from analysis of court documents, observations, and interviews for each of the noted categories.

**Triangulation.** One process that is involved in corroboration is triangulation, which is a process of verification that increases validity by incorporating three different viewpoints and methods (Denzin, 1978). Mathison (1988) noted, “triangulation has arisen as an important methodological issue in naturalistic and qualitative approaches to evaluation to control for bias and establish valid propositions because traditional scientific techniques are incompatible with this alternate epistemology” (p. 13).

Sevigny (1977) called the combination of the aspects of triangulation a sociological process of viewing a situation from all three perspectives. Denzin (1978) also identified several types of triangulation: convergence of multiple data sources; methodological triangulation, which involves the convergence of data from multiple data collection sources; and investigator triangulation, whereby multiple researchers are involved in an investigation (cross-examination of data). The researcher performed all three triangulation methods suggested by Denzin (1978) to establish the validity of the current research.

Triangulation is a method used by qualitative researchers to check and establish validity. The researcher used data, theory, and methodological triangulation during the research. Data triangulation involves the use of different sources of data and information. A key strategy is to categorize each stakeholder of the research. The researcher triangulated data by looking for outcomes that stakeholder groups agreed. The weight of evidence suggests that if every stakeholder who looked at the issue from different points of view saw the same outcome, then it is more than likely to be a true outcome.

Triangulation theory involves the use of multiple professional perspectives to interpret a single set of data or information. This method typically entails using professionals outside of the researcher's field of study. Another productive approach was to bring the researcher's dissertation committee together, as they are from different disciplines and could bring different perspective to the research. Therefore, if each evaluator from different disciplines interpreted the information in the same way, then validity was established. Methodological triangulation involves the use of multiple qualitative methods of study. If the conclusions from each of the methods are the same, then validity is established. The researcher used interviewing, observation, document analysis, and analysis of court documents; therefore, if findings from these methods drew the same or similar conclusions, then validity would be established.

### **Ethical Considerations**

Ethical issues in qualitative research are related to the nature of qualitative or field methodology, which usually includes long-term and close personal involvement, interviewing, and non-participant observation. The researcher's responsibility to participants includes ensuring confidentiality, reciprocity, and feedback of results. To ensure confidentiality the researcher did not report private data that identified a participant directly. Reciprocity may also entail providing informal feedback. Reciprocity fits within the constraints of research and personal ethics and within the framework of maintaining one's role as investigator. Participants received feedback on research results in the form of recognition and gratitude for their participation.

The researcher confronted ethical decisions at every stage of the project. These ethical considerations were made explicit via the research contract and provided guidelines for participants to evaluate the methods and results of the research (Sjoberg & Nett, 1968). The

participation of judges in this research was voluntary and could be terminated at any time. During the non-participatory observation stage of the research, the researcher was confronted with the possibility that her presence in the courtroom might affect the defendant's rights or trial outcome or, perhaps, even disturb the naturally occurring expectancy effects (positive and negative) in the courtroom setting (Skolnick, 1975). To address these ethical issues, the researcher attempted to ensure that each research participant was given equal attention and that the researcher was careful not to identify with any particular judge, attorney, or defendant. The researcher emphasized the ethical principle of respect for research participants and ensured that her actions respected the autonomy, integrity, privacy, and dignity of individuals (Adair, 1973; Creswell, 2009).

## **Data Analysis**

### **Data Processing**

Analysis refers to the breaking down of data into pieces and then connecting it together (Bohm, 2011). The word derives from the prefix 'ana' meaning 'above' and the Greek root 'lysis' meaning 'to break up or dissolve' (Bohm, 2011; p. 125). Analysis is a process of dissolving data into its basic components to make known its characteristic elements and structure. Without analysis, we would have to rely entirely on impressions and intuitions about the data as a whole.

In the current study, data analysis began during interviews and observations and continued through transcription when recurring themes, patterns, and categories started to develop. From the written documents, or records, the analysis consisted of coding data and identifying the main points or structures. Data reduction also included quantification, or some

other means, of data aggregation and reduction, including the use of data matrices, tables, and figures (Denzin, 1978).

Qualitative data are explained after the researcher explores the data by reading through the information. In this study, the researcher memorialized ideas and data while thinking about how to organize the data (transcripts, court documents, and photos). The researcher also coded the data, developed a description from the data, and defined and connected interrelating themes.

Following this process, the researcher preliminarily organized and identified themes by constantly comparing the data (Constant Comparative Analysis). The researcher gave themes or categories names, such as ordinary themes, unexpected, hard to classify, and major and minor themes. This was followed by providing a visual data display using a comparison table or matrix. Additionally, connecting the importance of themes or findings is crucial because it is an attempt to link themes to larger theoretical and practical issues. However, generalization to populations is not appropriate or desirable in most case studies. Further, the researcher made comparisons with the literature and interpreted the data in view of past research to show how findings support and contradict prior studies. The researcher also offers limitations and recommendations for the future research, which is included in the final section of this dissertation.

Following the data collection process, the researcher developed a working model to link the method of study and theoretical interest (Creswell, 2003; Sjoberg & Nett, 1968). The model identified the characteristics necessary to better comprehend a systematic understanding of judicial decision-making behaviors (Posner, 2003), which was used as a methodological guide.

**Background characteristics.** Background variables included gender, social status, education, ethnicity, intellectual ability, criminal history, and other such historical variables.

Although many background variables have no direct legal bearing on the guilt or innocence of the defendant in a trial, they have been found to influence judges and jurors' decision-making process in the trial (Wasserman & Robinson, 1980). The researcher fully explored the influence of these extra-legal factors on judges' styles of decision-making during the interview process.

**Expectancy factors.** Judges' decisions, or rulings, in a trial were examined to determine the decision-making processes of judges. The relationship between a judge's expected decisions in a trial and the actual outcome of that trial is an example of an expectancy effect if a judge's expectations affected his or her behaviors. Although judges can develop their decision-making behaviors for trial outcomes throughout the course of a trial, the researcher's preliminary findings were based on the discussions specific to participating judge.

Such archival data were easily accessed because trial outcomes, judgments, and sentences are available in the public records. The information gathered enabled the researcher to describe and analyze differences in the judges' behaviors and included defendants' criminal histories, judges' beliefs for trial outcomes, and actual verdicts, sentences, or rulings.

**Data description.** Description was the starting point of the current analysis. Through this analysis, the researcher was able to obtain a correct reading of the data. The researcher moved forward from an original explanation through the process of analyzing the data to determine how parts were connected. Thereafter, the researcher split, or classified, the data. The concepts used by the researcher to classify the data and its connected parts comprised the make-up of the data description. Of note, the backbone of qualitative analysis relies on data description, which has become known as a thick description (Denzin, 1978; Geertz, 1973). Denzin suggested that a thick description includes information about the context of an act, the intentions, and meanings that organize action, and its subsequent evolution (Denzin, 1978).

**Context.** Context is a re-occurring theme in a qualitative analysis that situates the action within the period of its social and historical network and relationships (Creswell, 1998). More specifically, context can be seen as a key to meaning because meaning can only be conveyed correctly if the context is understood. Additionally, communication, in general, involves inferring meaning from the context in which it occurs (Sperber & Wilson 1995). The researcher's given context was 17 judges who adjudicate domestic cases in Orleans and Jefferson Parishes.

**Process.** Qualitative research demonstrates how individuals interact in social situations (Creswell, 1998). The qualitative data were produced and collected through this research (over a one-year period) consisted of courtroom participant observations, interviewing judges, and analysis of court documents. These methods produced data that helped clarify the interactions and interconnections between actions and consequences. The data collected were descriptive of the social relationships and interchanges, which took place in the succession of actions and events in which the actors were engaged.

**Classification.** Interpretations and explanations are the responsibility of the analyst whose task is to develop a meaningful and adequate account of the research; the data merely provides a basis for the analysis, it does not dictate the analysis (Burgess, 1982). The researcher constructed a conceptual framework through which an explanation of actions or events became possible. Without data classification, the researcher would not know what she or he was analyzing and it would not be possible to explain comparisons between the data. Additionally, data classifications promote conceptual foundations upon which interpretations and explanations are based. In sum, the researcher classified the data to develop a connectional foundation analysis, which included categorization and retrieval of data based on a data comparison, and

defining and re-defining categories for the conceptualization.

Table 1

*Coding Data (Tesch, 1990)*

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1. Get sense of whole: Read all carefully.
  2. Pick one document “What is its underlying meaning?” Write thoughts and themes in the margin.
  3. Do this for several informants; Cluster together similar topics; Arrange major topic into unique topics, leftovers.
  4. Revisit data with topics; Abbreviate the topics as codes; Re-analyze. Do new codes emerge?
  5. Turn topics into themes.
  6. Reduce number of themes by grouping similar themes.
  7. Diagrammatize the basics of 5 & 6 above.
  8. Finalize abbreviations-alphabetize codes.
  9. Perform preliminary analysis on material belonging to each theme.
  10. If necessary, recode existing data.
- 

**Coding and developing category systems.** Coding refers to marking the segments of data with symbols, descriptive words, or category names (Creswell, 1998). After the researcher transcribed the data, all data were divided it into meaningful analytical units (i.e., segmenting the data). When the researcher located meaningful segments, she coded them accordingly. The researcher continued this process until all segments of the data received initial coding. During the coding process, the researcher used a master list of all codes that were developed and used in the study. In turn, codes were reapplied to new segments of data each time an appropriate segment was encountered.

When coding, Bryant and Charmaz (2010) noted that the researcher should address the following questions about the data,

- What is going on?
- What are people doing?
- What is the person saying?
- What do these actions and statements take for granted?
- How do structure and context serve to support, maintain, impede, or change these actions and statements?(p. 94-95)

The researcher coded the data according to Strauss and Corbin (1990). Specifically, the researcher examined word repetitions for commonly used words. The validity of qualitative research increases when multiple codes are used and when high “inter” and “intracoder” reliability is obtained. Additionally, the researcher must ensure that intercoder reliability is consistent among different coders and that intracoder reliability is consistent within a single coder. The following section provides the results and discussion of the observations and judicial interviews.

Table 2

*Coding Process* (Creswell, 2003)

Read text data	Divide text into segments of information	Code segments	Reduce Codes	Collapse codes into themes
Many pages of text	Many segments of text	30-40 codes	Codes reduced to 20	Codes reduced to 3-5 themes

**Summary**

The researcher conducted 51 courtroom observations, reviewed 50 court cases, and reviewed 17 judicial interviews from the 24th Judicial District Court in Jefferson Parish and civil, municipal, and criminal courts in Orleans Parish. These observations and interviews offered insight into the decision-making process of judges who adjudicate domestic violence cases. Extraction of themes stopped at the point of saturation where no new themes were identified, this is also known as theoretical saturation (Strauss & Corbin, 1990). The following section reports the data analysis and results, and offers a discussion of the major themes of judicial decision-making processes.



## **Analysis**

Following data collection and coding, via courtroom observations, judicial interviews, and review of court documents, the researcher conducted a thorough analysis via pattern testing. This analysis allowed the researcher to identify patterns in the decision-making processes of judges based on various factors. Testing for pattern matching included matching an observed pattern (a pattern of measured values; such as a process of adjudicating a domestic violence case in the courtroom) with an expected pattern (the theories of adjudication with respect to how judges make adjudication decisions in a domestic violence case or new patterns not previously accounted for).

Campbell (1966) coined the term “pattern identification” or “pattern matching” as a holistic characteristic of qualitative analysis, which involves analyzing the pattern rather than atomistic view, which analyzes its constituents. He argued that the single case study design could create a strong argument in favor of a theory if an entire set of expectations deduced from that theory (which together would represent an expected pattern) could be shown to be true in that case (Campbell, 1966). Practically, a pattern is any arrangement of objects or entities. The term arrangement is used to indicate that a pattern is, by definition, non-random and at least potentially describable (i.e., decisions of judges who adjudicate domestic violence cases in Orleans and Jefferson Parishes).

All theories imply some type of pattern; however, theories and patterns are not the same. In general, a theory postulates structural relationships between key constructs, which can be used as the basis to generate patterns of predictions. For instance, by knowing the theories of adjudication in jurisprudence, the researcher can describe how each theory has a pattern that links key constructs for whether a judge makes his or her decisions based on precedent

(formalism) or personal opinions (attitudinal theory). Theory might originate from a formal tradition of theorizing, from ideas or “hunches” of the researcher, or from some combination of the two.

Conceptualization tasks involve the translation of ideas into a specifiable theoretical pattern. The collection or organization of relevant operationalization (i.e., relevant to the theoretical pattern) is known as the observational pattern (Maykut & Morehouse, 1994). Here, the most important task involves the attempt to relate, link, or match patterns. The extent to which patterns match allows the researcher to conclude that the theory and any other theories that might predict the same observed patterns (adjudicating occurrence) are supported. An explanation of a new theory could also arise from newly identified patterns.

Theoretical pattern matching is what is expected in the data. The major benefit of this approach is that it encourages the use of more complex or detailed data. Overall, pattern matching tells a researcher whether there is a demonstrable relationship and that what is theoretically expected will connect to what occurs in practice.

The following section discusses the primary structure of the Louisiana court systems, which includes district, parish, and city courts. Within these courts, elected judges adjudicate domestic violence cases. This section also offers a discussion of the physical characteristics of the various courtrooms observed. Finally, specific characteristics of adjudicating domestic violence cases in Orleans and Jefferson Parishes are discussed.

## Chapter 5

### Setting

**Brief Overview of the Structure of the Louisiana Court System**At the appellate level, the Louisiana court structure consists of a Supreme Court and five intermediate appellate courts. At the trial court level, Louisiana courts include those of general, special, and limited jurisdiction. Finally, at the trial level, within the district court (with some exceptions), is the trier of fact that exercises general jurisdiction within an individual parish (single parish judicial districts) or within several parishes (multi-parish judicial districts). In Orleans Parish, the district court is divided into civil and criminal district courts that function separately. Special jurisdiction courts include four juvenile courts and the Family Court of East Baton Rouge Parish; these courts have exclusive original jurisdiction over specific types of cases. For example, the juvenile courts handle matters that relate to juveniles, while the family courts deal with issues such as adoptions, divorces, and child custody. Further, city or parish courts are the principal trial courts with limited jurisdiction.

Jurisdiction of the 46 city courts, outside of Orleans Parish, parallels that of the district courts, (except that the amount in controversy must be below a specified threshold). Additionally, the city courts' criminal jurisdiction is limited to misdemeanors. Functions and duties of the limited jurisdiction courts, in Orleans Parish, are similar in structure to the civil and criminal district courts. For example, the First and Second City Courts handle civil cases, while the municipal court handles criminal cases with the omission of traffic violations, which are handled by a separate traffic court. In 1964, the parish court began operations in Jefferson Parish. This court has limited jurisdiction and is similar in jurisdiction and structure to city courts located outside of Orleans Parish (Louisiana State Bar Association [LSBA], n.d.). The

First and Second Parish Courts of Jefferson have parish wide jurisdiction. Since the beginning of the parish courts, many small towns and villages have established mayor's courts, which are trial courts that have jurisdiction over violations of municipal ordinances.

**District court jurisdiction.** Louisiana has 63 district courts in the 40 judicial districts outside of Orleans Parish; one court located in the government center of each parish. These district courts are trial courts with general jurisdiction. Among these courts, 170 district court judges are elected to six-year terms. Conversely, in Orleans Parish, the district court is divided into civil court, with 14 judges, and criminal court, with 10 judges and 1 magistrate judge. As with the courts located outside of Orleans Parish, these judges are elected for six-year terms. Overall, district courts have jurisdiction over all matters within their territorial limits. However, there are exceptions in Orleans Parish and the 1st, 19th, and 24th Judicial Districts where family and juvenile courts have exclusive jurisdiction over specified cases. In addition, in Orleans Parish, violations of municipal ordinances are tried in municipal and traffic courts.

**Parish courts.** The First Parish Court for the Jefferson Parish maintains a territorial jurisdiction that includes the area of Jefferson Parish east of the Mississippi River. The jurisdiction of parish courts is similar in function to that of city courts (LSBA, n.d.). With respect to criminal offenses that are punishable by a fine of \$1,000 or less, imprisonment not exceeding six months, or both, parish courts have criminal jurisdiction that is concurrent with district courts (LSBA, n.d.). Additionally, the civil jurisdiction of parish courts coexists with district courts in cases with amounts in controversy of up to \$20,000. However, parish courts do not have jurisdiction over matters that involve (1) divorce, annulment of marriage, alimony, and separation of property; (2) the state, parish, municipal, or other political subdivision as a defendant; (3) claims of title to real estate; (4) election contests; (5) the plaintiff asserting civil or

political rights under federal or state constitutions; (6) succession, interdiction, receivership, liquidation, *habeas corpus*, and *quo warranto* proceedings; or, (7) juvenile cases (this limitation is specific to Jefferson Parish) (LSBA, n.d.). Any case that is tried that a parish court and appealed will go to the courts of appeal.

**City courts.** As of 2012, there were 46 city courts in Louisiana, excluding those located in Orleans Parish (LSBA, n.d.). Presiding over these courts are 56 judges who are elected for six-year terms and have the same qualifications as a district court judges (LSBA, n.d.). The courts in Orleans Parish are divided into the First and Second City Courts (civil jurisdiction), a municipal court (misdemeanor except traffic), and traffic court. Four judges preside over each of city, municipal, traffic courts, respectively. Orleans City Courts have jurisdiction over the following,

- (a) criminal offenses not punishable at hard labor including violations of parish and city ordinances, state DWI cases, peace bonds and preliminary examinations in non-capital cases; and (b) civil cases when the amount in dispute, or the value of the property involved, ranges from \$5,000 to \$20,000, except for those matters in which parish courts have no jurisdiction, and also except for tutorship, curatorship, emancipation and partition proceedings. (LSBA, n.d., para. 25)

City courts also exercise juvenile jurisdiction except where separate juvenile courts, with exclusive original juvenile jurisdiction, have been established.

As discussed, the Louisiana court system includes district, parish, and city courts. The structure of the court system in Louisiana is important to gain a better understanding of judicial socialization. The following section will discuss the dynamics of judicial socialization within this system. This discussion is illuminated with quotes from interviewed judges who shared their thoughts and insight into this unique network of professionals.

## **Organization of the Court: Jefferson Parish: The Twenty Fourth Judicial District Court**

**Domestic cases.** In the 24th Judicial District Court, domestic cases are randomly allotted to all divisions in the same manner as civil cases. Domestic cases consist of,

All domestic actions, which involve separation, divorce or annulment proceedings; and all issues, which are ancillary thereto; All child related actions in marital and non-marital domestic cases and all issues ancillary thereto, except as provided herein; All civil domestic protective orders issued including actions filed pursuant to The Domestic Abuse Assistance Act, The Post-Separation Family Violence Relief Act and Uniform Abuse Prevention Orders; All actions filed seeking to have a foreign judgment or order, or judgment or order of any other judicial district of this state, recognized and enforced which are described within these rules.

The 24th Judicial District Court has jurisdiction over all civil and criminal matters in Jefferson Parish, with the exception of certain juvenile matters. Additionally, the 24th Judicial District Court has appellate jurisdiction of appeals from all city courts in Jefferson Parish. Specifically, there are 16 elected court divisions within the district court system. Additionally, a Criminal Commissioner's Court, a Domestic Commissioner's Court, and four hearing officers work with domestic violence cases.

The 24th Judicial District Court is located in the Thomas F. Donelon Building, previously known as the Annex Building to the Jefferson Parish Courthouse. The address is 200 Derbigny Street, Gretna, LA 70053. The Annex Building was originally built in 1969 and, following the addition of three stories in late 1970s, the court building housed the Louisiana 5th Circuit Court of Appeal and the Jefferson Parish District Attorney's Office. In the early 2000s, the 5th Circuit and the District Attorney's Office moved into its own buildings. The Annex was completely renovated from October 2004 to January 2007.

The first judge for the 24th Judicial District Court was L. Robert Rivarde, who took the oath of office on December 22, 1924. He was the only district judge in the parish until August 1, 1944, when a second division of the court was established and Leo W. McCune took his oath of

office. As the parish's population grew, the court increased the number of divisions to its present number (Twenty-Fourth Judicial District Court, 2008).

The 24th Judicial Court has four Offices of the Commissioner for the Twenty-Fourth Judicial District Court. The language of LRS 13:717 states,

There are hereby created four Offices of Commissioner for the Twenty-Fourth Judicial District Court, (b) The commissioners shall be selected by a majority of the judges of the Twenty-Fourth Judicial District and may be removed from office by a majority of those judges, (c) One of the commissioners shall have jurisdiction over civil matters involving domestic relations and family law only, one commissioner shall have jurisdiction over criminal matters only, and one commissioner shall have jurisdiction over domestic relations, family law, and criminal matters.

All matters prearranged to the domestic docket are heard by the district judge to whom the case is allotted 30-45 days from the filing date unless the matter is resolved before the domestic commissioner or the domestic hearing officer, as provided for in these rules. The domestic docket may be commingled with other dockets. .

**Description of the 24th Judicial District courtrooms.** The style and configuration of the courtrooms are typical of a trial court wherein the presiding judge sits behind an elevated bench and oversees the entire proceeding. The short partition wall or the "bar" separates the audience seating area from all other official functions of the court. As expected, all other components are positioned on the other side of the "bar" opposite of the spectator seating area with a jury box, the witness stand, defense counsel/defendant's table, plaintiff/prosecution table, and the attorney's podium. Furnished in dark oak, the courtroom is a spacious and impressive modern day state-of-the-art facility.

**Appointment of domestic commissioners.** The 24th Judicial District Court, pursuant to La. R.S. 46:236.5 established the position of domestic commissioner. One commissioner has jurisdiction over criminal matters only, one commissioner has jurisdiction over domestic

relations and family law only, and one commissioner has jurisdiction over domestic relations, family law, and criminal matters. One criminal commissioner and one domestic commissioner are on magistrate duty on a weekly basis. The criminal commissioner on duty assumes the duties of signing search warrants, arrest warrants, setting bonds, and committing magistrate. The domestic commissioner on duty assumes all domestic duties.

According to one judge's account, the job of the domestic commissioner has changed substantially with the implementation of the pilot program (for domestic issues): "The new systems eased my workload; it is as effective for me as for the litigants. No long wait time, experienced hearing officers and commissioner. No doubt this system works and functions well." Additionally, the domestic hearing officers now handle most non-abuse rules that the domestic commissioner previously heard.

**Appointment of domestic hearing officers.** The 24th Judicial District Court, pursuant to La. R.S. 46:236.5 also established the position of domestic hearing officer. One or more domestic hearing officers (depending on the current contract) is appointed by the 24th Judicial District Court en banc and serves at the pleasure of the court. Originally, during the trial pilot program, domestic hearing officers were permitted, statutorily, to hear paternity issues when an action was brought by the State of Louisiana in cases that involved mothers who were eligible for state aid and services. As such, it appears that most domestic hearing officers were used to hear child support matters (Trammell, 1996). Trammell (1996) stated that the hearing officer's role is to "hear support and paternity cases in an expeditious fashion, make detailed findings of fact and recommendations to the district court for judgment, and generally speed the process and take workload from the judges" (p. 20). If parties do not seek a rehearing within a certain period, the officer's recommendations become final. It is also significant to mention that domestic



hearing officers who make recommendations on support and paternity issues do not actually hold evidentiary hearings or hear testimony. Additionally, no court reporters attend and no witnesses are sworn. Thus, the term “domestic hearing officer” can actually be misinterpreted as indicating that domestic hearing officers, who process domestic issues, actually hold evidentiary hearings. However, this is not the case. In 2003, the statutory responsibilities of domestic hearing officers in domestic relations cases expanded. In addition to hearing paternity cases that were brought by the State of Louisiana (support and support-related matters), the 2003 amendment to Title 46, Section 236.5 permitted domestic hearing officers to hear any “domestic and family related matters” (371 and 372 and Code of Civil Procedure Articles 3601 et. seq.) that involve person abuse, terrorizing, stalking, or harassment. Enforcement of orders in any of these matters, include contempt of court. As such, this statute was amended as follows,

Domestic and family matters shall include divorce and all issues ancillary to a divorce proceeding; all child-related issues such as paternity, filiation, custody, visitation, and support in non-marital cases; all protective orders filed in accordance with R.S. 46:2131 et seq., R.S. 46:2151 et seq., and the Children’s Code and all injunctions filed in accordance with R.S. 9:361, 371, and 372 and Code of Civil Procedure Articles 3601 et. seq., which involve person abuse terrorizing, stalking, or harassment; and enforcement of orders in any of these matters, including contempt of court. (LA. R. 24TH DIST. CT RULES 22-39 (2005))

Nevertheless, domestic commissioners, not domestic hearing officers, in the 24th Judicial District Court issue protective orders and injunctions that are filed in domestic or family violence cases or that are brought under the Children’s Code. The position of hearing officer was created to facilitate an expedited process to handle domestic matters, including divorce and all issues ancillary to a divorce proceeding pursuant to La. R.S. 46:236.5. According to LA. R. 24TH DIST. CT. Rule 23(E)(5), domestic hearing officers act as finders of fact and make written recommendations to the Court concerning any domestic matters including but not limited to

(1) All issues, which are ancillary to a domestic proceeding, including but not limited to: (a) use and occupancy of movables and immovables; (b) establishment, modification and method of collection of spousal support; (c) injunctive relief, except domestic abuse issues; and (d) community property.

(2) all child related actions in marital and non-marital cases, except issues concerning emancipation of minor children, domestic abuse and non-emergency UCCJA34, including but not limited to: (a) establishment, modification and method of collection of child support; (b) hear all stand alone non-support matters; (c) establishment, modification and enforcement of child custody and visitation; contested and uncontested paternity issues; and (3) contempt.

According to LA. R. 24TH DIST. CT. Rule 23(E)(5), domestic hearing officers are not allowed to hear issues concerning emancipation of minor children, domestic abuse issues, and non-emergency Uniform Child Custody Jurisdiction Act (UCCJA) issues.

**Structure discussion from the court observations and interviews.** During a court break, several lawyers discussed the “system not being effective.” Specifically, they noted that their clients should not be forced to go back to the hearing officer after a continuance with the trial judge or after a custody evaluation. These members were assertive that if a party has attended a Hearing Officer Conference (HOC) once, the party should not have to return to a HOC. Their disagreement was that there should not be an additional “hearing” with the same hearing officer on the same matter. For example, the parties at one hearing disagreed about the custody evaluation and the selection of experts to testify. Rather attorneys “wanted” the hearing to be set by a judge instead of going back to the hearing officer. In response, judges gave their opinion of the Domestic Early Intervention Triage Program in their court as “This system is great advancement” and “it is quick and very effective.” Another encounter during the courtroom observations was the attorney being frustrated with the “expedited” system saying, “there is no consistency among the domestic hearing officers. Each hearing officer has his or her own ways of handling cases and writing up their suggestions and recommendations.” The district judge, to who this hearing officer “belonged” stated,

The domestic hearing officers are extremely effective and efficient. They would spend as much time as necessary to study the problem and give their recommendation. The clients are happy and we are happy, as it lessens our workload.

Another account was as follows, “the system is quick and people are able to receive relieve faster in child support and in visitation-related matters.” Several judges also addressed the fact that the new system “gave them a lot of extra time on the docket,” while other judges mentioned, “Litigants decrease attorney expenses, and find quicker resolutions.”

From my personal observation, one issue in such hearings was that there is no official record in the HOCs because no witnesses are under oath or questioned. One lawyer saw this as problematic because “domestic hearing officers make their recommendations on the representations of lawyers and their clients who are not under oath” as well as such “discussions or suppositions” during the meeting that are put on the record for the judge to consider all the facts. As in many cases, the domestic hearing officers’ recommendations are, in effect, the final hearing officer’s judgment. One attorney argued the following

The system with a hearing officer has no real testimony and, if tried beyond the hearing officer, the trial judge never gets to adjudicate the case. But, the cases are settled or ‘written’ in recommendations by the hearing officer ‘without full considerations of the testimony.’

Another interesting point is that, if the parties decide to change counsel, there is no absolute “recreation” of the discussion from the previous transcripts concerning which “swim or sink” for further adjudication of the case tried in the district court, if the previous attorney was not present. If a party does not agree with a domestic hearing suggestion, they have the right to request a hearing with a commissioner or a district judge *de novo*. This process requires a “new” type of district judge and additional expenses on the party for a new litigation process. Specifically, a trial *de novo* means a trial anew or from the beginning (Pardue v. Stephens, 1989). If litigants are granted a hearing *de novo* after an objection has been filed to the domestic hearing

officer's recommendations, litigants are granted their right to a decision by an elected judge as is guaranteed by article V, section 22 of the Louisiana Constitution (Duronclet v. Doley, 1988). Being granted a hearing *de novo* (when a court hears a case *de novo*, or a new trial, means that it will decide the issues without reference) reverses the decision of trial court because it does not hold a hearing *de novo* after a party objects to the recommendation of a non-elected civil court commissioner. Another judge admitted that he believed that the new system worked best because "hearing officers have more expertise in domestic matters than do judges, whose domestic violence training is not mandatory." Another judge stated, "I am satisfied with their decision-making process; it makes my job much easier."

### **Organization and Description of the Court: Orleans Parish Courts**

**Orleans Parish Civil District Court.** The judges of Orleans Parish Civil District Court are elected to a specific division of the court and cases are allotted to sections rather than to divisions of court. Upon filing the first pleading, a case is randomly prearranged to section 5 through section 16 (non-domestic cases) or to a domestic relations section. Cases previously assigned to a division succeed to the domestic relations section. The Clerk of Court publishes, in the Clerk's Office, the assignment of case sections to particular divisions of the court. Further, each division handles assigned section cases until a change in the assignment of cases is made in accordance with the Allotment Rule.

**Orleans Parish Criminal District Court.** Constructed in the 1930s, Orleans Parish Criminal Court is an impressive example of Roman architecture with massive fluted columns. The building has had a variety of internal renovations over time, but the exterior is in near original condition and is sound in appearance and structure. The courtrooms have high ceilings and rooms are configured in a traditional trial court floor plan. Located in proximity to Orleans

Parish Prison, the building remains a functional focal point of the criminal justice system.

There are 13 sections of the court (known and designated as Sections A, B, C, D, E, F, G, H, I, J, K, L, and M, and the Magistrate Section), which are presided over by elected or appointed judges and by their successors in office. Each judge is known and designated as the Judge of the Section over which he or she presides. Additionally, four commissioners are appointed by the judges of the Criminal District Court. These judges have the authority and jurisdiction to discharge all duties and functions as judge of another section of the court. When a judge of this court is absent, all judicial matters, including bail, are heard by the Judge of the Section next in the rotation according to the following schedule: A to B, B to C, C to D, and thereafter, with L to A. The Magistrate Section is not included in the rotation schedule. However, the judge may designate any court to hear matters while he or she is absent, which refers to a judge who is not sitting that day or is not available to act as judge.

The courtrooms have medium dark wooded interior with mild lightning and classic design, which symbolizes the decorum of the early 19th century, and gives one the desire of having a law degree to practice in this courtroom. The capacity of the room is about 50 people, according to the sign outside the courtroom. At the time of observation, there were about 12 people, including witnesses and the family. The judge arrived and asked if everyone was ready to proceed.

**Orleans Parish Municipal Court.** Cases heard in municipal court include violations of motor vehicle and traffic laws; violations of disorderly and petty disorderly person's offenses; violations of Fish and Game laws, Parks and Forests, Weights and Measures, SPCA, and Boating Regulations; and violations of municipal ordinances (local laws) (see Table 3). The municipal court has only four judges, compared to the 12 (plus one magistrate) at the criminal district court.

According to one judge, “State law defines domestic violence narrowly, limiting its application to household violence against a child or an adult of the opposite sex.” The city code has a broader definition, covering gay and lesbian couples, stalkers, and violence against parents by children.

Municipal courtrooms are located on the main floor of the Municipal Court building along with New Orleans Traffic Court. At the time of observation, the courtroom was crowded and it seemed that there were no available seats. It took about two and a half hours for the crowd to fade. In this courtroom, many people were in street clothing (no one was in a suit unless it was an attorney or prosecutor) and about 20 people were in orange Orleans Parish Prison jumpsuits and shackles who were escorted by the Sheriff’s Office deputies. Additionally, the courtroom felt as if the AC was not working. The décor has not been updated for at least 20 years and the carpet was grey and stained. The courtroom had low wooded pews and, in the back of the room, there was a glass see-through office and a copying machine. A New Orleans Police Department officer stood by the side of the wall and advised everyone that there should be no cell phone usage or talking in the courtroom. The judge juggled several things at the same time: discussing a matter with an attorney and the prosecutor, addressing several law clerks, what seems to be a search for documents on the computer, looking at a cell phone. The crowd became impatient and some complained that they were waiting for their turn for more than two hours.

Table 3

*Summary of Structure*

<b>Structure</b>	<b>Orleans Criminal</b>	<b>Orleans Municipal</b>	<b>Orleans Civil</b>	<b>24<sup>th</sup> Judicial Jefferson</b>
Handle DV cases	X	X	X	X
Assign judge	X	X	X	X
Assign Commissioner				
Assign hearing officer				X
Length of judicial office		all courts from 2 to 15 years on bench		
Receive DV training	X		X	
Commissioners receive DV training				X
Hearing Officers receive DC training			X (per hiring)	

\*\* 24th judicial district: starts cases allocation from hearing officer to commissioner

As detailed in Table 3, the primary characteristics of the various courts are identified and addressed in this chapter. Specifically, in Orleans Criminal and Civil Courts and Jefferson 24th Judicial District Courts, judges are assigned domestic violence cases and judges receive domestic violence training. The Municipal Courts are structured in a similar manner; however, there is no training in domestic violence. Of note, an Orleans Civil court does not implement the use of hearing officers who are training in domestic violence issues. Additionally, the Jefferson 24th Judicial District Courts implement hearing officers and commissioners receive domestic violence training.

### **Tension between Orleans Municipal and Criminal Courts**

This section includes judicial perspectives of Orleans judges regarding the transition of domestic violence cases in Orleans Parish, its current and historical adjudication management, peculiar adjudication within each court, and its successes and challenges. Most of the cases involving domestic violence are charged as misdemeanors, except those with exceptional circumstances, such as cases that are charged as aggravated battery (where the weapon is used)

or second degree battery (where there is proof of serious injury such as a strangulation or a where the minor was present). Misdemeanor charges can be tried in both district and municipal courts; felony cases are only tried in district criminal courts. Additionally, the final decision of how a case will be tried depends upon the District Attorney's office. Domestic violence cases are commonly charged as felonies by law enforcement officers during an arrest and are later reduced to misdemeanors by the DA's office. Finally, Louisiana probation officers monitor convicted felony offenders.

Prior to the spring of 2009, in Orleans Parish, domestic violence cases were adjudicated in Municipal Court, as one judge put it, "with petty offenses like public urination." Another judge stated, "Before 2009, ninety percent domestic violence cases, including serious bodily injury" were booked as municipal charges, and "they were not treated as crimes." As one account indicated, "until last year, we had never seen these defendants spend a day in jail, unless they failed to pay a traffic ticket." Another judge noted, "I recall in 2009, there were about 2,000 domestic violence cases and, as far as I remember, the DA claimed that 80% of those were convicted in criminal court." This was after the change. Another account stated the following on this topic.

Judge 1: There have been about 3,000 domestic violence arrests made by New Orleans police, annually, in past year that were sent to Municipal Court. When they got there, more than half the cases were dismissed and of the ones that were not dismissed, the severest sentence was a 26-week anger management program.

One judge who was interviewed indicated that about 43,000 criminal charges were filed in New Orleans courts because of local police activity in 2011. Of those, over 30,000 were filed in municipal court and represent 71% of all cases brought by NOPD in 2011. The judge noted that municipal caseloads spiked in the beginning of 2012, when the District Attorney Leon Cannizzaro started prosecuting all stand-alone state misdemeanor cases in municipal court. A



stand-alone misdemeanor case is one in which a suspect has not also been charged with a felony. According to the judge, Cannizzaro's plan of moving misdemeanors to municipal Court would have allowed the DA and his staff to focus on complex felony cases; however, to date, this does not seem to be the case. A report released by the Metropolitan Crime Commission (MCC) shows that state felony dismissals actually increased during the first half of 2011, to 20% of all accepted cases — up from 14% in 2010 and 11% in 2009. One account from a member of the DA's office described this move.

DA's Office: We recognize that misdemeanors were languishing for months in state court. Municipal court judges move the cases through more efficiently. This is about increasing efficiencies everywhere. It deserves notice and recognition that the judges of municipal court have had their workload drastically increased in the past 12 months. They are doing yeoman's work there.

One account from a judge in municipal court stated that they are trying about 40% of the state's total docket in Orleans Parish in the light of the fact that the Municipal Court has 4 judges compared to the 12 judges and 1 magistrate at the Criminal District Court. According to one judicial account from the Municipal Court, the move had to "let go" of resources and personnel they had at the municipal court before the change, so when the cases came back, the municipal court had no financial resources and no program that ensured the cases were handled effectively.

From one of the judicial accounts, District Attorney Leon Cannizzaro believes that municipal court needs to sentence defendants to criminal district court's existing domestic violence monitoring court, though a judge from municipal court was certain that this type of the new system "will not work." The two judges said that their courts' distinct jurisdictions and separate financial structures make such an arrangement impossible. Additionally, placing the supervision of a defendant on probation to another judge would be an abdication of his responsibilities.

In 2009, Orleans Parish DA's office moved all domestic violence cases from municipal court to the criminal court with the purpose, as one judge put it, "to charge defendants under state domestic violence statute and put more of them behind the bars." Another judge stated, "That the domestic violence charge is not a joke anymore." In 2009, once domestic violence cases were moved to criminal court, law enforcement officers had to book these charges under state battery charges, rather under city ordinances in order, as one judge stated during an interview, to "encourage victim participation and put defendants behind bars before they commit more serious crimes." In the fall of 2011, however the District Attorney moved these cases back to municipal court, to which one judge strongly reported, "Now they cannot protect victims. No way. Criminal court has a \$3 million grant and municipal court does not." Another judge, addressing the transition of cases from municipal court to criminal court and back simply stated, "There is confusion here for all of us on how this transition will work without any budget." The judges from municipal court would prefer a hybrid system be put in place to assess the transition, "We would benefit from a hybrid court system that shares cases between the municipal and criminal district courts based on the seriousness of the crime and repeat offenders." Another judge addressed the effectiveness of the transition in the following way, "at least, if both courts, municipal and state, shared the same computer base data, it would make the transition better for the municipal court." One account showed the most effective structure to prosecute such cases, "My position is that cases of physical violence belong in state court." One judicial response on the same matter offered an explanation,

Judge 2: As a part of the shift of cases from criminal district court to municipal court, the municipal court has no staff to monitor defendants who come to municipal court. History shows that if high-risk defendants go unsupervised, some will injure or even kill their victims. It is a crisis. If we don't get some services, the loss won't be counted in dollars, it will be in lives.

Another judge stated,

Judge 3: I am not saying municipal court can't do a good job. But I'm disappointed that the victims won't be protected as much because there is no one to watch many of the defendants who can now walk into Municipal Court, pay a fine, and leave.

In sum, from one judicial account, District Attorney Leon Cannizzaro, who ordered the transfer of all misdemeanor domestic violence cases to municipal court in the fall of 2011, judges in municipal court should simply sentence defendants to criminal district court's existing domestic violence monitoring court. During the interviews, municipal court judges admitted, "That task is unworkable." A similar statement by one judge in the criminal court noted, "Distinct jurisdictions and separate financial structures make such an arrangement impossible." On the matter of unavailability of current resources, one judge said,

Judge 4: And probation staff isn't all the court is lacking to protect victims and monitor defendants. When we need to sentence defendants to wear ankle bracelets that track their whereabouts, we are told that the devices are reserved for criminal district court.

Still, another judge admitted, "There is no financial back up for prosecuting cases in municipal court. The grant criminal district court received cannot be transferred there; it was based on the standards for felony-level domestic-violence monitoring court."

According to the judicial account that was obtained during observations, in the January 2012 budget season, there were \$300,000 in cuts for municipal court and the court had to fire 12 people, which was more than 25% of its staff of 46 employees. As a result, the court was forced to handle a significantly heavier caseload. The judge from the municipal court also shared that the court's four judges were already handling the majority of criminal filings in New Orleans, yet the court received the smallest funding allocation and, in 2011; juvenile court received \$3.2 million and accepted about 1,600 cases (or about \$2,000 per case). This judicial account added,

Judge 5: The combined city allocations for the criminal district court and its clerk's office were \$6.4 million for 9,000 cases, or \$700 per case. That does not even account for the

court's judicial salaries, at \$136,000 each, that are paid for by the state. However, the municipal court received only \$1.7 million last year from the city and accepted more than 30,000 cases, which is less than \$58 per case.

### **Summary**

In summary, Orleans judiciaries' perspectives were as follows. The system where domestic violence cases return to municipal court was confusing and "unworkable," as summarized by one judges, "I think we're all trying to understand what the new system is and it's just not clear." The emphasis of creating a new hybrid court system that prosecutes domestic violence cases effectively was stressed by at least four judges in both municipal and criminal courts. However, one judge noted, "We would benefit from a hybrid court system that shares the cases between the municipal and criminal district courts based on the seriousness of the crime and repeat offenders." As of March of 2012, according to one judicial account, the municipal court adjudication process "is not able to effectively protect victims as they simply do not have resources, financial or staff." Additional accounts were recorded that illustrate the diversity of judicial opinions, in which court and procedures "handle" domestic cases most effectively in Orleans Parish.

## **Chapter 6**

### **Context of Judiciary**

This chapter addresses the context of judiciaries, in which all interviewed judges operate, regardless of their adjudication preference, such as formalism, skepticism, or realism. The chapter illustrates how socialization (gender and ethnicity), attitudes, values, roles behaviors, and orientations influence judicial decision-making process.

#### **Judicial Socialization**

Edison Haines suggested “judges are not born; they are the product of growth.” This quote speaks directly to the notion of judicial socialization, which is discussed in detail in this section. Specifically, the following section discusses the descriptive findings and includes judicial socialization. This section addresses the importance of race and gender in the judicial decision-making process. Findings also suggest that judges are influenced by Goldberg’s (1985) social, historical, normative, and institutional contexts.

Social research has developed the concept of socialization over time and has included several definitions and theories of socialization. Some approaches, as presented by Long and Hadden (1985), suggest the self develops because of social interactions. Therefore, socialization is highly dependent on the situations in which the actor finds him or herself. Socialization is also a process of attainment of appropriate norms, attitudes, self-images, values, and role behaviors. Given this meaning, socialization is a conservative force that permits the internalization of the social organization despite of the turnover of individual members through time

Long and Hadden (1985) defined socialization as “the medium for transforming newcomers into bona fide members of a group” (p. 41). The concept of socialization has traditionally addressed the problem of individual adjustment to society. Socialization, in one

way or another, refers to the idea that society shapes its members toward compliance and cooperation with societal requirements. Further, socialization is the process by which we become social human beings and learn group characteristics, norms, values, attitudes, and behaviours (Natrass & Glass, 1986; Varkey, 2003).

Scholars, such as Natrass and Glass (1986) and Varkey (2003), addressed the significance of judicial socialization to explain judicial decision-making. During the process of occupational socialization, judges learn the language of the culture and the roles they play within the judicial system. While being socialized to the position, judges learn, at varying degrees, to adapt to institutional norms within judicial institution. Cooley (1909) determined that all symbol-based interactions shape and form self, roles, becoming human, and socialization throughout life. In this research, the concept and explanation about judicial socialization will shed the light and address, from a sociological perspective, the process of judicial socialization in this sample of judges. As such, this chapter explores the influence of socialization on judges' decision-making processes.

In this project, demographic factors were identified among the 17 judges, including their gender, race (white or nonwhite), primary professional experience prior to becoming a judge (private practice, government, or other), law school education (elite: Tulane, Loyola or non-elite: LSU or other), and number of years on the bench. This study focused on judges from Orleans and Jefferson Parishes. In Orleans Parish, the researcher examined municipal court, criminal court, and civil court judges. Judiciaries from the Jefferson Parish included a representative selection from the 24th Judicial District Court.

Seventeen judges participated in this study, 15 judges were Caucasian males, 2 judges were females, 15 were graduates of private law schools, 17 attended law school

and had practiced law in Louisiana, and 13 had some prior judicial experience in criminal court. In addition, several interviewees had a history of extensive criminal practice and some had served briefly as assistant district attorneys throughout the course of their careers. All judges had been engaged in private civil practice for periods that ranged from 5 to 20 years and their bench experience ranged from 2 years to 25 years. During their years of civil practice, no judiciary reported being part of a “Wall Street” type of firm (a street in lower Manhattan that is the original home of the New York Stock Exchange. The street is the historic headquarters of the largest U.S. brokerages, investment banks, and law firms) before their judicial engagement. Goldberg (1985) suggested that judiciary interests are rooted in their social, historical, normative, and institutional contexts. Research has also found that the historical, normative, and institutional contexts influence the way some judges think and act about domestic violence.

The 15 judges who participated in this study were white men. Data on research participants frequently includes race, ethnicity, and gender as categorical variables, with the assumption that these variables exercise their effects through inborn or genetically determined biologic mechanisms. The body of the research addressed the above suggest that these variables have strong social dimensions and influence judicial decision-making processes in the adjudication of domestic cases. Thus, while interpreting the results of the research, it is important to acknowledge that the accounts represented in the research are dominant accounts of white male judges because the findings suggest that gender plays a role in decision-making processes. Therefore, this researcher examined the

decision-making styles and theories in the adjudication of domestic violence cases from a predominantly white male perspective.

Theories of white privilege suggest that whites view their social, cultural, and economic experiences as a norm that everyone should experience, rather than an advantaged position that must be maintained at the expense of others (Neville, Worthington, & Spanierman, 2001). The theory of white privilege may be seen as having its roots in the system of legalized discrimination that has existed for much of American history (Pulido, 2000). Williams (2004) wrote that many Americans who advocate a merit-based, race-free worldview do not acknowledge the systems of privilege that have benefited them. For example, many Americans rely on a social or financial inheritance from previous generations, which is an inheritance that is unlikely if one's ancestors were slaves. As such, whites have often been afforded opportunities and benefits unavailable to others (Faye, 2004). For example, in the middle of the 20th century, the government subsidized white homeownership through the Federal Housing Administration (Williams, 2004), which did not include homeownership of minorities. Some historians and authors, including Ignatiev and Brodtkin, discussed the historical trajectory from exclusion to acceptance of Irish and Jewish émigrés in the late 19th and early 20th centuries in terms of white privilege. At the end of the 20th century, there was a known system of advantage for white people in areas such as housing, salary, access to employment (especially to positions of power), access to education, and life expectancy (Farley, 1993).

The study of gender emerged as an important trend in the discipline of sociology in the 20th century. Research and theory associated with studying gender issues moved it from the



margins to the center sociological research. Although all group life is ordered in a variety of ways, gender is a key component to this ordering (Kimmel, 2011). Gender status is often stereotyped according to the traits an individual possesses by virtue of his or her biological makeup. For example, women have often been stereotyped as flirty and unreliable because they possess uncontrollable raging hormones that fuel unpredictable emotional outbursts. Compared to males, females are more likely to occupy a status inside and outside of the homes that is associated with less power, less prestige, and less or no pay. These beliefs about biological inferiority have been reinforced and used to justify discrimination of females. Additionally, patriarchy exhibits man-centered norms that operate through all social institutions and have become the standard to which all persons adhere (Kimmel, 2011). Sociologist Michael Kimmel (2011) described the culture that supports masculinity as a culture of entitlement, where men are raised to feel they deserve something; they feel entitled to power, sex, and women.

Geyh (1993) identified judicial socialization as a judge's educational and professional background upon which a judge may base his or her decisions concerning social factors such as affiliation. According to Geyh, when researchers analyze why and how judges make decisions, they must first consider the relationship of norms, discourses, identities, institutions, and the interrelations of judges within a socio-historic context (Geyh, 1993). The following statement illustrates the social historical context in judicial decision-making of judges who have been on the bench for more than 20 years, "Going way back to my law school years at X, we had no concept of 'domestic violence' cases. Once I became the judge, I started hearing them." From these interviews, we see a contrast where one judge addressed no interest in changing the system in relation to the adjudication of domestic violence cases, while another judge was unaware of

the “specialty” of such cases. Other historical judicial accounts are addressed in the following statements,

Judge 1: Historically, a domestic violence charge was heard in municipal court as a misdemeanor charge even though serious bodily injury was caused to a victim. I have seen too many of those. I look at it as a crime and as a jail sentence.

Additional historic, as well as current accounts, were recorded. These accounts illustrate the diversity of judicial opinions, in which court and procedures handled the domestic cases most effectively in Orleans Parish.

From a historical context, opinions indicate an understanding of changes that have taken place with the severity, level of awareness, and laws for domestic violence cases. One judge stated, “After the O.J. Simpson trial, we started looking at the domestic violence matter as a serious problem; no more cooling jail time.” Another judge stated,

Judge 2: Before becoming a judge...I thought that these domestic violence cases were some of the ugliest ones, along with criminal cases, of course...I had not realized how much has changed in that area in terms of the law. I had to look at them with a completely new perspective.

Other judges referred to normative aspects of domestic violence cases; for example, one judge stated, “Why would you change the system that effectively dealt with the perpetrators and that worked for over 30 years?” The institutional perspective is illustrated in the comments from another judge, “I think that jail will correct them (perpetrators).” This comment was in response to how an effective criminal justice system should work.

Bierman (1995), in his research on judicial socialization, addressed that a judge with a background in commercial litigation might implement a different decision-making style as that of a judge who practiced criminal litigation (Bierman, 1995). For example, a judge may have been a prosecutor, criminal attorney, or public defender before being elected to the bench. Therefore, he or she is more likely to perceive attorneys, who shared similar viewpoints on such

aspects of the process, as coming from the same bunch. Bierman (1995) examined judicial socialization and found that a judge with a background in commercial litigation is more likely to implement a different decision-making style as a judge who practiced criminal litigation (Bierman, 1995).

Researchers have also frequently considered the region where the court is located to identify cultural influences on judicial socialization and decision-making (Lloyd, 1995; Songer & Davis, 1990; Tate & Handberg, 1991). Wenner and Dutter (1988) explained that judiciary subcultures broaden the perspectives of judges who are socialized to an acceptance and understanding of the world that is geographically specific. This significance of location is demonstrated in one judge's comment on the uniqueness of Louisiana's domestic violence perpetrators.

Judge 3: I want to be clear on this as I know it and I have been here for a while to experience it, men can be battered also and, in Louisiana, we have the largest amount of women in comparison to the rest of the U.S. who can be as violent as men can be and I have seen it.

As discussed, a number of factors influence judicial decision-making processes including gender, race, education, and experience, which are part of judicial socialization. In addition to these influences, Elazar (1972) addressed cultural influences: moralistic (the principle of moral conduct), individualistic, and traditionalistic influences. A moralistic influence is seen in one judge's address to a defendant (taken from a court transcript),

Court 1: So I can't deal with that. All I can do, as a man and as a judicial officer, is suggest to people at this point in time that there is an obligation on the moral side of things for men to do what is right for their children and for their families. And, that's what I'm suggesting to everybody today.

The moralistic principle is addressed from one judicial interview as is explained as follows,

Judge 4: I like to preach to them if it is their first visit here (*smiles*) and see what happens first. In many cases it works. I bring them (victim and perpetrator) to my chambers and preach something to the respect that they have to change for the sake of their kid. In a couple of weeks, if I don't see them again, I know it worked.

The researcher also observed individualistic influences during proceedings when a judge jailed a perpetrator for violating a temporarily restraining order and nonpayment of the child support. The defendant was sentenced to 90 consecutive days in jail; however, the judge allowed the individual to serve the sentence on weekends. This final decision was made after the defendant's attorney pled that, if his client was jailed for 90 days, he would not be able to provide child support for his two minor children.

A vivid example of the traditionalistic influence is seen when the judge addresses the courtroom concerning the defendant's attorney complaint that the previous judge's docket was not kept according to schedule. Because of this, the attorney's client had a prolonged wait until the next hearings as the judge responded,

Court: The crucial part is not whether the previous Court kept up with its calendar, but whether the court kept with the justice.

Environmental influences also play a role in judicial decision-making and include contact with events, information, and people, "[I]t is difficult to imagine how individual judges, no matter how carefully trained in the law, could escape the contextual influences that surround them in their family, friendships, work-place and social organizations" (Wenner & Dutter, 1988, p.115). Garrison (1996) argued that "judicial socialization helps to establish a perimeter beyond which judicial decisions are likely to stray" (p. 413). Schneider (1991) and Bierman (1995) concurred with Garrison on this statement. Other researchers have addressed the degree to which judicial socialization and other aspects of judicial behavior affect decisions. Specifically,

these researchers provided the following as examples, being just, ethical, neutral, and expediting the processing of cases (Gavison, 1988; Geyh, 1993; Goldberg, 1985).

Cook (1971) confirmed that studying the influences of judiciary socialization could help explain judicial decisions concerning the interconnectedness of foundational politics, legal norms, and social contexts. Finally, Whittington's (2000) summary of judicial specialization displays the concept of judicial socialization, "Patterns of legal training, personnel selection, and judicial socialization all serve to shape how the Court approaches an individual case" (p. 621-22).

As illustrated in the accounts and scholarly literature detailed in this section, judicial socialization involves adjustment to life on the bench and the adoption of new roles in response to judicial environmental demands. Posner (2008; 2010) believed in the necessity to reflect on personal characteristics of judges within a given court environment. Other literature on judicial behavior has examined the backgrounds of judges and has focused on connecting judicial socialization to types of political views that Supreme Judges exhibit in policymaking (Posner 2010). However, this has left an unexplored direct connection to judicial decision-making processes.

Sociologists such as Arnett (1995), Holland (1970), and Radelet and Pierce (2010) addressed that race and ethnicity, gender, and specific socialization factors are likely to emerge as important intermediaries that influence judicial decision-making processes. Additionally, current research reveals that judicial socialization, from a white male judicial perspective, is interlocked with judicial decision-making in adjudicating cases and "establishing perimeters beyond their judicial decisions" (Garrison, 1996, p. 413). Judicial socialization includes a variety of factors such as gender, race, prior experience, law school education (Garrison, 1996, p.

413). This research also has peculiar characteristics from the sociological point of view, as a significant sample of the judges interviewed were white educated males; these demographics should be considered based on the above discussed socialization patterns, which may render specific results during the adjudication process.

Research on judicial socialization has attempted to explain the behavior of judges in terms of social backgrounds, gender, and ethnicity to provide evidence that links these factors with overall judicial decision-making processes. Linked with judicial socialization is role orientation, which refers to a judge's perceptions and expectation of his or her role. The following section explores this important dimension of the complex nature of judicial decision-making. Specifically, the researcher examined judicial role orientations of judges in Orleans and Jefferson Parishes.

### **Judicial Role Orientation**

The concept of role is prominent in social and political studies. Posner (2008) suggested that role analysis is a useful method to understanding judicial behavior. Further, Becker (1964) noted that a judge's perception of his or her role is a main characteristic that distinguishes him or her from political decision-makers. Becker considered the role "the major independent variable in the judicial equation" (pp.13-26). Dolbeare (1967) agreed and suggested that, "the way in which judge conceives his judicial role is the most significant single factor in the whole decisional process" (p. 69).

Berman (2000) defined role orientation as an individual's expectations about his or her job. Additionally, Feinblatt and Denckla (2001) defined role behavior as the actions an individual takes in terms of identifying problems, searching for alternative responses to those problems, weighting pros and cons of a given situation, and choosing the most appropriate

response or solution. Hanson (2001) integrated the notion of judicial roles to describe and explain judicial decision-making behaviors. Specifically, a judge has to be a sophisticated decision-maker in a job that, on a daily and routine basis, requires him or her to be an administrator, manager, and “Routineer,” and requires him to lean heavily on the services of others (Posner, 2010). As such, the objective was to explore and discuss common patterns in the judicial roles as seen in research.

Judicial roles have standardized performance standards concerning what is acceptable in terms of organizational needs (Thompson, 1963). Using Thompson’s classification, the researcher examined the judiciaries’ individual responses and expectations in response to how judges described their jobs as trial judges. It was proposed that each judge might have different obligations and workload responsibilities due to the organization of the court and to distinctively different sets of role expectations. It was also proposed that individual characteristics or patterns of role performance of the judge would influence his or her performance structure. The typologies of judicial role patterns, as discussed in Thompson (1963), include (1) “Intellectual-Scholar Workhorses,” (2) “Routinier Hack,” (3) “Political Adventurer-Careerist,” (4) “Judicial Pensioner,” (5) “The Hatchet-Man,” and (6) “Tyrant-Showboat-Benevolent Despot.”

The researcher classified several judges as “Workhorses” of the court (Thompson, 1963). Thompson (1963) referred to a “Workhorse” as someone who gets to the court early, leaves late, and often works on weekends. From observations, their courtrooms were often turbulent scenes of a trial in progress that were interrupted for the purpose of accepting a consent judgment; hearing a “quick” motion on various matters that affected cases before them; and consulting with lawyers, probation officials, members of the district attorney’s staff, etc. These judges were able to conduct multiple sets of activities during one court hearing in a simultaneous multitasking

fashion. Additionally, from interviews, judges responded that they frequently worked on Saturdays, Sundays, holidays, at odd hours of the night, and have sat up “all night waiting for a verdict while the jury deliberated.”

The Court (in a courtroom observation): (*addressing defense counsel*) You know how much I work. I believe in taking up the case myself instead of giving it to the Commissioner (the qualifications for the Office of Commissioner are the same as the qualifications for Office of District Court Judges: A Commissioner in the Jefferson Parish has the role of Judge on domestic violence matters and hears domestic violence matters. Please see Jefferson Parish structure of Courts) and work with you ‘til we resolve all pending issues, since you are already here in front of me, so you don’t have to have another hearing with the commissioner. I do this, because I always take up extra work

Another judicial account explained how judges fit into the category of the “Workhorse” of the court and illustrated by one judge who works and prepares for the cases as early as five o’clock in the morning.

Judge 1: My clerks come to work about 5:00 am to work on the cases, and I’m right after them. If there is no jury trial, I will be lucky if I can leave around 7 or 8 pm.

The researcher classified a couple of judges as “Routineer Hack” according to Thompson’s (1963) classification; these judges were easy-going, had a personal desire to make their “mark” in the organization, and were a “great” help to those who work with or for them. These judges were also very approachable and, from the researcher’s interactions, were not viewed as “threatening” individuals by other judges or attorneys. Additionally, they seemed to maintain consistent work and did not like to “get off schedule” in the courtroom or in their planned appointments. Some accounts illustrated how interviewed judges fit in the “Routineer Hack” judicial role category,

Judge 2: I like routine. It keeps me on a routine and I know what I have to do. I also check on everyone in my staff regularly to see how everyone is ‘doing’ to make sure we are on the same page and, if needed, I help them.

Judge 3: Routine helps me to stay on track in planning and it is important for my success. My employees (law clerks) are also important to me as we work together as a group.



Judge 4: They make my schedule around my regular ‘routines.’ They know how I have been functioning for all these years (*laughing*).

Judges classified as the “Political Adventurer-Careerist” type, according to Thompson’s (1963) classification, viewed the bench as a temporary “springboard” to other political offices. These judges had strong political connections and networks and they favored personal newspaper and media publicity. They also saw their judicial careers as part of their overall career plan. The office walls of these judges were covered with plaques, certificates, and symbols of their success stories and personal achievements.

Judge 5: I knew I had to be here (in this Court) for a couple years before I moved on, and I have no background to domestic violence, as you know, domestic violence workshops are not mandatory attendance for us, but I attended, and got training

Judge 6: We don’t need extra domestic violence training, even though we all start in this court. Until my next anticipated move, I am...(phone rings...after the judge is done with the call, he changes the subject).

The “Judicial Pensioner” type refers to a judge who was rewarded a judicial appointment late in his political life. These judges prefer to be left undisturbed, spend as little of their time in court as possible, and desire an anonymous existence. They also take virtually no interest in the administrative activities of the court; it is as though they are already retired. The researcher did not witness or categorize any of the judiciaries interviewed in this category.

The “Hatchet-Man” role, according to Thompson’s (1963) classification, among the judiciary, is played by a member of the bench who has previous experience as a district attorney. This category applied to several of interviewed judges. Of note, these judges have close ties to the district attorney office and other areas of power in municipal government.

The “Tyrant-Showboat-Benevolent Despot” generally composes all five facets of one role performance within the same incumbent; various roles are presented on alternate occasions.

This type of judge is a deeply hostile, frustrated, ambition-ridden individual who has been defeated in his or her career aspirations. The researcher did not witness this type of judge.

All judicial types, despite the differential characteristics of their performance, contribute to the court's organization as a functioning mechanism (Posner, 2008). As such, the division of labor in the court is not as random and accidental as it may appear at the outset (Cook, 1971). Posner (2008) noted that each judicial role type uniquely contributes to the total institutional arrangement to perform a complete mission in terms of a judge's drives, needs, and personality. As long as individual deviation does not materially impede with the attainment of the organization's objectives of production and efficiency, all role types will be permitted to precede undisturbed (Posner, 2008).

From the review of the interviews, six judges were categorized as "Workhorses" and seven judges were categorized as "Routineers." There is a stark difference between these two categories; the "Workhorse" often arrives at the courthouse early and leaves late. This type of judge can also be found in the courthouse on weekends and holidays; while the "Routineer" keeps a strict schedule, is calm, and easily approachable. Finally, one judge was categorized as a "Political Adventurer," using the bench to move his or her political career forward, and four were categorized as "Hatchet-Man," or previous DA.

## Chapter 7

### Theoretical Analysis

#### Judges and the Theories

To understand the judicial decision-making process, it is necessary to understand how a judge decides cases or how his or her mind works in the deciding process. Researchers achieve this by understanding how judges perceive the matters that are involved during the adjudication process, how and what priorities they see in adjudicating cases, and how they make their decisions. According to Singer (1988), the decision-making process still reflects the difficulty of human brain process to be analyzed and explained using methods that are supplied by medicine, brain scanning, chemical testing, and cognition, which continue to probe at the human decision-making process. Despite current limitations, there are complex theories and explanations that aim to interpret and define the fundamental aspect of a judge's job, one of which is the judicial decision-making process (Posner, 2008). Included in the research are three prominent theories: formalism, skepticism, and realism.

**Judicial belief systems.** Oliver Wendell Holmes (1881) stated, "We can identify the belief systems of judges as having a major influence on the outcome of cases, but we cannot explain this relationship with any precision or detail." Social research suggests that humans view the world differently; dilemmas and solutions materialize differently for different people. North (1997) noted, "Individuals from different backgrounds interpret the same evidence differently and, in consequence, make different choices." Bargh (2011) referred to a person's beliefs and expectations as a chronic framework, which is also known as the basis or skeleton of judgments. He further explained judicial interests by advancing the notion that judges make decisions based on this chronic framework or, more simply, based on their training. Bargh

suggested that judges receive their training from within the culture in which they grew up, their families, and even their experiences of traumatic events. Following this line of thought, Bargh stated that a judge is raised, “in your family, in your culture. He watches TV and reads the newspaper with you” (p. 123).

Many judges have openly admitted this influence, although often in an unconscious and unexplainable way, of their belief systems on their decisions. George and Epstein (1992) and Segal and Spaeth (1993) argued that two cases with identical facts can result in different outcomes depending on the beliefs of the judge who hears the case. These judicial belief systems develop from life experiences and influences that include parents, family, peers, and teachers, and are peculiar to the individual. This belief system is especially crucial in the evolution of the law. According to Holmes (1881),

The very considerations, which judges most rarely mention, and always with apology, is the secret room from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle, which is developed by litigation, is in fact and the bottom result of more or less definitely understood views or public policy; most generally, to be sure, under our practice and tradition, the unconscious result of instinctive preferences and inarticulate convictions, but nonetheless traceable to views of public policy. (p. 31)

*Through the "eyes" of formalism.* Through interviews, observations, and analysis of court documents, the researcher identified several judicial belief sets that affected overall decision-making processes based on the theory of formalism. The main codes during the analysis of the data included the use of precedent known as mechanical jurisprudence, strict use of rules, strict use of facts, and no extra-legal factors. Here, the crucial judicial belief was the choice of precedent, which is the basis of the theory of formalism. One female judicial account clearly illustrates this concept,

Judge 1: Domestic violence cases are like any other cases for me where I strictly apply law, such as norms to facts.

According to formalism, judges apply the governing law to the facts of a case in a logical, mechanical, and deliberative way. As one judge stated, in support of formalism, the strong belief is that “Sometimes a bad rule is better than no rule at all.” Formalists view the judicial systems a giant syllogism machine and the judge acts like a highly skilled mechanic (Leiter, 1999).

Moreover, formalism is a

Descriptive theory of adjudication according to which (1) the law is rationally determinate and (2) judging is mechanical. It follows from law as rationally determinate to legal reasoning that is autonomous because the class of legal reasons suffices to justify a unique outcome; no recourse to non-legal reasons is demanded or required. (Leiter, 1999, p. 1145)

The theory of formalism emphasizes the plain meaning of statutes or facts and the independence of political or social institutions (Schauer, 1988). The following account addresses the judicial belief that the law rationally determines the required solution of every case and there should be no open structures or cases that is not explained by the statute of law. These formalist accounts, obtained through the interviews with judges, explain the meaning of statutes, precedents, and facts that tritely govern judicial adjudication.

Judge 2: Most of domestic violence cases I hear are straightforward. Depending on the offense type, a defendant’s history, and the DA’s charge, the threshold leads me to my sentencing patterns.

Judge 3: I follow precedent, read previous judgments, and look at the past history and what the DA is charging; then see what law applies.

Judge 4: I look at the facts of the case and steer away from the “hunch” decisions. If a case goes to appeal, all they are interested to know is if I applied the law correctly.

Judge 5: At first glance, many domestic violence cases look open-ended and it looks like a judge has multiple choices in rule; but trust me, once you spend considerable time and review the file with previous rules, you know that there is only one way to rule; there is no room for “hunches.”

Another example from the court record illustrates the formalist view of how the judiciary follows the rules and precedent when examining the witness.

Defense's attorney: Your Honor, this is new testimony now.

Victim's attorney: Well, then she should have objected if she thought it was new testimony. All I was trying to do was clear up who was in the house when...That wasn't new testimony.

Defense attorney: But the witness started testifying about bringing him things, which she had never said before.

Victim's attorney: I was trying to clear up the confusion.

The Court: The witness volunteered. You should have objected. Overruled. It is in the record.

Several judges in criminal and civil cases in both Parishes explained the fact that their "decision-making style and process" was highly transparent compared to their higher-ranking judicial colleagues in superior courts. Some judges stated that their judicial decision-making styles and final decisions were very visible and that they carried the burden of the decision-making process in the lower courts if a case was appealed.

Judge 6: Those who took me on appeal know that I simply follow the law and there no extra-legal factors to find.

Judge 7: I am a formalist, for sure. The only way the appeal could have been won if, between my ruling and the time the appeal was heard, the rule was changed and new law elected.

This discussion on a formalist belief system shows that judges who hold this belief system follow the letter of the law and do not believe in room for personal interpretation. This is in stark contrast to the theory of skepticism, in which judges may go beyond the law of precedent when making decisions. Judicial belief systems, through the eyes of skepticism included the following codes, use of precedent with "open structure," individualistic adjudication, and balancing test of equitable outcome.

*Through the "eyes" of skepticism.* Frank (1963, p. 112) said, "...I might once in a while be embarrassed by a technical rule, but I almost always found principles suited to my view of the case..." Skepticism accepts the definitional claim that the law consists of a set of canonical legal source materials, but denies that these sources supply a determinate answer to any significant legal question. Rather, skeptics claim that law is so flexible that plausible legal arguments, derived from canonical legal sources are usually available to justify any conceivable resolution of a contested case. Furthermore, skeptics argue that judges have considerable leeway when characterizing the facts of the case in such a way that they can get to a preferred outcome regardless of the law (Frank, 1949; Tamanaha, 2008).

The following judicial account describes this judicial belief; specifically in regard to how the judge approaches cases from theoretical perspective. This account also addresses the fact that the judge looks into the depth of the case, rather than simply through the role of precedent. Specifically, judges who hold this view, look at the facts of the case as they pertain to a given situation to understand if extra discretion is needed for the benefit of litigants involved.

Judge 1: Each case has a life of its own. I believe in studying the evolution, nuances, and overtones of each individual case when I decide which precedent is most important.

Another judge responded to the question of open- structure.

Judge 2: As part of my judicial beliefs, I have become increasingly aware of the special difficulties in adjudication. It is my responsibility to review each individual case with an open mind, make an unbiased decision on case-by-case basis, and determine if the open structure situation is possible and applicable to guarantee that it would be used by me in that case.

The above account by Judge 2 highlights his state of open-mindedness when determining facts that could matter in a case-by-case based situation. Another judiciary shared a similar belief of applying an open structure to the facts on a case-by-case basis.

Judge 3: I look into the case beyond precedent. I try to read from each situation.

Another judicial account explained his perception on open structure adjudication.

Judge 4: The laws must not require the impossible of those subjected to them. I look at the context of today's world and the situation they (litigants) are in.

Another judicial account explained the openness of judicial adjudication very clearly,

Judge 5: Every law has some corners that do not quite fit.

The above account promotes the major skepticism perspective of adjusting the law to a particular case, with the possibility of adjusting the law to the current situation. Another judicial account supported the previous judicial rational for using the theory of skepticism.

Judge 6: It will be only fair if judges are able to foresee such imperfect generalizations in law and apply the perfect justice to the situation on hand. I believe that law grows and develops and, even in a system with prior decisions, which are authoritative- some opinions should be left to judges on a case-to-case basis.

The final account on the openness of judicial adjudication perspective is presented as follows,

Judge 7: I think family law is inclusive of domestic violence cases, which are more rational than formalistic as they deal with wider sets and relations. Thus, for judges to make a final decision, we need to study the cases beyond what formalists would say are logically organized rules.

The second judicial belief set in the skepticism category refers to the necessity of an effective balancing test, which weighs the importance of multiple factors of a case. Posner (2008) argued that such balancing tests allow for a deeper consideration of the complex issues beyond what can be understood through the application of precedent to facts. Thus, balancing tests allow judges the ability to justify a conclusion. An account from court transcripts illustrates how one judge applied this balancing test during his decision-making process,

Judge 8: I have always thought and believed that if there could be a ruling made that would benefit children,...I should implement it. Yes, he failed to pay child support for 6 months and, yes, he is responsible. But, if I jail him, how would he



pay the child support? Who would suffer? Children, so I sentence him to 60 days in jail and he serves over the weekends while working and paying the child support. We will be back in court in three months and I will assess the situation. If it does not work, the penalty will be harsher.

Another account, from a different judge, revealed the following,

Judge 9: You were in the courtroom when we had an alleged domestic violence case of the mother and the boyfriend who had a baby. From the facts, I can tell that both are at fault and contributed to the situation. Both are also illegally here from Mexico. This is an open situation for me. We have facts, but we also have some aspects I have not dealt with before. So, I am open to things here in the best interest of their child, who was born in USA.

According to the theories of skepticism, judges can determine whether an open structure exists, as seen in the above account, when, typically, if counsel represented both parties, a judge would not perform the direct examination, as it was performed and administered by counsel. The following accounts offer an example when the judge decided to question the witness himself during the direct examination by counsel,

Defendant's attorney: No further questions. Thank you.

Victim's attorney: I have no questions. Thank you.

The Court: I have one question. When did this happen?

Witness: I am not sure of the date. I know when the fundraiser was—I could look on my calendar and tell you the date.

The Court: What month was it?

Witness: October

The Court: of 2006?

Witness: Yes

The Court: Okay. You're excused.

The theory of skepticism gives counsel on both sides leeway in ensuring that they covered all the points during the proceedings, as in this example, and the judge was able to ensure that counsel had a chance to make objections to the production of documents in the domestic violence case. Additionally, this technique (personal questioning by a

judge) might give an attorney with less experience a hint if it was a right time to object or provide additional evidence. For example, from courtroom observations, the following account shows the judge counseling the attorney who was not sure how to proceed. The judge asked him a direct question,

Judge 10: Mr. Attorney, are you offering M-5?

Victim's attorney: I am. If I didn't, I would offer, introduce, and file into evidence M-5, Your Honor.

Judge 10: (*addressing the defendant's attorney*) Any objection to M-5?

In the account presented below, the judge corrected the counsel in the courtroom and provided leeway and an opportunity to learn though his or her skeptic view of the adjudication.

The Witness: I am trying to remember.

Judge 10: Hold on Ma'am.

The Witness: Okay.

Judge 10: Rephrase the question because that could include hearsay answers.

This is an example of skepticism in petition for the allegation of domestic violence abuse filed by a victim. The defendant, at the direct examination by his attorney, alleged self-defense and gave his explanation of how the victim hit him. Because the defender did not file the allegations in his answer for the petition, generally, the defendant would not be able to testify or bring in new information that was not pled in the petition. In this particular example, the judge allowed the testimony of the victim; however, the allegations were not pled in the answer of the petition. Various explanations could be offered as to why the judge allowed this; however, the most probable answer is that the judge felt that the facts of the testimony would help in the decision of this DV case. The following accounts offer a direct examination of the defendant by his attorney.

Defendant's Attorney: Mr. X, did you beat Ms. X with a baby gym bar?

Defendant: No. She beat me with a baby gym bar.

Defendant's Attorney: Tell the Court what happened that day. When was that?

Victim's Attorney: Judge, I am going to object to him again. I think we've been over this before; that he is alleging that she beat him. There are no pleadings that she beat him. There are no pleadings before the Court on this.

The Court: Overruled.

Defendant's Attorney: Please tell the Court what happened, Mr. X.

Defendant: I was going to work. It was morning, a typical weekday, working too hard. So I said, 'I've got to go to work.' It was probably like 8:30, 9:00 O'clock and she did not want me to go to work and so there was a little thing on the ground...She grabbed the strap and she hit me hard. Then she hit me again, not quite as hard the second time. And then I managed to get the thing away from her. Then, I went down to Bob Doe to have him take the picture.

Another account presents an example of skepticism when the judge allowed the testimony of the defendant, even though the particular occurrence was not pled in the petition and the defendant's attorney was not able to examine the evidence prior to the hearing. From court observations, the defendant described the incident where a couple of the dates after his wife's decision to separate, he returned home, but his wife intended to go out with his girlfriend for a drink rather than staying home.

Defendant: So, she got in the car and she left; then she came home about 1:30, I think. And she was pretty drunk.

Victim's attorney: Objection, Judge. What relevancy does this have? I fail to see the relevance of this.

The Court: Go ahead.

Defendant: What do I do?

Defendant's attorney: Continue answering.

The Court: Go ahead.

Defendant: So she went...I think she was taking their clothes off and getting ready to go to bed with me. And she put her phone on the charger and I think she was in the bathroom getting undressed. I took the phone...I wanted to see who she had called over the last hour or so. And I did. And she came out and she wanted the phone back. She started attacking me to get the phone back.

Victim's attorney: Objection, your Honor. This is not-I don't know what this is, okay, other than a character assassination attempt on Mrs. X. It is not pled, now he is saying she attacked him.

The Court: Overruled.

The defendant's attorney argued that the victim testified to the occurrence of the day in question and his client wanted to address the incidents of that day from his recollection, even though he did not pled them.

Victim's attorney: Relevancy, Judge?

The Court: Mr. Y, stop.

The defendant's attorney introduced into the evidence the police report taken on the day the defendant was addressing.

Victim's attorney: It's hearsay, Judge. It is also irrelevant. It does corroborate that he took the phone.

The Court: I am going to admit it. Your objection is noted Mr. Y.

Another example of skepticism, illustrated below, occurred when the judge admitted the evidence of the violence, even though it was not pled in the petition for temporary protective order.

Witness: And I could not believe it, 'cause I was shaking already. And I saw him see me in the mirror and I tried to drop back...I dropped back on XX road and in heavy traffic, if you've ever been on XX Road around that time, he stopped his car. He slammed on the brakes.

Defendant's attorney: I am going to object to this testimony, Your Honor. There is nothing about any incident like this that was filled seeking relief from this Court.

Victim's attorney: I believe it is in the pleadings, Your Honor. Chased her. If you look at 8-C in the pleading, Judge, where we've typed things out, it says he chased her while she was fleeing for her safety.

Defendant's attorney: Those are past incidents. In the paragraph prior, she references October 2nd and October 16th.

Victim's attorney: Chased her while she was fleeing for her safety.

The Court: This is an allegation that he chased her down the street on foot. This allegation, Mr. Attorney, is a different allegation.

Victim's attorney: We also have an allegation about stalking, Judge, and this is stalking. If you look at Paragraph 8, we checked stalking. This is stalking.

The Court: Answer the question (*letting the evidence in*).

In an example of the relationship to formalism, with judicial accounts in domestic violence hearings, two judges allowed the two sides to testify (victim and the defendant) and admitted forms of documents as a proof of their testimony. Additionally, the judge excused any witness in the relationship to present documents. In the following account, the judge allowed the witness to testify and he felt that he wanted to hear the testimony. This is also an example of an add on where the judge asks questions during direct examination if he or she has a question and wants to know the answer, thus as one of the judges explained

Judge 1: It giving him the opportunity to know what he wants to know to make a fair, balanced decision.

The following account illustrates this notion during a direct cross-examination in court. Specifically, while the victim's and defendant's attorneys conducted a cross-examination of the witness, the judges asked a question.

Court: Let me ask a question. What bills were you supposed to be paying for Mr. X? (*The witness was a personal assistant of the defendant*)

The Witness: From time to time, Mr. X would ask me to make sure certain bills were paid.

Court: I understand that. What bills sir?

Witness: Energy, Cox.

Court 1: Personal bills? Business bills?

Witness: Personal.

Court: Okay. Bills at his house?

Witness: Yes, sir.

Court: Okay. Go on.

Defendant's attorney: And to the best of your knowledge, were those bills paid?

Witness: Yes.

Victim's attorney: And I also have a best evidence objection.

Court: What does this have to do with the domestic abuse?

Defendant's attorney: Your Honor, this is in defense of the allegations raised on Ms. X's case-in-chief that he...

Court: What case-in-Chief?

Defendant's attorney: On December 7th, as part of the domestic abuse petition that he had cut off the utilities and had not paid certain bills. So, this witness is offering a defense of that.

Victim's attorney: Well, Judge, he cannot testify about this. Number one, the best evidence would be that the bills were timely paid subsequent to the date of XXXX.

Defendant's attorney: On...That was part of the domestic abuse petition that he had cut utilities and had not paid certain bills. So, this witness is offering a defense of that.

Court: The best evidence would be proof that the utilities were cut off or not cut off. I don't have any evidence that they've been cut off.

Victim's attorney: You have Ms. X's testimony that they were cut off that is not hearsay other than what she testifies. They are still cut off as we sit here.

In addressing skepticism in this judicial account, it is up to a particular judge to determine how open he or she stays with the council and what freedom is given in the courtroom, as well as when he or she decides to take the freedom back.

The Court: Sustained.

Defendant's attorney. Your honor, there has been a lot of evidence

Victim's attorney: Why must Ms. (defendant's attorney) argue with Your Honor when you make a ruling?

The Court: Mr. X, you do so also. So just stop.

Victim's attorney: Yes. Sir.

Another account of skepticism shows the information that was admitted by a judge, but was not directly or indirectly connected to domestic violence or physical abuse. The defendant was questioned by the defendant's attorney concerning when he last had an alcoholic drink. The victim's attorney believed there was no connection to this discussion and, regardless of such, the judge allowed the defendant's answers.

Victim's attorney: Objection, Judge. This doesn't have anything to do with the physical abuse, nothing whatsoever.

The Court: Well, we have been all over this track. So go ahead. Overruled.

Defendant's attorney: (questioning the defender): And since XXXX, you have refrained from taking muscle relaxers and pain pills even though you are in pain?

This account demonstrates how skepticism is used; the judge admitted the questions, even though it was asked based on the police report presented by a defender's side, which was not addressed in person, and the police officer who wrote the report was not present in court for testimony. Here, the defendant's attorney gave the photocopy of the report to the defender to comment on and the defender looked over the report.

Victim's attorney. Wait a minute. Can I read it?

The Court: Let him finish reading it.

Victim's attorney: This is not a certified copy, number one. And number two, it is hearsay. Is she going to call this policeman? She needs to call him, otherwise I'm going to object to any questions about it even before I read it. It's hearsay.

The Court: Do you have a certified copy?

Defendant's attorney: Yes sir. Here it is Your Honor.

The Court: I'm going to allow the question. Your objection is noted.

*Through the "eyes" of realism.* As seen in the above accounts, skepticism provides room for interpretation of the law and judges' personal beliefs. The third category of judicial belief systems is realism. Realism consisted of the following codes: extra-legal factors, which influence the adjudication of the case (e.g., political affiliation; "hunches," judicial "feelings," etc.) and inconsistency of adjudication using legal texts. The following discusses this judicial belief system and provides examples from courtroom observations.

Hutcheson (1929) offered a personal anecdote on his judicial belief system, "I...give my imagination play, and brooding over the cause, wait for the feeling, the "hunch"—that intuitive flash of understanding..." (p. 279). Additionally, Holmes (1981) stated

A decision is the unconscious result of instinctive prejudices and inarticulate connections...Even the prejudices, which judges share with their fellow men, have a good

deal more to do than the syllogism in determining the rules by which men should be governed. (p. 35)

According to realists, judges follow an intuitive process to reach conclusions, which they only later rationalize with deliberative reasoning (Hutcheson, 1929). For realists, the judge “decides by feeling, and not by judgment; by ‘hunching’ and not by ratiocination and “later uses deliberative faculties not only to justify that intuition to himself, but to make it pass muster.” (Frank, 1930).

The theory of realism is rooted in judicial, political, social, and moral “predictions” of judicial decision-making processes (Trotter, 1997). Realists advance beyond formalism in explaining the importance of judges’ preferences on the outcomes of cases (Singer, 1965). As seen, realists contribute to jurisprudence by addressing extra-legal factors that influence judicial decision-making processes. Jurimetrics refers to the scientific effort used to characterize the judicial decision-making process (Loevinger, 1963) and addresses variables, or critical factors, in this process. For example, researchers have addressed individual aspects of judicial decision-making, regardless of the “level” or position of the court in which the judge presides (Schauer, 1988; Trotter, 1997). In short, realism is the view that creativity in the interpretation of legal texts is justified, which ensures that the law serves good public policy and social interests.

With realism, political pressures and previous considerations can surface and manifest. For example, a judge might not want to offend previous or future campaign contributors. Future judicial considerations or sympathy could also cause a judge to favor the interests of a contributor or attorney. Therefore, it is in a judge’s interest to consider political sponsors in his or her decision-making processes. As revealed in the interviews of this research, at least half of the judges received visits to their chambers by politically connected attorneys who represented either the defendant or defendant. However, this researcher cannot state what those “quick”



visits, with warm greetings, shared memories, or personal connections, fully represent. One might argue that these occasions could be interpreted as a quick and easy “fix” in the decision-making process in favor of the attorney. Conversely, as the pool between attorneys and judges was relatively small in both parishes included in this study, it is fair to assume that judges would be familiar with most attorneys in these parishes. Such an advantage may offer the attorney credibility in terms of his or her career and the cases he or she partakes.

The researcher overheard a conversation between an attorney and a judge while sitting in the pre-chambers of the courtroom. The topic of conversation during closed-door meetings is unknown; however, the researcher did obtain some accounts of the conversation between the judge and attorney

Attorney 1: What a game it was! Did you get in trouble for staying late?

Judge 1: Yea, you know how it goes. Anyway, what is going on today? What are we doing?

Attorney 1: I suggest we give him (*inaudible*). Thanks man. See you on the bench.

Judge 1: Don't make it a 2-day deal.

Attorney 1: (*Displays smile*)

Attorney 2: Don't tell me you believe her?

Judge 1: Come, grab a cup of coffee.

Attorney 1: What's up with these pictures she produced? Do you know John Doe, (*refers to the attorney who represents her*)?"

Judge 1: We did a tournament together. Get him in, let's talk.

Judge 1: Who is here?

Attorney 1: Did they screen her well?

Judge 1: (*Rolls his eyes and has a grin on the face*)

Attorney 1 and Judge 1: (*shake hands and disappear in the chambers. Loud laughter is heard and they come out*)

Judge 1: Man, you need to tone it down. I don't feel too well today.

Attorney 1: Depends. You know,... (*inaudible*).

An additional review of realism accounts is included in detail in a separate chapter on fluidity of judicial decision-making or “hunches.”

Holmes (1881) noted the following concerning the law and developed theories of judicial decision-making

The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. (p. 32)

The results of this research are consistent with literature on judicial decision-making (Posner, 2003; 2005; 2008; Gennaioli & Shleifer 2007a; Tamanaha, 2008), which notes that skepticism has been a major influence on American writing on the judicial decision-making. More importantly, the researcher believes that the most difficult issue facing our legal system (e.g., Orleans and Jefferson Parishes) with respect to adjudicated domestic violence cases is determining how to deal with the disparity in judging based on theoretical principles of judging about sentencing, individual responsibility, or the treatment of offenders and victims. Through this research, judicial accounts gave the researcher insight in to particular judicial beliefs concerning adjudication principles and court locality. Thus, what is truly correct, changes with the perspective of a particular judge and his or her theory of law (formalism, skepticism, or realism).

As judiciaries shared their views and principles on the adjudication of domestic violence cases, their answers can be taken in many directions. Perhaps the most important, but also the most difficult, is linking between the theory of law used (formalism, skepticism and realism) to showcase the extent to which the law does, should, or must accommodate judicial differences among the adjudication of domestic violence cases.

Formalists stress the internal coherence of the law, where the most important characteristic is the separation or application of norms to facts. With formalism, the law can be seen as a more or less closed normative system. Conversely, realists stress its ultimate source, the judge. Realists also stress the importance of personal discretion within the narrow context of law made by the courts. It seems that having the same facts of a case, judiciaries would exhibit the same adjudication of a case. Rather, it is a combination of a number of competing values of judiciaries (socialization, judicial beliefs, working style) as well as their agreement of the adjudication theories available. A substantial competing value that often contradicts the search for perfection is the appearance of equal treatment. Additionally, the trouble with the discretion-conferring approach (realism) to judicial decision-making is that it does not always satisfy this sense of justice very well. When a case is recorded that offers a different disposition from an earlier decision, it is important, not only that the latter case be different, but that it be seen to be so, especially if the system of justice is to be respected. Therefore, judges must explain, case-by-case, why they have the power to resolve the given case in the different way as a similar precedent (Ely, 1973; Hart & Sacks, 1958; Wellman, 1987). The realist conceptualization of the judge's function suggests a useful and flexible way to conceptualize the fact that legal and non-legal factors may have a causal effect on judicial behaviors. The most straightforward implication of the realist approach concerns how the judge's interest in the case outcome affects the degree to which legal sources influence the decision (see Judicial Biases, addressed later in the research). The realist perspective on adjudication also has implications for the degree to which judges defer to legal decisions reached by other institutions, such as legislature and executive officials (Stephenson, 2006).

Highlighting formalist, skeptic, and realist perspective accounts in this research opens a variety of research possibilities. First, it adds to the knowledge addressed in the literature review from researchers who have explored sophisticated ways to classify judicial decisions. Additionally, this line of thought suggests a number of comparative conditions (socialization, judicial beliefs, use of experts, appearance in court) under which law and legal argument are most (or least) likely to matter. Finally, it illustrates how judicial behaviors might change in response to changes in resource constraints, talents of a particular judge in decision-making, or the external environment.

In sum, the researcher's aim was to illustrate how an understanding of various connections between theories of judicial decision-making in domestic violence cases can show and be helpful for those who study judicial decision-making. The main connection between adjudication theories found in this research was linked by theme, which was central to all three decision-making theories; specifically, whether and in what ways judicial judgments are justified based on theory. As noted in the body of this chapter's judicial accounts, the prevailing theory used by 12 of the 17 judiciaries interviewed was skepticism. This finding is consistent with the theory that a judge can always explain or justify possible outcomes or resolutions (Leiter, 2005; Tamanaha, 2008). However, this outcome is two-fold. On one hand, it is beneficial for a victim that the judge acknowledges precedent, but if he determines the state of an open structure during adjudication, the judge can bring the individual justice and review and admit the facts. This process would not be admitted by the formalist judge, as seen from the interviews, observations, and court records in this chapter. The drawback of such adjudication in domestic violence cases is its inconsistency in rulings and judicial reading of the case on hand. Thus, it can be argued that, if the decisions by a skeptic judge are reviewed, not all social-based adjudication of

domestic violence could be found as equitable among litigants of the skeptic judge who adjudicated the case. Therefore, even with such drawbacks, it is still the preferable theory to follow in adjudication of domestic violence cases and it is most beneficial for victims. For example, the formalism judge would apply pure mechanical jurisprudence according to law and rules and not necessarily consider the individualist situation within a particular social setting. During formalist adjudication, the outcomes of the adjudication are expected to be equal across and the notion of open structure does not exist. Conversely, the realist judge might be the least desired option for litigants in domestic violence cases, as things such as extra-legal factors would interfere with proper legal adjudication, which the researcher addresses in the following chapter.

**“Hunches” and fluidity in judicial decision-making: Realism accounts.** The examination of the three fundamental theories of judicial decision-making processes, via observations, interviews, and analysis of court documents, clarified that most decisions fell into either the traditional categories of formalism or skepticism. Because analysis of court documents is strictly a recorded document of the proceedings, the researcher was not able to hear “off the record” statements nor could she identify the pre-hearing atmosphere in the courtroom, which could signal other possible decision-making styles that judges employ as such additional information would not be contained in the transcript record.

The following codes for this section included “hunches” in decision-making, intuition in decision-making, flexibility in decisions. In recent years, Guthrie, Rachlinski, and Wistrich (2001) conducted several studies that examined federal and state trial judges nationwide. These researchers found that judges commonly encounter stimuli on the job that result in intuitive reactions, although they occasionally display an ability to override these intuitive responses.

Philosophers have distinguished between intuition and deduction. Epstein (1994) suggested that this is an “Awareness of a distinction between an experiential and a rational mode of processing information has a long history, predating psychology as a formal discipline.” (p. 712). Further, Descartes said, “intuition or “hunch” and deduction are the two processes by means of which humans arrive at knowledge of things.” Pascal (1970) pointed to the differences between the intuitive mind and the geometric mind, where the intuitive mind one can only look and no effort is necessary, while the geometric mind requires systematic thinking and assessment of which the average mind does not look. Additionally, Stanovich and West (2002) noted that intuitive processes, “occur spontaneously and do not require or consume much attention.” Such intuitive process is “automatic, heuristic-based, and relatively undemanding of computational capacity” (Stanovich & West, 2002, p. 436). On the other hand, the geometric mind has “mental operations requiring effort, motivation, concentration, and the execution of learned rules” (Frederick, 2005, p. 25).

The non-rational aspect of extra-legal factors, specifically, the “fluidity” of decision-making, was best summarized by two judges during the interviews who said, “I hear the evidence and, if all things are ‘equal,’ then I use my intuition” and “sometimes I say to myself, just make a decision.” During the interviews, it became apparent that, in domestic violence cases where there is no evidence of physical violence, the judge will make a final decision based on the credibility of given litigants. One judge addressed the notion of a “hunch” decision by stating that some of his decisions are simply based on whom he feels is more credible. Another judge argued the following,

Judge 1: The theories we talked about, formalism, realism, and skepticism, in my view, are the ideal model rather than an actual model of real world judicial decision-making. I don’t think it is possible to predict the actual decision-making process other than to assess what factors influence the decision.

“Hunch” decisions are also seen in the literature, as demonstrated by Judge Hutcheson’s confession that he sometimes reached his decisions based on a “hunch” about what would be right or fair considering the facts of a given case (Schauer, 2009, p.278). This shows the foundation of the applicability of “hunch” decisions in this research. Moreover, Judge Hutcheson declared, “the way in which the judge gets his “hunches” is the key to the judicial process” (Schauer, 2009, p.104).

Five judges interviewed stressed the fluidity of decision-making as a highly transparent process. One statement made during the interviews summarizes the matter, “Though decisions are fluid, they are definitely transparent in the end. The judiciary clearly knows the coverage of their operations and decisions.” The non-rational aspect, or the “feeling,” of the judicial decision-making process is best summarized by several 24th Judicial District Trial Court Judges who addressed the process of judicial decision-making as follows,

Judge 1: (smiling) You want to know how? I flip the coin. Is there any other way?

Judge 2: I hear the evidence and if all things are “equal,” then I use my intuition.

Judge 3: I make a decision in favor of who I feel (emphasis) is more credible. There is no exact science here, you know.

Many researchers have studied the fluidity of judicial decision-making outcomes in court cases (Fisher, Horowitz, & Reed; 1993). Though some researchers have argued that statutory terms guide the rules of case law, they have concluded that the use of this methodology and its application to the adjudication of a particular case limits the judiciary’s possible discretion or possible outcome of a case. However, in many case studies, the fluidity of judicial decisions comes from human nature or human factors (Gavison, 1988; Whittington, 2000). One account from one judicial interview illustrates the fluidity of judicial decision-making and judicial discretion with respect to the outcome of a case,

Judge 4: The majority of people think that the law operates according to a set of fixed rules and judges are required to follow these rules. There are cases like that - where the application of the law is quite clear. But, what if a judge gets a case where a straightforward (“predictable” so to say) application of the law leads to a shocking injustice? Should the judge bend the law to avoid such a result?

Posner (2008) noted that the common law decision-making process depends on precedent (i.e., past decisions). Posner (1990) also suggested that, while judges must choose from a narrow range of justifiable outcomes, it is not quite possible to predict the actual outcome. The majority of the judges explained that most straightforward legal questions in domestic violence cases are answered through statutes and precedent. This methodology, however, might be obsolete in cases where new problems or questions arise that are distinct from old answers. Further, most judges who participated in the study agreed that, while statutes and precedent pointed to a range of possible outcomes in their decision-making process, these were not the only possible answers or solutions to the case. Thus, the predictability of a decision will depend on how a particular judge weighs the evidence and the precedent. One judge noted,

Judge 5: I will give you a hypothetical and you tell me if you could predict the decision in this case? The perpetrator is convicted of the murder of his girlfriend and a daughter they shared together. There is no doubt of his guilt in this crime. You are a judge and you are convinced that, if the perpetrator were released, he would not stop. The case against him was obtained by means of an interrogation that did not satisfy the technical requirements of Miranda. Under the facts of the case, you have a legal obligation to let the defendant go free and, therefore, condemn to possible death the lives of others (the perpetrator shares another child with an ex-girlfriend). Or, you would put justice above the law and find a way to affirm the conviction despite the technicality? Is such a decision fluid?

Some researchers have insisted that doctrine is the straightforward approach and the visible part of the law, while non-doctrine factors (e.g., extra-legal factors) make up the invisible part of the decision-making process that cannot be explained or predicted with any precision given humans’ primitive understanding of how the mind functions (Dworkin, 1986; Tate &



Handberg, 1991). The following statement, from an interview with a judge, addresses the predictability and fluidity of judicial decision-making,

Judge 6: There are objective principles by which the law operates - principles that dictate the legal outcomes and, often, the predictable result in most of the cases. But, don't kid yourself, these principles are not followed by every judge in every case and, even if these rules are followed, there is some room for the exercise of personal judgment.

This judicial statement corroborates the existing body of knowledge about the fluidity of judicial decision-making and confirms the notion that even straightforward precedent-controlled decisions can be considered on different merits by different judges. This statement also confirms Frank's (1930) conclusion on legal scholarship,

The judge's innumerable unique traits, dispositions and habits, shape his decisions not only in his determination of what he thinks fair or just with reference to a given set of facts, but in the very process by which he becomes convinced that those facts are...the personality of the judge is the pivotal factor in law administration. (p. 110; 242)

Epstein (1999) and Epstein and Knight (1998) attempted to predict case outcomes using a methodology based on the characteristics of judges (e.g., liberal or conservative). This approach surprised the legal scholars (e.g., Posner, 1998) because it disregarded the effects of legal doctrine. These case studies, as explained by both Epstein and Knight, highlighted how hidden factors, rather than legal doctrine, influenced the outcome of the cases studied. Holmes (1897) also suggested that something, other than legal doctrine, influenced the fluidity of the judicial decision-making process,

The language of judicial decision is mainly the language of logic. And the logical method and form flatter that longing for certainty and for repose, which is in every human mind. But certainty generally is illusion, and repose is not the destiny of man. Behind the logical form lies a judgment as to the relative worth and importance of competing legislative grounds, often an inarticulate and unconscious judgment it is true, and yet the very root and nerve of the whole proceeding. (457, 465-66)

The interview below (referred to by the legal scholars and coined by Jerome Frank as “what the judge ate for breakfast” doctrine) is worth sharing on the matter of the fluidity of judicial decision-making

Judge 7: Sometimes I read the previous rulings and - no offense to my colleagues - but I tend to agree with the research that says that the judiciary decision-making process is fluid and almost depends on what that particular judge ate for breakfast. Recently, there were several cases where the ruling had to be reversed.

Judge 7: Do you recall who said that phrase?

Researcher: Yes, your Honor. It was Jerome Frank, who was a judge, and belonged to the legal realism movement. They (realists) believed that the law, being a human concoction, is subject to the same biases and imperfections that affect everything humans do. They believed that judges are influenced by irrelevant things, like their moods and, as Frank suggested, their breakfast.

Judge 7: Oh, so if a judge is in a grouchy mood, according to the theory, he will take it out on the litigant he least identifies with.

The findings of this chapter, with respect to the fluidity and the “hunch” of judicial decision-making processes as they relate to extra-legal factors are supported by the scholarly literature. In this research, judges were neither classified as “purely deductive decision makers,” (as envisioned by the formalists), nor as the intuitive rationalizers (Goldberg, 2001, p. 67). Additionally, judges have the tendency to make intuitive decisions at times (realism), but can override their intuitive reactions with “complex, deliberative thought” (Goldberg, 2001, p. 69). In line with the use of “hunches” to make decisions, it is also important to discuss the role of judicial biases in the decision-making process. The following section provides a detailed discussion on such biases.

*Biases.* The final accounts of realism theories consist of judiciary biases section. The codes for judiciary biases included judiciary predictability of events from personal perspective, judicial stereotypes, and bias control. Various mental processes includes the development of bias include intentional focus, memories, implicit perceptions, attitudes, and stereotypes. One

such process is known as hindsight bias and is the well-documented tendency to overestimate the predictability of past events (Fischhoff, 1975). The bias arises from an intuitive sense that the actual outcome must have been inevitable. As such, people allow their knowledge to influence their sense of what would have been predictable (Hawkins & Hastie, 1990). Further, because judges usually evaluate events after the fact, they are vulnerable to hindsight bias (Rachlinski, 1998). The following accounts illustrate hindsight biases and are based on court documents obtained during the research.

Judge 1: She gets a TRO and then, at the proceedings, wants me to let him go because she says that he is the one who has a job and she is home with the kids. She says 'it will be OK the next time and we will resolve it between ourselves.' She then says, 'Please let him go and I want to take my charges back. I need him at work.' I have heard this several times before. I know that he will do it again.

One issue of corrective measures from judicial interviews is illustrated below.

Judge 2: A man who hurts, pushes, shoves, and relentlessly confronts his wife won't be a cupcake when thousands, perhaps hundreds of thousands, of dollars are at stake.

It is also necessary to acknowledge that the researcher found judges who were capable of resisting the hindsight bias. The density of this area of law and the training received in the area of domestic violence tell judges that intuition and hindsight bias might be inconsistent with the governing law; therefore, that they will need to think carefully through the rules created by the appellate courts. Some judges also acknowledged that there are ways to control biases and some even cited the work of several researchers from the workshops they had attended on reducing judicial bias (as discussed during interviews). The following is one example of this occurrence.

Judge 3: I enjoy going to domestic violence workshops. They always send us to nice places. They teach us a lot of interesting stuff, such as how to control our biases and not judge by initial appearance or manner of speech.

In this research, references to biases in the courtroom setting, in observations, or in document analysis refer to mental processes that are based on attitudes or stereotypes that play an often unnoticed role in day-to-day decision-making (Greenwald & Krieger, 2006). This discussion focuses on judicial recusal. The following is an account of bias connected to judicial ethics wherein the judge, who heard a divorce proceeding that involved domestic violence, retained (prior to the hearing) the victim's attorney to represent him in a campaign/election lawsuit. The Judge failed to disclose this information during the hearing and the defendant (plaintiff) filed a motion for the recusal of the judge.

Judge 4: After carefully scrutinizing the record and reviewing the applicable jurisprudence interpreting LA. Civil Code of Procedure Art. 151(B)2 and the Code of Judicial Conduct, it is undisputed that Mr. Attorney represented Mrs. Victim for approximately three and one-half (3-1/2) years prior to Judge Z's election to the bench. Mr. Attorney was retained by the current Judge Z, then Mr. Z, when he as a candidate, to represent him in two election suits filed on (date #1) involving his judgeship. Judge Z was elected to the bench on (date #2). Mr. Attorney withdrew as counsel of record on each of the election suits on (date #3). Judge Z testified that he was sworn in and took the bench on (date #4). Mr. Attorney appeared before Judge Z for a hearing in this case on (date #5). In accordance with LA. Code Civil Procedure Art. 151(B)2, this Court is of the opinion that Judge Z was required to disclose his prior representation by Mr. Attorney, even though Mr. Attorney withdrew as counsel of record before Judge Z was sworn in on (date #4) and even though representation was short-lived. Furthermore, this Court has looked into the Code of Judicial Conduct requiring judges to uphold the integrity and the independence of the judiciary by avoiding the appearance impropriety. Considering the totality of circumstances, Mr. Attorney represented Judge Z as a candidate as late as (date #3); this case was pending in Judge Z's Division in which Mr. Attorney was counsel of record. A hearing was held before Judge Z in this divorce proceeding within months of Judge Z's election. This Court is of the opinion that, because Judge Z failed to make the requisite disclosure, recusal is warranted in light of LA. Code of Civil Procedure Art. 151(b) 2 and the Code of Judicial Conduct; therefore, it is ordered, adjudged, and decreed that plaintiff's motion for recusal is granted and this case be re-allotted to a different division of court for a new hearing.

In the following account, the judge appears to have given legal advice to the perpetrator's attorney and confirmed her or his future adjudication result (obtained through observation and further confirmed through the court transcript).

Court Transcript: On XXXX, 2009, after Judge X strongly suggested to Mr. X's counsel that she file a motion to reduce child support, implying that if one were filed, the judge (herself/himself) would grant it, Mr. X filed an "Expedited (sic) Motion to Set Aside Child Support Judgment, Reset Child Support and in the Alternative to Reduce Child Support," which was set for hearing in November XXXX.

In the next account of personal judicial bias, we see that the attorney, who practiced law with the judge prior to his becoming a judge jumped into a case at the last moment and the judge addressed his feelings on the matter.

The Court: When Mr. X (attorney for the perpetrator) signed the record on Friday, it caused me some concern. I was aghast and I thought on the eve of trial for Mr. X to jump into this case didn't make any sense to me.

Attorney X: I am ready to make my comments.

The Court: Okay.

Attorney X: If the Court is done.

The Court: All right.

Attorney X: My true concern is when a judge - and this is probably the first time I can remember in 20 plus years of doing this - that the judge is aghast or offended by something that I've done. What is of greater concern is the inference, if not direct innuendo, that the Court would believe that I would do something to effect what is my duty as an officer of the Court. And, even more so by reading between the lines, here from a Court that I respect, that in some way, shape, or form, I am attempting to manipulate a client or a prospective client to manipulate a matter.

The Court: I do not think I said you...

Attorney X. And, if I can be quite blunt...

The Court: I do not think I said you...

Attorney X: In that I am the mouthpiece at this point, I do not see a distinction there. I am quite aghast and quite offended by what it is that I'm reading between the lines. But, getting past the emotion of the moment, which I presume is as uncomfortable for you as it is for me. I have known the man for 14 years. We went to school together. The man's home is very, very near to my office. I see him out in social circles on a very, very, very regular basis. But, my biggest concern is when I hear phraseology such as "aghast" and "offended," I have to ask myself, can someone who is aghast and offended really be fair? Is that not like oil and water? When one is aghast and offended, can they put their aghastness and their offendedness aside and really be fair? That is the concern that I'm having right now and I just wanted to bring that out to the Court.

Judge 5: Okay, I understand that.

Attorney X: If the Court...is convinced that the Court can be fair, I have no reason to disbelieve the Court. I just want the Court to understand when I hear those sorts of words...

The Court: I understand.

Attorney X: ...They don't look like they fit in the same sentence with "fair."

The Court: That was my initial reaction on Friday; that, you know, it was. I have digested it. I've weighted it. I've considered, you know, if I can be fair and impartial - and I can - because...when we get down to the bottom line, I know there is a lot of monetary interest in this case, but we still have two very young children. And, you know, that's who I will ultimately keep in the background of what I can do to be fair and impartial and to do what's in the best interest of the children....I know there are lots of other issues. But, I know, regardless of who is representing who and...however many lawyers are retained...I'm going to judge this case based on the facts and the evidence with impartial treatment of all the litigants and all the layers.

In the accounts below, from court transcripts, we see yet another account of the importance that judges set aside personal interests and biases so that they can impartially decide cases on their merits alone. As illustrated in the transcript, the judge's feelings, or intentions, and ability to set aside personal feelings to fulfill his or her obligation must rise above personal considerations when deciding a case.

The Court: I do admit that there were way more feelings than I had anticipated and, had I known what was coming, I, perhaps, would have sent the majority of them to the Commissioner.

The Court: All right. And, I will say that...initially, the domestic nature is what - and listening to Mr. L (attorney for perpetrator) say there are other factors in this case - and I guess I should say that I feel a little better that...I probably had a knee-jerk reaction. So I do feel a little better and I did not consider that initially.

Research suggests that the theory of bias is based on the science of implicit cognition, which "suggests that actors do not always have conscious, intentional control over the processes of social perception, impression formation, and judgment that motivate their actions" (Greenwald & Krieger, 2006). Additionally, biases are rooted in the essential mechanics of the human thought process where people learn early to correlate items that commonly go together and logically expect them to inevitably co-exist in other settings (i.e., "thunder and rain, for

instance, or gray hair and old age” (Mitchell, & Jolley, 2010, p. 4). Such biases can be predominantly problematic in judicial decision-making because “they can produce behavior that diverges from a person’s avowed or endorsed beliefs or principles” (Greenwald & Krieger, 2006, p. 951).

Greenwald, Nosek, and Banaji (2003) found that more than 75% of “test takers” display some implicit biases in favor of the young, the rich, and white persons. Further, conscious desires or conscious reports against being biased do not eliminate the presence of biases (Greenwald et al., 2003). Banaji’s research has been applied in more and more diverse domains as well as among a wide variety of social groups (Greenwald & Krieger, 2006). The results of Banaji’s research and analysis of the data found that the bias data set has predictive validity, meaning a significant correlation with measures of behavior (Greenwald & Krieger, 2006). Thus, biases, known as unconscious attitudes and correlations that are formed by one’s life experiences, are always on the “back burner” waiting to integrate during the decision-making process. Greenwald et al. (2003) suggested that judges, like any other group of people, carry biases that can affect decision-making, especially in contexts where judges are unaware of their biases. Greenwald and Krieger (2006) noted the lack of research on bias in the context of judicial decision-making, despite the fact that such biases affect intuitive and deliberative decisions. Greenwald et al. (2003) argued that it seems possible that biases can have varying levels of influence on judicial decision-making at all levels of the judicial process. For example, trial judges more often apply intuitive processing for problems that arise during the course of a trial; however, they also engage in deliberative resolution of matters submitted and taken under advisement. As one stated during the interviews,

Judge 6: I can give you an example of a simple bias. The constant increase in our caseload creates a constant temptation for judges to give away essential pieces of their

job and allow them to be performed and prepared by other people. The temptation increases when you know that your staff attorneys are extremely experienced. So, when you get a record from them and their reading of a key aspect of the case, you can only trust they did not implant their bias in the matter. It is a reality of judicial life that only a couple of judges read all the cases and draft their own opinions from the scratch. You can trust me on that.

Judges also acknowledged that there are ways to control biases and some even cited the work of several researchers from the workshops they had attended on how to reduce judicial bias,

Judge 7: At the workshops, they teach us a lot of interesting stuff, such as how to control our biases and not judge by initial appearance or manner of speech.

Other judges spoke to the correlation between a particular demographic segment of the population and domestic violence statistics.

Judge 8: Does domestic violence occur more in disadvantaged neighborhoods? Absolutely! This is the trend. The couples who face job instability or other economic distress are more susceptible to domestic violence. Look at how numbers went sky high after Katrina.

Judge 9: Because a higher percentage of African Americans live in disadvantaged neighborhoods and face economic distress, they experience higher rates of domestic violence compared to whites.

Judge 10: If we look at the income of African Americans and the income of whites and we assume it is about the same level, then the domestic violence levels are about the same.

Judge 11: I am not sure about minorities and their relationship to domestic violence levels.

Judge 12: I think black women, from my experience, are more likely to report domestic violence.

Judge 13: I believe that for both males and females, divorced and separated persons have higher levels of domestic violence than those who are not married and, especially if the married group have children together.

One judge suggested that, if a particular decision-maker is biased against a particular race, enhanced exposure to positive examples from that race might work to diminish or counteract the negative implicit biases.



Judge 14: We look at and face the facts very often and, only because we see more African Americans in our courtroom, we think that this demographic segment is affected the most by domestic violence in the city. But, by doing the workshop we realize that it is not so. So, exposure to cases like that helps us eliminate our biases toward certain demographic groups. I don't mean to suggest that such issues are very easy to deal with. What I am saying is that such ethical issues arise all the time and a large part of a judge's job is to confront and deal with them.

Rachlinski (2009) offered that, if a judge's decisions suggest that he or she has or may have a negative bias toward black defendants, affirmative steps to expose that judge to more positive black role models, such as colleagues, could have a positive impact on the bias. Most judges agreed that an effective effort to minimize or counteract biases would be to specifically test and train judicial decision makers about biases. Green and Williams (2007) noted that testing for bias might assist judges in better understanding their implicit biases and the extent to which those biases influence their decisions. Green and Williams (2007) also advocated that that bias training, specifically on the effect of bias in judicial decision-making and strategies to minimize this impact, could become another aspect of the judicial curriculum. Braman (2009) suggested that more effective deliberation could be achieved by taking steps to increase the amount of time that judges have to make decisions, revise the frequency with which judges are required to issue written decisions explaining their reasoning, and reallocate decision-making between judges and juries or by implementing more multi-judge panels. From this study, I observed that it is the human desire of the judges to believe that they operate or function free of prejudices and biases when they make decisions. These judiciary accounts originate come from interviews and represent the above statement,

Judge 15: I don't claim that I have no biases and I don't say that I would not be tempted. But, what I am saying is that if money were important to me I would be still practicing law where I was paid about \$300 an hour. I am here to be fair. However, the human mind is a complex mechanism and research strongly suggests that, regardless of whether we are conscious of our biases and prejudices, most people employ and display biases. Because knowledge is power, the mere recognition of the prevalence of bias by the

judiciary is a progressive step toward being open to the possibility that it influences their decision-making and take steps to educate themselves on how to eliminate it.

Judge 16: I think we should craft additional ethical rules and standards that are directed toward judges and possibly extend the scope of what is implied within the impartiality standards to ensure ethical judicial behaviors.

The intuitive or “hunch” approach in realism decision-making is quick and simple, while the deliberative approach to decision-making is effortful and complex. The evident advantage of the former is its pace; judges with heavy dockets can rely on intuition to make judgments quickly. The obvious advantage to the latter lies in a careful and complex process and signifies that deliberative judgments are more accurate. However, intuitive thinking can also “lead to severe and systematic errors” (Klein & Hume, 2003). This chapter addressed the scientific research and research accounts obtained in the current research that suggest that judges rely on their intuitive accounts. However, with proper training can review facts in detail and predict outcomes on appeal, judges seem to favor make intuitive judgments. Therefore, the complexity of rules might enable trial judges to avoid the bias.

Studying judiciary biases is another aspect of judicial decision-making that can illuminate the depth of study on the judicial decision-making process. We have to be realistic in our understanding that some judicial biases are hidden from view and no rules can possibly ensure ethical judicial conduct that is completely free of bias. Judicial research on biases can illuminate biases and provide for a future understanding of the judicial decision-making process and awareness that it is ultimately the responsibility of the judiciary to police themselves properly against judicial bias.

### **Realism and Sentencing: Extra-Legal Factors (Personal Factors) Matter?**

The sentencing behaviors of trial court judges have attracted attention over the years (Selin, 1935). Most researchers have noted that, *ceteris paribus*, the severity of sentences, which

judges enforce on offenders, varies from time-to-time, place-to-place, judge-to-judge, or from class of defendant-to-class of defendant (Somit, Tanenhaus, & Wilke, 1960). Clearly, determining an appropriate sentence is a difficult issue for judges (see, for example, *United States v. Hayes*). However, this responsibility falls squarely to the judge alone (Federal Practice and Procedure Criminal, 1998).

The amount of sentencing discretion allotted to judges has varied throughout history. Traditionally, judges were granted almost unlimited discretion, which was subject only to the bounds of the Constitution and criminal statutes (23. See 18 U.S.C. § 3577 1976). However, the implementation of the Federal Sentencing Guidelines restrained judicial sentencing discretion by imposing mandatory sentence ranges to be applied mechanically; a judge must first consult the sentencing grid to determine the “base offense level.” Once the base level is determined, the judge may then adjust the offense level upward or downward based on the listed offense characteristics. Further adjustment is then made based on the victim, role of the defendant, acceptance of responsibility, criminal history, and offender characteristics.

Courts have implemented a 3-step process that begins with a calculation of the appropriate sentence range according to the Guidelines (Berry, 1919). During the observations, the researcher witnessed the judiciaries, when determining the appropriate sentence range, consider the parties’ arguments and certain factors enumerated in § 3553(a). *Gall v. United States*,

[A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by the party.

These factors include (1) nature and circumstances of the offense and the history and characteristic of the defendant; (2) need to punish, deter, protect the public, and rehabilitate;

(3)available sentences; (4) sentence range for similar crimes; (5) policy; (6) need to avoid unwarranted sentence disparities; and (7) need to provide restitution. During the interviews, one judge admitted to using the following grid in determining the sentence standards, “I have § 3553(3) for my references, which gives me the direct guidelines and a matrix of characteristics to access the correct sentence range.”

The researcher attempted to specify the types of personal variables and role expectations that were important as well as conditions under which judiciaries operate during their sentencing stage. Specifically, the researcher questioned the level that individual characteristics were acceptable to dislocate legally relevant considerations of the judiciary. Several judges addressed the fact that it was possible to see, in his or her courtroom, a disparity of differential criminal behavior patterns and sentencing between African Americans and Whites. Judges also addressed the fact that African Americans seemed to commit more serious crimes of domestic violence with heavier penalties and sentencing patterns. One judge stated, “Most domestic violence perpetrators were black males.” The judiciaries also related this fact to the African American upbringing culture and early saturation of “gangster and rapper” ideas in the culture, which could result in different standards of family values in domestic situations and relationships.

The researcher also observed the influence of personal factors such as sex and in judicial sentencing of domestic violence cases. Following these observations (50), the researcher separated the sample into categories of similar offence sentencing such as violations of TRO (temporarily restraining order), nonpayment of child support, etc. The researcher recorded the sex, race, the nature of the (similar “possible”) charges, and other similar defendant characteristics. The ages of defendants were also placed into one of four categories, up to 20 years old; 20 to 35; 35 to 50, and 50 years old and older. No direct establishment of belonging to

a particular social class was determined. The use of an attorney was used as a variable to suggest a defendant was able to afford legal fees. Additionally, considerate defendant behaviors were considered in two ways. First, the manner in which the defendant was dressed: least appropriate apparel included work clothes such as manual labor uniforms; casual clothes included shabby apparel (less appropriate to a courtroom appearance) and clothing that was clean and neat; and the most court-appropriate category, business clothes (suit coat and tie or pantyhose and heels). Of note, the type of clothing observed persuaded the researcher that dress was not significantly related to social class, as many defendants who appeared to be working class wore business cloths, while some who appeared to be professionals were shabbily dressed. Therefore, this was an imprecise judgment because the researcher had no measure of status against which to test these categories. The second category of courtroom behavior was the individual's tendency to draw a negative reaction from the judge. This variable was grouped into the following categories,

1. Failure to use an honorific title in addressing the judge ("Hold up, Sir, this is not how it went"; "Man, Telling you, she is lying...");
2. Expression of disagreement with declarative statement of the judge; ("Judge, this is unfair! She started pushing and kicking me"; "No, this is not how it went. Look at my phone.");
3. Raising of the voice;
4. Use of sarcasm ("come on, you tricked into believing her;" "This is not right.");
5. Expression of criticism of courts, law, or police ("It took them 30 minutes to get there...they were obviously not in a rush;" "You sure? Where does it say that?" (referring to basic statute of TRO).

The variable of sentencing was recorded when pronounced by the judge. For the study, the following sentences were considered, jail confinement, the amount of fine imposed, or jail and fine. Findings for this variable suggest that differences in sentencing are due primarily to diverse attitudes on the part of individual judges toward various crimes rather than individual

personal attributes and that the severity or lightness of the punishment depended on (1) the severity of the offense charged and (2) recidivism of the defendant.

The researcher expected that judges, in their legal professional role, would recognize legally relevant criteria and those they would not allow factors such as a defendant's age, race, and social class to influence his or her decisions, regardless of what these characteristics mean. Findings point to significant relationships between the presence of counsel and sentencing, as the majority judges noted during courtroom observations and interviews that defendants who were aware of their more serious offense employed legal counsel, while those whose offences were of limited severity would not hire representation. Judges also commented that they were limited in the type of questions they could ask defendants without the presence of the counsel. One judge stated,

Judge 1: I can definitely ask questions if one is not represented by counsel in civil proceedings, but I cannot do it in criminal. And, the changes are that they will be able to get into the record more without the attorney, then with one.

From realist standpoint, the researcher did not identify a significant relationship between the harshness of offense and race. The observed behaviors were either directly justified in the law or otherwise a consequence of a role that emphasized the importance of justifiable legal procedures. It was obvious during observations that the committers of more serious offenses and repeated offenders represented the harshest penalties. Additionally, neither a defendant's social class nor his race affected the severity of sentencing given by the judge. However, under some limited circumstances, judges did appear to respond leniently to younger defendant and work with them in a coaching manner; this may be evidence of judicial irrationality. The respect shown by appropriate clothing did not appear to influence sentencing in terms of fine. Finally, courtroom demeanor did not relate to jail sentencing.

The Federal Sentencing Guidelines has restrained the discretion of judicial sentencing. Today, a judge must consult the sentencing grid to determine based offense sentencing. Despite these guidelines, various factors influence and bias judges during the sentencing. During interviews, judges offered insight into factors that measure the risk of new arrests in domestic violence cases. Specifically, they addressed long arrest record, race (not white), number of prior probation sentences, sex (being male), and any current offenses (e.g., burglary, fraud, sale of any drugs). Three judges noted that certain extra-legal factors (e.g., age, employment, and education) could be used to simplify the task of identifying types of individuals to receive particular intermediate sanctions.

### **Judges and the Theories**

According to the doctrine of formalism, judges make decisions by analyzing factors and adhering to legal requirements that are internal to the law, which is also known as precedent. Judges also employ a neutral principal to avoid any type of undue influence (Wechsler, 1959). Decision-making under the formalist doctrine is “independent of particular individual moral or political views” (Greenawalt, 1989, p. 13). According to the theory of skepticism, which was the most used by the judges in this research (12 out of 17 judges from a sample), the law is rationally undefined on certain points when the class of legal reasons is insufficient to justify the established outcome of an issue (Posner, 2008). Realism refers to the manner in which a judge responds to the facts of a particular case, which is determined by various psychological and sociological factors (conscious and unconscious). Therefore, the final decision is not the product of the law, but of various psychosocial factors that range from the judge’s political ideology to his institutional role or, sometimes, to the judge’s personality. Finally, the realist movement

takes a realistic and intellectual look at how judges decide cases by considering “what the courts do in fact” (Holmes, 1897, p.461).

Based on the current findings, the researcher concludes that the judicial philosophy of the judges studied and their different belief systems, “hunch” decisions, biases, and personal facts, can affect a judge’s choice of which precedent to use, the direction in which he or she pushes or directs the proceeding, outcomes and sentencing, and how decisions are voiced or explained. Overall, it is important to note the similarity of findings between this research and other scholarly conclusions concerning the importance of judicial belief systems. While judicial beliefs (overall belongingness to the skepticism theory) are not always easily distinguishable, if a belief is known, it suggests a high element of probability. Therefore, known beliefs can indicate a judicial predisposition toward a favorable or unfavorable response; however, knowledge of beliefs is not an exact barometer or indication of how a particular judicial belief will influence the proceedings.

### **Common Emergent Themes Across all Theoretical Perspectives**

#### **Contradictions of the Bench**

This section describes the two emergent themes found across the experiences of the judges, “God in the Courtroom,” and the use experts. Thus, this section will address and illustrate judicial accounts on judges' perceptions of themselves as the “God of the Courtroom,” which speaks to the power held by judges and how they employ this meaning in their relationships with experts they use in the adjudication of domestic violence cases. At the same time, judges hold power in the courtroom when they employ the knowledge of the experts, which makes this notion contradictory.

**“The God of the Courtroom”.** The following codes for the common emergent themes



across all theoretical perspectives include “God of the Courtroom” as one judge used this phrase to describe himself to refer to the power and unbiased authority over the courtroom. The findings of this research illustrate the divine power or nature of the judges to control and have authority over their courtrooms. However, this chapter displays how judges exercise considerable judgment in addressing litigants and counsel in their courtrooms to achieve courtroom order and practical case adjudication management goals. This achievement is especially important in the highly interactive context of the judicial caseload where most judges encounter the public circulating through the courtroom on a daily basis. Carl Jung remarked, “The more one sees of human fate and the more one examines its secret springs of action, the more one is impressed by the strength of unconscious motives and the limitations of free choice” (2012, p. 2, para 9). The judiciary is expected to render decisions that are fair, ethical, and free from the manipulation of personal biases and prejudices. For the judiciary, the concept of unbiased decision-making is codified in the *Judicial Code of Ethics*. Judiciaries’ are to be the impartial and unbiased authority of the state of affairs that come before them. These beliefs are collectively known as “the cult of the robe” (Posner, 2008) and dominate the study of judicial decision-making. According to one judge, the “cult of the robe” is a set of beliefs that reflect the judiciary as a majestic and mystical body.

Judge 1: It feels as if you are in a different world when you put the robe on. Something tells you and lets you feel that you absolutely have to do what is right.

Spaeth (1979) made the following statement, “No aspect of American government is more suffused with myth than judicial decision-making” (p. 1). Several aspects surround judicial “mythology.” One of the most obvious is the long black robes worn by judges. No other governmental institution, other than the military and law enforcement, wear an official uniform. Additionally, the length and cut of judicial robes make an impression on the minds of those who

come to the court and the color black symbolizes the seriousness of the proceedings. This is illustrated in the following transcript excerpt,

Court: Mr. X, your personality and the way you do things apparently works well in business, sir. But, I'm going to tell you, in personal relationships, it does not work at all. You cannot make people do what you want them to do as you tried to make this Court do what you wanted it to do. You tried to make this Court understand your point of view when you were not even on the witness stand at the time and, when you were on the witness stand, you continued even when objections were raised and sustained.

As much as a person's fate can literally lie in the hands of a judge, they are the "Gods of the Courtroom." At all times during court proceedings, one must respect the judge. This is demonstrated in the following courtroom observation,

Judge 2: Mr. X, okay. I am going to admonish everybody to conduct themselves appropriately. We've been down this road before. If I see anybody doing anything, I am going to take care of it myself, okay?

Additionally, judges preside from a bench that allows them to observe all that occurs in the courtroom. The bench also forces everyone in the courtroom (litigants, participants, and audience) to look up at the judge physically; this is another reminder of who is in control of the proceedings. Other reminders include requiring everyone in the courtroom to rise to the cry of the bailiff that court is in session when the judge enters, addressing the judge as "Your Honor," and referring to the judge as the "Honorable Judge/Justice."

Overall, the United States legal system descended from the English legal system; therefore, many physical aspects of the judiciary have their roots in English legal customs (Posner, 2008). Because it was these monarchs, or their representatives, who heard petitions and appeals, it was believed that their decisions came from God. This notions helps explain the religious overtones that are present even in the modern judiciary and supports the required showing of respect for the dispensers of divine justice. As one judge noted,

Judge 3: Historically, judges have adopted the belief that we are giving out divine justice.

This attitude, however, is not simply an extension of the fact that early judges were representatives of the Crown; rather, these early judges (as is the case with the modern judiciary) held the lives and fates of the people in their hands. From one courtroom observation, the judge announced to the courtroom, directly and clearly, which illustrates his “God-”like power over the courtroom.

Judge 5: He doesn’t have permission to be here.

Here is the tendency, and perhaps a desire, to look upon judges as being superior. Specifically, it is easier to place your fate in the hands of someone with superior wisdom and the ability to find “truth and justice” than in someone considered an equal. Judges often mirror these attitudes and many have adopted the belief that they are dispensing divine justice. While the significance of their authority may not be the same, modern American judges hold similar attitudes regarding their roles,

Judge 5: (*addressing the counsel for both sides*). I might have to shackle you all together before it’s over with.

In the following account, it appears that the individuals in court are wasting the judge’s time. Again, this illustrates the idea of “God of the Courtroom” in that the judge’s time is more valuable than the defendants and attorneys’ time,

Judge 6: You just don’t seem to get it that when the judge says stop talking you just would not stop.

Another judicial account was noted during observations,

Judge 7: We’re not coming back. I’m not going to be here tomorrow. I gave up one day. I’m not going to give up another day.

A final account stated,

Judge 8: The court will come back to order. We are going to go out of turn for a witness.

In their active duty as the “God in the Courtroom,” judges addressed their duties in the courtroom. The “God of the Courtroom” performs five distinct tasks behind all visible regalia within the courtroom. The first task is simply to preside over the proceedings and see that order is maintained.

Judge 9: Mr. X, you need to stop right now!

The second task was to determine whether any evidence from either party is illegal or improper.

Judge 10: Look counsel, you claim that there is not a disputed issue of material fact on this point, but isn't it true that the affidavit of Joe Smith, submitted by opposing counsel, directly contradicts your client's affidavit?

Attorney: Well, your honor, I'm not really sure.

Judge 10: Let's not guess. The affidavit appears at page 635 of the Excerpts of Record. Why don't we read it together and you can explain to me what it says.

Attorney: Your honor, I don't have the Excerpts.

Judge 10: That's OK, counsel. You can go over to your briefcase and bring it to the lectern. I'll wait.

Attorney: Well, what I mean, your honor, is I didn't bring the Excerpts with me to court.

Judge 10: What did you think we were going to do here today, have coffee and donuts and talk about the weather?

Attorney: To be truthful, I thought we were going to talk about the law. I wasn't counsel in the district court so I'm not really all that familiar with the record, but if you say the affidavit is in there, how can I deny it?

Judge 10: Well, let's talk about the law then. Isn't it the law that you can't get summary judgment if there is a disputed issue of material fact? And, the affidavit seems to establish a disputed issue of fact.

Attorney: But, that's true only if you believe the affidavit. I can tell you for a fact it's a lie. In any event, it's hearsay since it describes out-of-court conduct, and it's not the best evidence.

The third task occurs before the jury begins its deliberations regarding the facts of the case. At this point, the judge must give the jury instructions about the law that applies to the case and the standards it must use in deciding the case. The fourth task refers to bench trials when the judge must determine the facts and decide the case. The fifth task is to sentence

convicted criminal defendants. Overall, even if perceived as a “God of the Courtroom,” or an authoritative figure, the judge is also legally responsible for everything that goes on in the courtroom, as evidenced by the five tasks discussed above.

The findings of this section illustrate the divine power or nature of the judges according to accounts based on realism and judges’ control and authority over their courtrooms. However, this research also illustrates how judges exercise considerable judgment in addressing litigants and counsel to achieve courtroom order and practical case adjudication management goals, while applying extra-legal factors by addressing litigants or giving their opinions on organizational matters during the hearing. This achievement is especially important in the highly interactive context of the judicial caseload where most judges encounter the public circulating through the courtroom on a daily basis. The following section reviews the use of experts during proceedings. Specifically, the following section discusses the use of experts from the theories of formalism, skepticism, and realism and highlights how judges perceive experts.

**Experts.** Formalists, skeptics, and realists agree that experts can explain many problems that are associated with using science in judicial proceedings. Science is a body of knowledge or process used to propose and refine explanations about the world (Scott, 1995). All interviewed judges agreed that the best explanation for science, knowledge, and expertise in behaviors on domestic violence cases could be presented to them with the help of experts. The overall requirements that judges expect of experts are explained further. The codes used included science help beyond the judicial scope of knowledge and ease in making decisions with expert testimony.

Consensus of all three theories (Scott, 1995) suggests that to qualify an expert witness and demonstrate his or her expertise to the judge and jury, introductory questions should focus

on expert professional background and seek to accomplish two goals. The expert must demonstrate to the judge that he or she possesses at least the minimum qualifications to give opinion testimony on a particular subject. The expert must persuade the jury (or fact finder) that his or her judgment is sound and opinion is correct (Keeton, 1973). This is illustrated in the following court record,

Judge 1: You are tendering him as what?

Attorney 1: I would like to tender Mr. X as an expert in the field of Substance Abuse Counseling.

Attorney 2: As an expert of what?

Attorney 1: The field of Substance Abuse Counseling.

Attorney 2: I don't know what that means Judge. What can that be? Addiction Counseling? When he talks about substance abuse, he should not be offered in an area that is any broader than where he holds a license or a certification from the State of Louisiana.

Judge 1: Well, I would think that substance abuse would be inclusive of - would be included under Addiction Counseling - wouldn't you think? I'm going to accept him as an expert in the field of Substance Abuse Counseling, which I think includes Addiction Counseling.

The fundamental reasoning for treating expert evidence as special, to the point of permitting evidence of opinion, dates back to the earliest use of expert evidence when courts concludes that certain areas of knowledge are beyond the capacity of the Court or jury; therefore, it is appropriate to have expert evidence, albeit opinion evidence put before the Court. This was characterized and added to the resources of the Court in *Buckley v Rice-Thomas* (1554) (Bryne, Cross, & Gobbo, 1979).

All judges interviewed highlighted and discussed the importance of an expert's knowledge and testimony in assisting a judge's final decision in the adjudication of domestic violence cases. Judicial answers that illustrate this point include the following accounts that were obtained during interviews,

Judge 2: I love experts. I don't know what we would do without them?"

Judge 3: "Experts are always welcome in my courtroom. The more, the better. It makes it easier to make a decision.

The judges also stressed their dependence on sociologists, psychologists, and criminologists. Many judges discussed that the introduction of social science data in assisting with judicial decisions is a relatively a new phenomenon. A sampling of judicial thoughts includes the following accounts,

Judge 4: In child custody cases involving domestic violence, I would rather listen to the experts and their suggestions than talk to the children. You know how it goes! Whether they are three years old or whether they are in their teens, the parent who buys them the stuff they want is the best. This will be their testimony. But, I need a professional assessment of the situation.

Judge 5: There were times when the expert testimony made me rethink the total outcome and how to adjudicate the case.

Still, a different judge stated that expert testimony could give him the ability to correlate, scientifically, the perpetrator's behavior with the use of alcohol and medication.

Judge 6: And, it's also true that the drugs and alcohol would negate the effects of any anti-psychotic medication. Is that correct?

Expert: They could.

Many problems associated with using science in judicial proceedings can be explained by examining the cultures of law and science. Science is a body of knowledge, a process used to propose and refine explanations about the world that is subject to further testing (Scott, 1995). Scientists value precision and accuracy and they look for a high level of confidence in their findings, which, in many cases, requires an extended period to complete. The legal system functions with a different set of values and rules. This system seeks consensus and understanding of the truth; it also seeks pragmatic justice at a particular point in time after which those involved can move on with their lives (Alcorn, 1996). Additionally, the judicial

requirements for subject matter experts include knowledge, precision, and accuracy in the respective field of study. Some judges interviewed addressed these requirements as follows,

Judge 7: Experts are highly welcomed in my courtroom, as long as they do not forget to bring their CV. I need to know what they have done before they came to testify in my courtroom.

Judge 8: As long as the expert testimony is based on knowledge - not belief or feelings - I will admit it and I will use it in my decision. I welcome experts.

In 1622, Sir William Coke offered one of the first criticisms of the use of experts. He stated that opinion was an inadequate basis for a court to make its decisions (Freckelton, 1994). In 1873, Sir George Jessel began discussing the problem of the quality of opinions put before the Court (Freckelton, 1994). Specifically, Sir George Jessel concluded that evidence too regularly coincided with the views of the party engaging the expert witness (Freckelton, 1994). Serious debates have since ensued about this approach (Chesebro, 1994). A 1991 Federal Judicial Center survey of federal trial judges found that “judges’ doubts regarding the credibility of testimony by the parties’ experts were common...The main issue is whether the parties’ experts are ‘real’ experts or simply “hired guns”” (Cecil & Willging, 1994, p. 64).

The judges interviewed for this study also indicated that the main problem with using expert witnesses in domestic violence cases is that attorneys for both sides only hire experts who will support their position. These attorneys are determined to find the best witness and not necessarily the best scientists. Known as the “hired gun” phenomenon, these so-called experts who are willing to testify to marginal or even dubious scientific positions for compensation, are in great demand. Re-introducing one judge’s statement,

Judge 9: I use experts, of course. They are very important for understanding the complex issues, but I listen to them very carefully. I want to know from them if they were trained by the side that hired them.



One account of a “hired gun” expert is best illustrated by the following expert testimony (from the record),

Judge 10: And you are relying on the patient to tell you those things, right?

Expert: That’s correct.

Judge 10: You don’t have any other way of determining whether or not the patient is telling you the truth about his or her drug use?

Expert: The only other way would be to get a urine or drug toxicology screen and, I did not do that.

Judge 10: Have you done that?

Expert: No, I have not.

Judge 10: Why not, Doctor?

Expert: Well, at the time I did not feel it was indicated because I thought I knew what was happening.

Judge 10: Let’s move on.

The role of experts is important to judges’ decision-making processes. There is a growing need for scientific and technical facts in civil and criminal litigation, which means that the legal system needs the best scientific and social knowledge experts to make just and rational decisions. Scientific or social evidence can provide the answer in certain types of cases. A scientific expert might be used to answer the question of causation in a case that involves a father murdering his daughter (Jenkins & Kroll-Smith; 1996, p. 65). In one case example, a cultural interpreter was used when the wife of a Japanese businessman, who was living California, drowned her children because she was distraught over her husband’s affairs. The following is an account of how an expert could be used to testify by assessing the individual based on culture and, thus provide credible information for the judge.

She walked with her two small children into the ocean, intending to drown with them in a family suicide. A Good Samaritan rescued the woman; the children, however, drowned. The woman was charged with first-degree murder for the deaths of her children and faced a possible death penalty. The case aroused such deep concern in the Los Angeles area Japanese community that 4,000 people signed a petition to the district attorney asserting that the woman’s actions would be regarded very differently in Japan.

In the above scenario, the expert could provide the judge with information on the woman's culture in relation to family and duty. This information may provide a foundation for the judge to better understand the situation and render a decision.

Jenkins and Kroll-Smith (1996) addressed the involvement of sociologists as expert witnesses of religion in so-called cult brainwashing cases. Those who oppose brainwashing theories are motivated in part by personal concerns about freedom of religion; however, they primarily question the quality of expert psychological and psychiatric testimony.

For each party, expert evidence could mean the difference between winning and losing (Jenkins & Kroll-Smith, 1996). As many death row cases indicate (Anderson & Winfree, 1987), science can play a crucial role in judges' life or death decisions (e.g., DNA, fingerprinting). The expert witness, when selected according to established standards, can enhance the credibility of how a case is handled (Jenkins & Kroll-Smith, 1996). A word of caution, public perception of the "hired gun" notion is that the legal system does not do an effective job of distinguishing between the Nobel Laureate and charlatan.

In the last 25 years, criticisms of courts' methods of handling or mishandling cases have received extensive attention (Anderson & Winfree, 1987). For example, the 1993, a Carnegie Commission on Science, Technology, and Government report referred to "widespread allegations that the judicial system is increasingly unable to manage and adjudicate science and technology...issues" (p. 11). The Commission also stated,

If these claims go unanswered, or are not dealt with, confidence in the judiciary will be undermined as the public becomes convinced that the courts, as now constituted, are incapable of correctly resolving some of the most pressing legal issues of our day. (p. 11)

Since 1993, three landmark Supreme Court decisions have addressed the issue of expert witnesses in the courtroom, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579,

(Ferrell, 1994); *General Electric Co. v. Joiner*, 522 U.S. 136, (1997); and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, (1999) (Jenkins & Kroll-Smith, 1996, p.5). Questions regarding the validity of scientific evidence and credentials of some experts were the background of the Supreme Court's 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* The plaintiffs in this lawsuit were two minor children and their parents who claimed that the children's birth defects were caused by their mothers' prenatal use of the anti-nausea drug, Bendectin (Orr, 1994). The Federal District Court granted the defendant summary judgment and ruled that the plaintiff's evidence did not meet the standard of general acceptance within the scientific community (Jenkins & Kroll-Smith, 1996). On appeal, the Supreme Court had to determine the standard for the admissibility of expert scientific testimony. In this landmark decision, the Court ruled that federal trial judges must act as gatekeepers to exclude unreliable evidence from the courtroom. The Court also found that a trial judge must determine "whether the reasoning or methodology underlying the testimony is scientifically valid" and will "assist the trier of fact." The Court cited the AAAS/NAS brief to the effect that, "Science is not an encyclopedic body of knowledge about the universe. Instead it represents a process for proposing and refining theoretical explanations about the world that are subject to further testing and refinement" (Jenkins & Kroll-Smith, 1996).

In 1997, the Supreme Court issued an opinion that addressed the role of experts and the merits of evidence that was admissible in court, *General Electric Co. v. Joiner* (Orr, 2004). While the *Daubert* case addressed the distinction between the methods that an expert uses to draw conclusions, the *Joiner* case suggested that methodology and conclusions are not entirely distinct and may be considered linked. In summary, if valid reasoning does not support an expert's conclusion, it should be excluded (Orr, 1994).

For some judges, expert witnesses can pose a challenging task. According to Judge Weinstein (1994), “I’ve got a background in the humanities. And I’m faced with two equally qualified scientists, one of whom says ‘black’ while the other says ‘white’. Now c’mon, I’m supposed to make a decision here?” (p. 326). Two judges spoke to this notion,

Judge 11: Experts are great if they can give me the bottom line and make it simple.

Judge 12: Yes, experts are extremely important. My prerequisite with them is the use of simple English. We all need to know what battered woman syndrome is all about.

There may be a way to avoid some of the challenges that are associated with expert testimony using experts who are appointed by the court rather than those who are hired by the parties of the litigation. Additionally, judges have the power to appoint experts through several sources, including the *Federal Rules of Evidence*, which state, “The Court may appoint any expert witness agreed upon by the parties and may appoint expert witnesses of its own selection.” The 1991 Federal Judicial Center survey examined the Judicial Branch and found that of 87% (375) of judges surveyed expressed the view that court-appointed experts were likely to be helpful in some cases (Cecil & Willging, 1994). One judge specifically admitted that, in his courtroom, he only used court appointed experts.

Judge 13: I request a court appointed expert so there are no disagreements. If the parties claim that she or he is unsuitable in the case then I can entertain other options, but they have to make a good argument, like the expert has been dating the baby sister or something like that.

In the course of the interviews, judges indicated that they consider three main questions with regard to expert witness testimony. First, whether the testimony is based on established scientific principles, as indicated in the following,

Judge 14: As long as the expert testimony is based on knowledge, not belief or feelings, I will admit it and I will use it in my decision. I welcome experts.”

The second question concerns the use of appropriate methods for the task. The third question concerns the usefulness of the information from expert witnesses; for example, judges emphasized that experts are used in the courtroom to offer judges guidance. Experts achieve this by providing judges with scientific facts that help them reach a decision where common sense and ordinary experience might not be sufficient.

Based on the research and scholarly literature review on expert witnesses, the researcher concludes that the use of experts to provide judges with important scientific evidence is critical to the adjudication of cases. In the courtroom, the goal is not a consensus of the truth, rather a definitive decision. Of importance, although there may be consensus in the scientific community about a particular question, such consensus is unlikely to occur in the courtroom. On the contrary, opposing attorneys will seek out experts who can strengthen their arguments or points of view.

As discussed, formalism, skepticism, and realism in judicial decision-making processes are often the basis of decision-making theories and use external sources of information (i.e., experts), who play a significant role in the judicial decision-making process. Interestingly, regardless of a judge's decision-making style, all judges rely strongly on expert opinion, either in the form of expert testimony or psychiatric services contained in reports. Through these testimonies, judges gather information to support their final decisions, even though they identify themselves as the "God of the Courtroom," which could falsely lead one to believe that their sole knowledge on the matter would make the final adjudication. Contrary to such fact, in their own judiciary explanations on decision-making patterns, the judiciary stressed the need for expert recommendations to help mitigate their own uncertainties about a case. In this way, judges can

use a collective strategy to determine what appears to be the best possible decision and have a mutual back-up mechanism of evidence.

Interestingly, regardless of a judge's decision-making style, all judges rely strongly on expert opinion, either in the form of expert testimony or psychiatric services contained in reports, which they can "lean on" when making their final decisions. In their own explanations on decision-making patterns, the judiciary stressed the need for expert recommendations to help diffuse judicial responsibility or mitigate their own uncertainties about a case. This theme is important because it speaks to the attitudes, expectations, and environmental "feel" of the courtroom.

## **Chapter 8**

### **Conclusions**

The manner in which judges choose between rules, standards, legal, and extra-legal factors fundamentally shapes case outcomes and the development of a broader understanding of the judicial decision-making process. While the scholarly literature has much to say about the merits of judicial theories, rules, standards, and legal factors, legal scholarship has produced little comprehensive explanation on how judges, individually or collectively, make choices in their decision-making process.

Through court observations, judicial interviews, and analysis of court documents, the researcher examined various aspects, or factors, of the judicial decision-making process and discussed in what manner judges were likely to use them, if at all. By studying and exploring the theoretical notions and individual judicial preferences, the researcher sought to gain an understanding of the judicial decision-making process. Specifically, this dissertation addressed the dominant factors of the judicial decision-making process. Within the given research framework, the researcher showed how factors, such as judicial socialization, beliefs, work styles, biases, personal factors, and the use of the experts in the courtroom, shape and effect the judicial decision-making process. Findings reveal that judicial decision-making shapes the outcome of cases. Thus, researchers must examine the context of each decision-making process to understand its meaning fully. This dissertation raised and answered two questions,

- How do judges make decisions during the adjudication of domestic violence cases?
- What is the relationship between legal and extra-legal factors in adjudication of domestic violence cases?

To answer the first question, the researcher identified theories of judicial decision-making through a review of the literature. The researcher then examined and analyzed the theories of

formalism, realism, and skepticism, as well as their role in the judicial decision-making process by conducting 17 judicial interviews, 51 courtroom observations, and analyzed 50 transcript documents.

According to the theoretical perspective of formalism, judges make decisions by analyzing factors and adhering to legal requirements internal to the law, also known as precedent. Judges also employ a neutral principal to avoid any type of undue influence under the theory of formalism (Wechsler, 1959). Decision-making under the formalist perspective is “independent of particular individual moral or political views” (Greenawalt, 1989, p. 13). Additionally, lower courts, such as trial courts, use established precedent, put in place by higher courts, to make decisions and higher courts use patterns of past precedents in deciding appeals. Following legal precedent appears to be a much stronger constraint on lower courts than it is on higher courts, which is expected given the nature of the judicial hierarchy. The researcher identified five judges who employed, during trial, the theory of formalism in the adjudication of domestic violence case (via accounts discussed) and concluded that such theory is the least desirable or beneficial option for litigants in domestic violence cases. This is because mechanical jurisprudence overlooks new and updated characteristics that are based on cases-by-case situations. Additionally, formalism does not employ is case-by-case consideration, as one judge mentioned, “there are many corners which are not covered by the theory of formalism.” Another judge stated that formalism is not an “one fits all” theory for the victims of domestic violence because each case is different and based on the diversity of the household situation. Therefore, the benefit of this theory for domestic violence cases is the uniformity and homogeneity of decisions. In addition, it is important to address that, because the law includes domestic violence statutes (e.g., issues of protective orders), civil and criminal domestic violence



issues can result in protective orders, which are bound by laws and lack discretion (e.g., when a protective order is violated). Other elements of domestic violence, such as issues of the child support, alimony, and physical child custody, can be adjudicated under the formalist, skeptic, or realist theoretical perspectives. Judges, who adjudicated primarily under the theory of formalism maintained their adjudication from the perspective of formalism in child support, alimony, and physical child custody cases. In further discussion of the judicial perspectives of skepticism and realism, the component of all restraining orders was adjudicated according to formalism: bound by precedent and lack judiciary discretion.

Twelve judges were identified as following the philosophy of skepticism. According to the theory of skepticism, which was most widely used by judges in this research, the law is rationally undefined on certain points when the class of legal reason is insufficient to justify the established outcome on an issue (Posner, 2008). As such, the judiciaries adjudicated cases using an open-structure to choose the precedent they deemed necessary and, thus, were able to review individual factors of a case to decide on proper and final adjudication. This theoretical perspective is the most favorable in the adjudication of domestic violence cases because it allows for individual consideration. It also allows judges to determine how such factors come into play in the current and future life of litigants, especially when children are involved. The drawback of this theory for domestic violence cases is its inconsistency between cases because decisions depend on individual judges, socialization patterns, and beliefs in the overall adjudication process, or so to say “the human element in justice” (Everson, 1919).

The theoretical framework of realism refers to the manner in which a judge responds to the facts of a particular case, which is determined by various psychological and sociological factors. The realist movement took a realistic and intellectual look at how judges decided cases

by considering “what the courts do in fact” (Holmes, 1897, p.461). Therefore, the final decision is not the “mechanical jurisprudence” product of the law, but of various factors that range from the judge’s ideology to his or her institutional role or, sometimes, personality.

What judges actually do, according to realists, is decide cases according to how the facts strike them and not because legal rules require a particular result. Further, realists argue that judges are largely fact-responsive rather than rule-responsive (Posner, 2008). The researcher identified one judge who belonged to this category; however, was disbarred, or “removed from the bench” for judicial misconduct. As illustrated, this theoretical perspective is the least desirable in the adjudication of domestic violence cases because of the interference of extra-legal factors.

In contrast to scholars who assert that one theoretical approach is preferable to another, the findings of this research illustrate that the rules and standards of each theory have limitations and opportunities for judicial discretion and can be advantageous or disadvantageous under given circumstances.

The prevailing sample of this research was white male judges. This is important because the role of gender and race must be acknowledged when evaluating and addressing the results of this research. This researcher also identified dominant or key influences in judicial decision-making processes such as judicial socialization, gender and race, judicial beliefs, fluidity and “hunches” of judicial decision-making, working styles, and the role of experts. These influences, as well as the locality of the court and statutes of domestic violence that are practiced within each court, are conditions that could affect case outcomes.

Considerable research has been conducted to assess the role that legal and extra-legal (personal) factors play in the judicial adjudication process. Although sometimes remote, the

researcher witnessed these concepts through an analysis of court documents and court observations. The findings add to the existing body of knowledge the notion that extra-legal factors may influence judicial decision-making processes; unfortunately, this influence is sometimes in a manner that is not visible to the naked eye.

The external debate of the prevalence of legal versus extra-legal factors in judicial decision-making and its philosophical value might merit future extensive research to explain why and how judges make their decisions. The examination of extra-legal factors, such as biases and “hunches,” as well as personal factors is important in its own regard in that it can offer an understanding of how such factors interact within the confines of the law. Such an examination could also assist in developing a normative assessment of judicial decision-making processes, which could have real life significance for all parties involved in the adjudication process.

Until the 1970s, crimes of domestic violence were seen as a private problem and legal or social support for victims of these crimes was nonexistent. Beginning in the 1970s, feminists and battered women’s activists began addressing and increasing awareness of domestic violence as a widespread social problem. In response to these efforts, slowly, state-by-state legal responses developed. These early efforts were supported by civil orders of protection, mandatory arrest policies, and the development of state statutes that specifically require certain case prosecution routines or sentences for domestic violence crimes (e.g., assault, harassment, and stalking). Today’s response to domestic violence in court represents a step toward the union of these social and legal strategies.

Judicial socialization reflects the personal characteristics and responses of a particular judge on the bench to his or her environment. Findings suggest that judicial socialization is

interlocked with the decision-making process. This relationship influences the establishment of judicial parameters and sheds light on how judges make their decisions.

In this study, judicial belief systems fell into three main categories; the choice of precedent; the necessity of establishing the balancing test, and the beliefs that speak to a particular judicial domestic violence adjudication framework or training. Based on these findings, the researcher concluded that the judicial philosophy studied and judges' belief systems could affect their choices of which precedent to use, the direction in which they push or direct proceedings, the outcomes of sentencing, and how they voice and explain their decisions.

The researcher also identified judicial role performance types to understanding judicial behaviors and judges' abilities to address options and expectations, which gave the researcher insight into judges' perceptions and understanding about job performance standards. From courtroom observations and interviews, the researcher identified three of Thompson's six judicial work styles, "Workhorses" of the court, "Routineer Hacks," and "Political Adventurer-Careerist" categories. Findings revealed a close tie between the "Workhorses" of the court with "Routineer Hacks" ("Judicial Pensioner," the "Hatchet-Man," and "Tyrant-Showboat-Benevolent Despot" were not applicable). These judicial types contribute to the court's organization as a functional mechanism to perform a complete "mission" in terms of judicial drives, needs, and personality.

Findings also revealed three types of judicial decision-making process, which include the theoretical beliefs of formalism, skepticism, and realism. Adhering to a school of thought to describe the judicial decision-making process suggests that it is advantageous to know how judges perceive the matters involved during the adjudication process. Judges who supported the belief of formalism emphasized the plain meaning of statutes and facts. Those who supported the belief of skepticism claimed that the law is always "open and available" to explain any

judicial decision and its structure. Finally, realists confirmed the influence of extra-legal factors on the judicial decision-making process. The majority of the current sample of the judges (12 out of 17) employed the theory of skepticism. Additionally, of the three possible adjudication theories studied, skepticism is the most advantageous in domestic violence victims because of the importance of the individualistic nature of these cases. However, a possible drawback involves the non-homogeneity of adjudication, which could influence decisions based on judicial socialization and beliefs.

Another factor to judicial decision-making is the role of experts. There is a growing need for scientific and technical facts in civil in criminal litigation; therefore, scientific and social evidence can provide the answer to such cases. In the courtroom, the goal is not consensus of truth, rather a definitive decision. Although there may be consensus in the scientific community about a particular question, such consensus is unlikely to appear in the courtroom. Thus, it is up to the judge to listen to experts on the matter who scientifically strengthen the notion of truth to make the best possible adjudication decision.

Concerning the idea of the “God of the Courtroom,” the researcher concluded that, ultimately, judges have power over and control of proceedings in their courtroom. Considering the highly interactive context of the judicial caseload, this control and order is important for effective adjudication of cases as well as for reinforcing historical judicial majestic and mystical power. One concept that emerged during the interviews was that, even though judges perceived themselves to be “Gods of the Courtroom,” they still used expert testimony in their final adjudication decisions.

Also discussed were judiciary “hunches” and biases. This researcher witnessed some cases of judicial biases that varied on different levels of the judicial decision-making process.

However, it is encouraging to know that judiciaries acknowledge this problem and are eager to learn ways to control their “hunches” and biases by attending and obtaining professional knowledge through conferences and workshops. Studying judiciary biases is another aspect of judicial decision-making, which can illuminate the depth of the study of judicial decision-making processes. However, we must be realistic in our understanding that some judicial biases are hidden from view and no rules can possibly ensure that ethical judicial conduct is completely free of bias. However, we do hope judges understand that the judicial decision-making process and awareness are ultimately the responsibility of the judiciary to police themselves properly against judicial bias.

During courtroom observations, the researcher established the following courtroom behaviors as negative reactions as perceived by judges: failure to use an honorific title when addressing the judge, expression of disagreement with declarative statements to the judge, raising one’s voice, use of sarcasm, and expression of criticism of the court, law, and police. Associated with the belief that judges, in their legal capacity, will recognize legally relevant criteria is the expectation that they will not allow factors, such as a defendant’s age, race, or social class, to color their decisions, regardless of what these characteristics mean.

Overall, the findings open the broader issue of the connection between these findings and the adjudication of domestic violence cases. This research offers insight into the dynamics of the judicial decision-making process and creates awareness in recording judicial decision-making practices in adjudicating domestic violence cases in Orleans and Jefferson Parishes. This research also asserts the fact that domestic violence training is an important aspect of proper adjudication, as it requires a degree of expertise and knowledge to handle such cases.

The judiciary's role is to serve justice and find the truth, which, if not properly adjudicated, can lead to long-term negative consequences for the victim and the perpetrator. If a case is not properly adjudicated, the victim can lose faith in the criminal justice system and court protections, and the perpetrator, not seeing the severity of the offense, might re-offend, which would bring negative ramifications to the offender or, possibly, new victims.

This research also helps demonstrate the importance of formal training in data collection of reports for law enforcement agencies, which are the initial data collectors in domestic violence cases. Specifically, these data collection activities assist in establishing reliability of data that judges use during the adjudication of domestic violence cases.

This research does have limitations, such as the geography of the study (specific to Orleans and Jefferson Parishes) and, therefore, is not generalizable. Access to judges was another limitation; not all judges were interested in participating because of workload or possibly personal interests. This is important because, as an example, an elected judge (compared to appointed) might hold different views on domestic violence cases. Additionally, it is believed that elected judges are more focused on providing services to voters (i.e., they behave like politicians), whereas appointed judges focus on their long-term legacy as creators of precedent (i.e., they behave like professionals).

This research identified one court in the 24th Judicial District Court in Jefferson Parish and three courts in Orleans Parish (Orleans Municipal Court, Orleans State Criminal Court, and Orleans Civil Court) that hear domestic violence cases. The researcher interviewed 17 judges in both parishes, conducted 51 courtroom observations, and conducted 50 transcript analysis cases. This research yielded accounts on the adjudication of domestic violence cases from different

judicial jurisdictions in light of judicial decision-making styles, work styles, beliefs, biases, verbal and non-verbal communication, sentencing patterns, and use of experts.

The researcher hopes that the reported findings will provide useful information to judges, commissioners, hearing officers who adjudicate domestic violence cases, and attorneys who represent domestic violence victims. Additionally, this researcher hopes that these stakeholders will learn from each other by reading these accounts and develop best practices to increase consistency of practice implementation within and across jurisdictions.

In conclusion to this research, the researcher explained how judges fall into certain categories when making their decisions, which highlights that key insight and rulings, as studied and addressed in courtroom observations, transcript analyses, and interviews, migrate a judge toward theory using a case-by-case decision-making process.

In this research, the account of judicial decision-making skills in the legal context was presented. Studying judicial decision-making theories and accounts, the researcher could raise important questions for litigants, lawyers, judges, and the architects of the civil and criminal justice systems. Specifically, which of the three theory-based decision-making processes is preferable? This researcher also identified several concrete measures that the civil and criminal justice systems might implement to promote deliberative decision-making (e.g., workshops on new laws in domestic violence cases). Based on the current findings, it would be interesting to suggest that our justice system require judges who deal with domestic violence cases to write opinions. This researcher believes that this practice would take a considerable amount of time from judges and might stimulate thought that otherwise would not occur. Rather than serving simply to describe an allegedly deliberative process that has already occurred (as a formalist might argue) or to rationalize an intuitive decision that has already been made (as a realists might



argue), the discipline of opinion writing could enable well-meaning judges to overcome their intuitive, impressionistic reactions and possibly challenge them to assess a decision more carefully, logically, and deductively. It is understandable that preparing a written opinion is sometimes inconvenient or simply infeasible. In such situations, judges should, perhaps, be required to articulate the basis for their decisions before announcing their conclusions. However, there is often little opportunity for reflection in these situations; therefore, simply stating the reasons for the decision before the ruling is announced may encourage the judge to be more deliberative in his or her decision-making and reflect on mental processes to properly assess situations from an advanced research outlook. To expand on this notion, the following sections discuss the findings in terms of the structure and adjudication of domestic violence cases from the Jefferson and Orleans Parishes.

### **Structure and Adjudication of DV Cases in Both Parishes**

Based on information gathered from the judicial interviews, victim safety and offender accountability were nearly universal goals for the adjudication in both parishes. Accountability is a term with many definitions; therefore, the researcher understood that accountability is transparent in overall judicial views, regardless of which adjudication theory is used or which parish a judge resides.

Such accountability was seen through judicial interviews on the structures of the courts and the advantages and disadvantages of these structures. For example, some judges admitted that they had no prior experience in adjudicating domestic violence matters; however, they also expressed interest in ongoing domestic violence training seminars and workshops. Several judges confirmed that effective cooperation with victim advocates in the courts and prosecutors' offices is critical to establish and safeguard a victim's safety. Further, all the judges addressed

the use and enforcement of protection orders as a fundamental adjudication practice to ensure victim safety and offender accountability.

With respect to victim safety, the researcher found that, with the transition of domestic violence cases from criminal court to municipal court, judges stressed issues such as the inability of victims to access services, poor funding to monitor domestic violence cases, and a need to achieve a coordinated response to domestic violence within Orleans court system.

### **The Relationship between Legal and Extra-Legal Factors**

Findings suggest a diverse trend in judicial decision-making toward the adjudication of domestic violence cases, which is based on a combination of internal and external factors, some of which are beyond the scope and control of the judiciary. In particular, as the initial point-of-contact with the criminal justice system, law enforcement plays a pivotal role in the adjudication of domestic violence cases. In fact, one could argue that law enforcement officers are the gatekeepers in as much as their decision to arrest or not to arrest triggers the adjudication process. In addition, the presence and quality of many legal factors (evidence, witness statements, etc.) are a direct result of law enforcement responses.

Another influencing factor in judicial decision-making is the District Attorney. The District Attorney, who has the potential to influence a judge's decision, vets all criminal prosecutions and decides who is charged and which crime is prosecuted. For example, a defendant who is charged by the police with a felony crime may be prosecuted on a misdemeanor before a different judge in a different court, or, for that matter, not prosecuted at all. Internally, judges' backgrounds, perspectives, and knowledge of domestic violence law, willingness to seek training, and individual biases contribute to the diversity that exists with respect to domestic violence adjudication.

## **Diversity in Judges' Daily Practice Styles**

There is overall agreement concerning major rationales for adjudicating domestic violence cases and there is great diversity in how judges prioritize goals under the domestic violence category, which ranges from acknowledging an expert and judicial expertise to applying state statutes to achieve a coordinated response to domestic violence. There are also differences in how courts are structured, typical caseload, particular services available to victims, and types of sentences and conditions that might be imposed on offenders.

The researcher found that the explanation of how cases are identified differed between courts in Jefferson and Orleans Parishes, with some courts using the type of offense committed as the determining factor. For example, a domestic violence offense defined by statute, compared to the municipal court in New Orleans, which tries domestic violence cases as misdemeanor. However, different judges implemented similar strategies for typical sentencing, but reported some deviations between their responses to defendant programs and mental evaluation programs. All judges admitted that they needed the help of expert witnesses for the adjudication process. There were also different beliefs in the judicial monitoring processes. For example, some judges requested that offenders appear in court anywhere from two months per year (i.e., 24th Judicial Court and Orleans Criminal Court) to three times per year (i.e., Orleans Civil Court). In addition, during trial proceedings, there was a wide range in judicial verbal and non-verbal communication in which some judges addressed the defendant and diminished him while some imposed a fine for noncompliance. It is important to note that judicial communication and sanctioning strategies depend on judicial preference. With regard to victim safety, some judges believed that services such as advocacy groups are extremely beneficial, while others believed that having an advocacy group at the hearing should not be of benefit other

than to provide information on how to file legal documents if an attorney does not represent the victim. However, findings revealed a clear pattern of similar answers on judicial decision-making successes, challenges, and innovation in adjudicating domestic violence cases. The following section summarizes the findings that address the questions, “What is your opinion of successful adjudications of domestic violence cases, and how did you achieve this success?” and “What challenges have you faced in adjudicating domestic violence cases?”

### **Successes, Challenges, and Innovation in the Decision-Making Process of Adjudication of Domestic Violence Cases**

Nearly all judges interviewed suggested that the process to their successful adjudication was proper case identification by the DA or law enforcement agency that imposed the charge, staffing, monetary resources, and availability of “clear” policies and procedures. Judges also discussed the uniqueness of and sensitivity to the dynamics of domestic violence adjudications for themselves and their staff as an important factor to court success. This uniqueness and sensitivity came from knowledge of domestic laws and special domestic violence training. In addition, judges noted factors for success that included effective cooperation with other courts (e.g., data sharing), local police, and probation officers. All judges identified the success of “no drop” charges as well as careful decision-making of all precedents (formalism) on a case-by-case basis. Concerning innovations, judges from Jefferson Parish reported a new monitoring court system using hearing offices, commissioners, and a special domestic violence grant for felony prosecutions in Orleans District Criminal Office. Other innovations discussed included the availability of a “coordinator” who specifically monitors the intake of domestic violence cases. Challenges addressed concerning peculiar courts included case overload and the inability to pay staff to support regular adjudication factors (e.g., police officers’ booking charge), which

determines the court that a case will be assigned. Finally, the judges from Orleans Parish addressed the lack of assessments for mental health and substance abuse services as a means to monitor offenders.

### **Training and Feedback**

Just as there is continuing legal education for lawyers, there also is continuing legal education for judges. However, the justice system could provide even more training opportunities for judges and invest additional resources in the types of judicial training that would most likely facilitate deliberative decision-making. Several judges suggested that statistical training increases the likelihood that judges make rational, deliberative decisions rather than intuitive decisions. Training could also help judges better understand the extent of their reliance on intuition and identify when such reliance is risky - a necessary first step in self-correction. Additionally, such training could teach judges to interrupt their intuition, which would allow deliberation to intervene and modify behaviors, if not actually alter underlying prejudices or attitudes. Jurisdictions could also adopt peer-review processes to provide judges with feedback. For example, every two years, three experienced judges from other jurisdictions could visit a targeted court. These guest judges could select a few recently decided cases by each target court judge, read all rulings and transcripts, and provide the judge with feedback on his or her performance as well as constructive suggestions for improvement. This practice would give judges the opportunity to obtain feedback and increase judicial accountability on issues that typically escape appellate review. The results of such a process might also identify structural problems that amendments to rules or statutes should remedy. Armed with this feedback, judges might learn what they are doing well and what they are doing poorly (Faigman, 2006). Of note, with the exception of tasks that judges perform repeatedly, it might take a long time for judges to

acquire sufficient experience in handling a particular issue to accumulate enough feedback to avoid errors.

### **Implications for Policy and Practice**

As a comprehensive source of information that reflects the realities of current court practices, this report may help trainers, justice administrators, and other practitioners make realistic assessments and develop promising strategies to achieve insight into how judges make their decisions when adjudicating domestic violence cases. This research will also be beneficial for victim advocacy and advocate organizations to identify and remain informed on such decision-making processes. Moreover, it is the researcher's intent that this research will allow domestic violence courts to identify and contact each other, facilitate an informed approach, and find alternative ways to implement an effective domestic violence prosecution.

The researcher intended to gain an understanding of how judges make decisions in adjudicating domestic violence cases and how legal and extra-legal factors contribute to judges' decision-making strategies in domestic violence cases in Orleans and Jefferson Parishes in Louisiana. This study is important to expand on the existing body of research and provide information on potentially serious ramifications of flawed decision-making among judges.

Unlike chess grandmasters, judges are not likely to acquire precise and consistent feedback on most of the judgments they make. Judges are likely to obtain external validation (or invalidation) of the accuracy of their judgments when their rulings are challenged on appeal. However, the appeals process does not supply reliable feedback. Many cases settle before appellate courts resolve the appeal and appeals commonly take years to resolve, which can heavily dilute the value of any feedback. Moreover, the standards of review require appellate courts to give "respect" to trial judges on many of their "flexible open-minded" decisions that are

consistent with skepticism. By time an appellate court decides an appeal, the trial judge may have forgotten the nuances of the case, the law may have changed, or the judge may have retired or switched assignments. Thus, it is not surprising that the findings did not reveal differences in performance based on a judge's experience or length of service. Other aspects of the litigation process make it even more difficult for judges to receive significant feedback. First, judges may have a constricted role in cases that may preclude them from learning what happens later. For example, civil master calendar judges or criminal arraignment calendar judges might think that their decisions are correct, but they seldom learn how their decisions affect later proceedings of a case. Second, judges seldom receive useful feedback from lawyers or litigants. Lawyers do not address the judge personally about the quality of his or her performance. When they do, judges easily discount such comments as biased. Third, judges are poorly placed to learn how their decisions affect the world beyond the immediate case in front of them. Unlike legislators, they usually do not learn how their decisions affect subsequent conduct or events. Critics of the common-law process often base their criticism in part on this lack of feedback (Horowitz, 1977; Rachlinski, 2006).

It would be fair to say that trial judges function like emergency-room physicians in that they handle only part of a case. They may observe how well or how poorly things go while they are directly involved, but they often do not learn how things go at a later stage, so they cannot weigh or estimate the long-term effectiveness of their decisions (e.g., on-duty judges who hear emergency Protective Orders in Civil Court in Orleans Parish). In addition, errors seldom have direct adverse consequences for judges. This reality creates the problems caused by the scarcity of significant feedback. Even though most judges are conscientious and hard working, indirect consequences may be insufficient to guarantee good or improved performance. Finally, reversal

on appeals directly affects judges, but appeals occur infrequently and are seldom motivating (Klein & Hume, 2003).

### **Study Strengths and Limitations**

This study illuminated the general state of domestic violence court policies and practices and judicial decision-making processes and strategies in Jefferson and Orleans Parish Courts. Strengths of this study include the perspectives of judges and several viewpoints of prosecutors and attorneys in the field of domestic violence. These perspectives can help to understand, conceptually, how domestic violence cases are adjudicated and highlight judicial decision-making strategies and beliefs. The use of interviews allowed the researcher to examine and provide in-depth information than had the researcher relied only on an analysis of documents, observations, and self-reported survey responses.

While there were strengths, limitations within this study also exist. For example, the limitation of generalizability of the findings is present; however, the use of two courts adds to the external validity of this study. Regardless of this fact, these results only apply to the studied courts. The interview sample may also introduce a limitation with this research. It was in the researcher's interest to interview a larger number of judges; however, she was only able to obtain consent from 17 judiciaries from the purposive sample of 30 judges. A sample size of 30 would have increased the validity of this study. A further limitation is that the researcher did not interview personnel from probation departments or defense attorneys directly because the main interest in this study was judiciaries. The researcher felt that judges would be in position to provide a sufficient description of the study questions. Further, the roles that probation and defense attorneys play vary widely across jurisdictions.



### **Recommendations for Further Research**

This research focused on understanding the judicial decision-making process in domestic violence cases. Findings can provide researchers with a better picture of the range of practices currently used by judges to adjudicate domestic violence cases, as well as the factors, legal or extra-legal, that influence judicial decision-making processes. As such, future studies could consider court-level characteristics and address findings on a broader level, such as the decision-making processes of judges throughout the State of Louisiana; all 64 parishes. Current findings also suggest the need for in-depth research on the role of judicial decision-specific practices in domestic violence proceedings. The impact of different methods of selecting and rotating domestic violence court judges is an aspect of court policy that appears to have a strong effect on court functioning, thus, deserves further research. Additionally, it might be interesting to compare victim perceptions, in terms of safety, and judges' approaches to domestic violence case adjudication. Future research should establish a clearer understanding of how local civil courts respond to domestic violence by conducting a longitudinal study. Finally, state versus local statutes is another important area to consider in the future.

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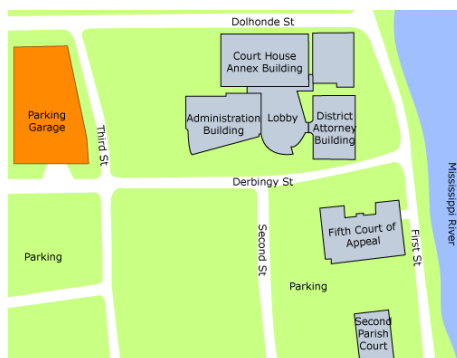


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## APPENDIX A: Twenty-Fourth Judicial District Court



Twenty-Fourth Judicial District Court (hereinafter referred to as the Court or 24th JDC) located at 200 Derbigny Street in the Gretna



Courthouse Building in Gretna, Louisiana 70053

## **APPENDIX B: Orleans Criminal and Municipal Courts**



**Criminal Court picture attached: (inside no picture- no cameras are allowed)**



**Municipal Court Picture attached**

## **APPENDIX C: Judicial Interview Questions**

Prepared by Yulia Koublitskaia

### **Snap Shot/Current Situation in DV Courts**

1. From your perspective, have there been any significant changes in the adjudication of domestic violence cases in the past several years with respect to the role the judiciary?
2. What are the implications of these changes?

### **Orleans Parish**

3. Please talk to me about the movement of domestic violence cases from municipal court to criminal court and back.
4. Do you consider the movement of domestic violence cases to be a good strategic move for the management of DV cases?
5. Please tell me how the changes have impacted your position.
6. Please discuss what you consider the current challenges in adjudication of DV cases.

### **Jefferson Parish**

7. From your perspective, have there been any significant changes in the adjudication of domestic violence cases in the past several years with respect to the role of the judiciary?
8. Please talk to me how these changes have impacted your position.
9. What are the current challenges in the adjudication of DV cases?

### **Structure**

10. From your perspective as a Trial Court Judge, what is the most challenging aspect of adjudicating DV cases?
11. Please tell me what your typical day in court is like.
12. Can you talk to me about what type of training judges might receive regarding domestic violence?

### **Trials**

13. In a DV related case where one party is represented by the “most” experienced attorney or expert on DV and the other party is represented by an “average skilled attorney or one with no DV specialization,” do you have a specific approach or method in which you handle the adjudication or proceeding that might equalize the “power” of representation?
14. How about in a case where one party is represented by an attorney and the other is not?
15. In cases where there is no hard or physical evidence of DV present and the proceeding “boils down to” to each individual’s credibility, what steps do you take in making your decision?
16. How does your decision-making process differ when deciding child custody in situations where there is “no physical evidence of abuse present”?

### **From Research**

17. Research has shown that extra-legal factors (e.g., race, sex, age, and socioeconomic background) can play a part in or influence judicial decision-making. Can you discuss how a particular aspect of the following extra-legal case factors might influence some judges in cases involving DV?
  - A) Age of the victim/perpetrator
  - B) Minor children
  - C) Employment status
  - D) Criminal history
  - E) Appearance/Dress and tattoos

**Advocacy Groups**

18. From your perspective, are there any advantages for DV victims to be represented or assisted in court by advocacy groups?

THANK YOU FOR YOUR TIME.

**IRB**

The university Institutional Review Board approved the researcher's proposal in February 2011, after completing the required training and application submission.

**Timeline**

The researcher has completed all coursework required by the University of New Orleans Doctor of Urban Studies program. The researcher will defend her dissertation proposal in April 2012. The researcher took the general examination in May 2011. The researcher intends to present her dissertation for final defense in the spring semester of 2012.

## Appendix D: IRB Approval

### ***University Committee for the Protection of Human Subjects in Research University of New Orleans***

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#### *Campus Correspondence*

Principal Investigator: Pamela Jenkins  
Co-Investigator: Ioulia Koublitskaia  
Date: July 26, 2012  
Protocol Title: The relationship between legal and extralegal factors: How judges come to make their decisions in domestic violence cases  
IRB#: 06Jul12

Federal guidelines prohibit IRBs from providing retroactive approval. However, IRBs can confirm that previous research was exempt from IRB regulations. The IRB has deemed that the research and procedures described in this protocol application are exempt from federal regulations under 45 CFR 46.101 category 2. Although information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects, any disclosure of the human subjects' responses outside the research wouldn't reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

Exempt protocols do not have an expiration date; however, if there are any changes made to this protocol that may cause it to be no longer exempt from CFR 46, the IRB requires another standard application from the investigator(s) which should provide the same information that is in this application with changes that may have changed the exempt status.

If an adverse, unforeseen event occurs (e.g., physical, social, or emotional harm), you are required to inform the IRB as soon as possible after the event. Please note that had your project not been exempt, approval could not have been granted. Keep this in mind as you plan future projects and obtain IRB approval before beginning the study.

Best wishes on your project!

Sincerely,



Robert D. Laird, Chair  
UNO Committee for the Protection of Human Subjects in Research



## Vita

### Julia Koublitskaia PhD (Summer 2012), CHTP

Lakes of Chateau Estates North  
3706 Loyola Drive #308  
Kenner, LA, 70065

[jkoublitskaia@yahoo.com](mailto:jkoublitskaia@yahoo.com)  
[ikoublit@uno.edu](mailto:ikoublit@uno.edu)

Cell: 504-914-5569

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#### Areas of Expertise in Teaching and Education

*Classroom Management*  
*Instructional Best Practices*  
*Experimental Learning*  
*Creative Lesson Planning*

*Standardized Testing/Scoring*  
*Special Needs Students*  
*Curriculum Development*  
*Learner Assessment*

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#### Areas of Expertise in Business, Management and Planning

*Customer Service Management*  
*Complaint Handling & Resolution*  
*Detail Operations Management*

*Customer Satisfaction Enhancement*  
*Front-End Supervision*  
*Sales & Margin Improvement*

*Teambuilding/Training*  
*Cost-Reduction Strategies*  
*Order Fulfillment*

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#### Professional Teaching Experience and Instruction

##### University of New Orleans, LA, College of Business Administration

##### Adjunct Professor: Full Time

12/11 to 05/12

- Currently teaching
  - *Tourism and Hospitality Marketing* (Senior level class in Undergraduate Program)
  - *International Tourism* (Graduate Class)
  - *Principles of Travel and Tourism* (Undergrad class)
  - *Tourism Planning and Operations* (Undergrad class)

##### Tulane University New Orleans, LA

10/11 to 12/11

- Guest speaker on Dissertation process in collaboration with Dr. Peter Scharff, Research Professor in the Department of Global Health Systems and Development

##### University of New Orleans, LA, College of Liberal Arts 08/00-01/01

- Delivered Russian Language Instruction to intermediate college level students

##### Kaluga State Pedagogic University, Kaluga, Russia

08/97-08/98

- Delivered English, Russian, and Latin Language Instruction to entry level students
- Created and published *University Student Handbook*
- Admissions Counselor for students' long range class planning 08/96-08/98
- Served on PR Committee and maintained PR standing of the university among other state universities

##### Certified 9<sup>th</sup> through 11<sup>th</sup> Grade High School Teacher and Certified Undergraduate University (Instructor valid from 09/96 - 09/2006)

## **Professional Business Experience**

### **Fine Weddings NOLA, LLC/Owner**

07/09 to present

- Specialize in Wedding planning, parties, and corporate events.
- Projects with vendors such as: Windsor Court Hotel, The Bourbon Orleans Hotel (Floral and the Wedding Cake advisor), Le Pavillon Hotel, Marriott Canal and the Wedding In Style Magazine.

### **Primary Caregiver**

08/07 to 07/09

- Stepped away from the position on pre maternity leave and serve as caregiver to a new born daughter.

### **Presidential Food Service**

#### **The White House, Washington, D.C.**

08/07

- Guest Sous Chef at the White House Mess for President Bush; Organized and led Techniques of Cooking Class for the White House Mess and the Presidential Food Service Staff.

### **Residence of the U.S. Ambassador to France, Craig R. Stapleton**

#### **41, rue du Faubourg Saint-Honore, 75008 Paris, France**

- Visiting Chef for the Napa Valley Winery Association and Morgan Ranch for American Ambassadors Beef and California Wine Tasting Event Organizers.

### **Director of Rooms and Guest Services**

#### **Astor Crowne Plaza Hotel New Orleans**

06/06-07/07

- Oversaw Front Office and Housekeeping operation for a 707 unit AAA Four Diamond Property.
- Ensured adherence to all AAA standards and policies for Four Diamond Performance.
- Redefined departmental job descriptions to address evolving needs of the New Orleans operating environment and development to emergency policies.
- Lead \$2.5M renovation of lobby and other public areas and \$1.5M upgrade to a 192 room luxury wing.
- Responsible for a short and long-term Front Office Budget Planning. Planned for labor shortage post Katrina and better employee compensation benefits.
- Created in multi-unit MOD program. Cross trained managers within the property as well as across multiple properties.
- Won "Service Excellence Award" for instrumental role in driving record-high sales increases, securing the hotel four diamond service recognition award from AAA rating service.
- Reduced staff turnover by 15% in 2008, benchmarking a record-setting improvement in staff retention due to the success of employee-development and morale-building programs.
- Developed and implemented Front Office and Security employee manual.
- Elevated hotel's guest-satisfaction index from 81% to 92% within one year; ensured the swift resolution of customer issues to preserve customer loyalty while complying with company policies.
- Served on special taskforce charged with turning around under-performing hotels which were owned by the same hotel group. Trained CSRs and managers in respective properties, and contributed to significant improvements in guest satisfaction and sales.
- Directed employees and managed P&L, sales, inventory, merchandising, and cost controls.
- Maintained high standards in sanitation and safety and complied with regulatory guidelines.

**Acting Housekeeping Manager*****The Royal Sonesta Hotel, New Orleans, Louisiana***

10/05-06/06

- Daily room inspections with Executive Office.
- Special Events project manager (Operations set up for Christmas, Sugar Bowl, Mardi Gras, and other events).
- Hired and trained housekeeping personnel and supervisors on a daily basis (130 employees).
- Performed scheduling, payroll, and related administration.
- Supported public relations, sales, & marketing efforts by developing reports for upgrades, renovation schedules, staffing guidelines and other operational issues affecting their promotions.
- Improved guest service satisfaction index to 96%.
- Maintained low employee turnover.
- Stayed on property during Katrina and the period following. Safely evacuated all guests and associates, and readied the hotel for emergency and recovery personnel. Responsible for crafting and implementing Emergency Plans.
- Housed disaster relief workers at full capacity, and continued to maintain high levels of occupancy while converting reservations back to typical demographics.
- Assisted with the efforts to repair the physical hotel. Rebuilt staffing and operations following the disaster.
- The leader of the Department at Daily Executive Meeting with General Manager and hotel Department Heads.

**Senior Assistant Manager on Duty*****The Royal Sonesta Hotel, New Orleans, Louisiana***

06/05-10/05

- Responsible for supervision and cross training of two Managers on Duty.
- Leverage technology by creating market segment codes for property management system to track business sources and growth. Created client contact database.
- Assistant Manager on Duty duties apply.
- Leader of Daily Executive Meeting with General Manager and hotel Department Heads.
- Member of the Executive Hotel Committee.

**Assistant Manager on Duty*****The Royal Sonesta Hotel, New Orleans, Louisiana***

03/01-06/05

- 438 room AAA 4 Diamond hotel located in the Heart of the French Quarter.
- Resolve guest issues and concerns in a professional and courteous manner.
- Maintain effective and responsive communication between Executive office, Departmental Heads, Managers, and individual employees.
- Provided ongoing supervision of employees in a variety of settings, to include, Front office, Reservations, Communications, Food and Beverage Department, and Garage.
- Participated actively in interdepartmental cross training sessions including Manager on Duty Training Module.
- Leader of Daily Executive Meeting with General Manager and hotel Department Heads.
- Member of the Executive Hotel Committee.

**Front Desk Agent/UNO Internship*****Le Meridien Hotel, New Orleans, Louisiana***

08/00-06/00

- Worked with training Manager to develop a Front Desk Training Manual.

## **Executive Manager**

***Institute, Moscow, Russia***

03/96-06/00

- Conducted SWOT analysis for management organization.
  - Analyzed economic, financial, and operational reports including the translation of materials in English.
  - Responsible for recruitment, employee development, and training.
  - Prepared and managed division budget.
- 

## **Education and Training**

- **Post-Graduate School at University of New Orleans**, Doctorate Degree in Urban Studies and Planning (PhD) at University of New Orleans. Defense Date April 9, 2012 Graduation Date Summer 2012
  - **Master of Science in Hotel, Restaurant and Tourism Administration**, University of New Orleans, Fall 2007
  - **Spanish Graduation Excellence Certificate Level 1 & 2**; 2005, 2006 - World Trade Center of New Orleans, LA
  - **Bachelor of Business Administration in Hotel, Restaurant and Tourism Administration**, University of New Orleans, Summer 2001
    - **Certificate of Excellence** presented by the Louisiana Board of Regents, Summer 2001 Chancellor List 2000
  - **Bachelor of Arts in Linguistics Studies**, Kaluga State Pedagogic University, Kaluga, Russia 1998 Chancellor List 1995-1997. Graduated: Cum Laude
  - **Classical Piano Music College Degree**: 1985-1995, Obninsk, Russia. Concentration: Classical Piano
    - Dean's List: 1985-1994
- 

## **Memberships**

- Who is Who in Manchester, USA; Business Association; Member
  - Hospitality Professional and Technology Professionals Association - Chapter Vice President, University of New Orleans Chapter 2004-2006; Certified Hospitality Technology Professional, November 2004
  - Eta Sigma Delta International Hospitality Management Honor Society, the only International Honor Society recognized by the Hospitality Industry
  - Sigma Iota Epsilon, Honors Division in Management, a premier group of national and international scholars and practitioners in the field of Management
- 

## **Related Experience and Achievements**

- Franklin Covey Certificate of Achievement, the 7 Habits of Highly Effective People, April 2005
- Educational Institute of the American Hotel & Lodging Association, Managing Technology in the Hospitality Industry, November 2004
- Attended Seminar Series Business and Law at Harvard University, Cambridge, MA, October 2004.
- Symposium presented by the United Nations Department of Peacekeeping Operations
- Hashimoto, K., Koublitskaia, J., & Fenich, G. G. (2003). *Russian casino development and*

*regulations after perestroika*. International Conference on Gambling and Risk Taking in Vancouver (BC) May 2003

- Hashimoto, K., & Koublitskaia, J .(2002). *An Exploration of Gaming in Russia*. 2002 CHRIE Convention, Orlando, Florida
- Undergraduate Senior Class Hospitality Consultant for University of New Orleans with Dr. Mehmet Erdem, Assistant Professor of Hospitality Information Technology, University of New Orleans (504) 280-6962
- University Of New Orleans Small Business Development Center, co-host of business seminars for 12 Russian restaurateurs and Lyonell Wright, the owner of several area McDonald's restaurants, March 2000
- Diploma - prize winner of the Russian Conference in the field of Linguistics, Obninsk, Russia, 1994
- Diploma - Regional Finalist in Obninsk Oblast, Russia - Krieble Institute of the Free Congress Foundation, Washington, D.C., October 1994

**References available per request**