


7-8-2016

## Does Gender Still Matter? Child Custody Bias in the Illinois Family Court System

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DOES GENDER STILL MATTER? CHILD CUSTODY BIAS  
IN THE ILLINOIS FAMILY COURT SYSTEM

Derek K. Ronnfeldt

68 Pages

Over the last several decades, nearly all of the states have formed task forces to look at the perception of gender bias within the family court systems as it pertains to child custody. This self-scrutiny has included the attitudes of judges and attorneys within the system and the need for reform of our family courts. This research focused on replicating a study conducted by Dotterweich and McKinney that was completed in 2000 that compiled statistics from four different state task forces in Maryland, Missouri, Texas, and Washington. This research focused on Illinois judges and attorneys, using the same questions and response categories as Dotterweich and McKinney to determine if perceptions still existed of preferential treatment by gender in awarding custody of the children, even while state laws mandated equal treatment. An additional variable was introduced, specifically, if the concept of the “deadbeat dad” effects the presiding judge’s decision of awarding custody and whether this negative perception of males helps to favor mothers in these disputes. E-surveys were sent to 1,910 judges and attorneys in the state of Illinois, with all 102 counties represented, to provide a “perspective regarding attitudes towards gender bias in child custody cases” (Dotterweich & McKinney, 2000, p.

208). Of the 1,910 surveys sent, 183 responses were returned; 160 (87.4%) attorneys participated and 23 (12.6%) judges. Of the 160 attorneys, 103 (65.9%) of the participants were male and 57 (34.1%) were female. In compiling the results, over a third of the attorneys (35.6%) felt that judges favored the mother “always or usually” when awarding child custody, whereas, only 4.4% of the judges perceived this bias. Less than half of the attorneys (40.6%) “always or usually” hold the opinion that fathers are given fair consideration in child custody matters, and yet 78.3% of judges hold the same opinion. Neither attorneys (5.0%) nor judges (8.7%) “always or usually” hold the opinion that financial standing or employment outside the home (19% for attorneys and 0% for judges) matters. The concept of Deadbeat dads had no significantly statistical relationship in regards to decision making on child custody awards. Overall, attorneys perceive that mothers continue to be favored in custody cases but not to the same degree as in the Dotterweich & McKinney study; judges do not share this opinion.

**KEYWORDS:** Child Custody, Gender Bias, Social Sciences

DOES GENDER STILL MATTER? CHILD CUSTODY BIAS  
IN THE ILLINOIS FAMILY COURT SYSTEM

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A Thesis Submitted in Partial  
Fulfillment of the Requirements  
for the Degree of

MASTER OF SCIENCE

Department of Criminal Justice Sciences

ILLINOIS STATE UNIVERSITY

2016

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## CHAPTER I

### INTRODUCTION

As I was going through my divorce back in the 1990's, part of my preparation was finding an attorney to help me through the legal hurdles and challenges. Besides worrying about the division of assets, timelines, possible child support, costs of the legal proceedings, and all of the paperwork involved in becoming divorced, I worried about the loss of quality time with my children. During my initial consultation with my lawyer, I wanted to know what my chances were of gaining primary custody. His words will never be forgotten: "Unless your wife is doing crack or having sex in front of your children, you will not win a custody fight." Two other lawyers I spoke with during the same time period were not as elegant in their verbiage, but both stated that I had virtually no chance of obtaining primary custody and that I should do everything in my power to get the best possible visitation rights. These assessments were given without knowing any facts about my case other than that I was male! How could this be possible when my preliminary research showed Illinois state law prohibited using gender as a variable in determining custody? Were judges in family law courtrooms across the state of Illinois actually discriminating against males categorically to the degree where it was common knowledge to a vast majority of the attorney's practicing within their courtrooms? Or, since all three of the lawyers I spoke with were males and from the same county, were they just biased and over generalizing due to their own personal stories and a few bad judges' decisions? Maybe there were one or two judges within their jurisdiction that

were biased against men and the attorneys were warning me of real circumstances in which I was about to tread. Maybe the lawyers were just wrong and misrepresented the facts out of ignorance or lack of experience. But what if they were accurate in their assertions and men, within the contexts of the family law courtrooms, fit into the same category as minorities in the 1950s or women in the 1800s?

In today's family law courtrooms, are females given preferential treatment and/or the benefit of the doubt by sitting judges when determining primary custody of their children? If males, which account for approximately half the population of Illinois, are discriminated against on a large scale, should society not evaluate the bias for the purposes of eradicating it? This research examines the possibility of bias within our family court system in Illinois in regards to gaining custody within Illinois family courts. This research also looks at the possibility that sitting judges, who also oversee child default payments in their courtrooms, may have an unconscious bias to men due to the male being the primary culprit in defaults. This information could be very valuable to society as a whole to determine if bias exists in a system pursuing justice, where factors of affluence, socio-economic status, or gender are not supposed to be variables.

The problem facing the family courts in Illinois today stems from the recognition that the court system reflects society's culture at large, and that bias and prejudice based on gender is deeply rooted in the historical and social past of this country. The mission of the American judicial system is to adjudicate cases in a just manner. Courts are the instrument in which our country's citizens come for the resolution of their claims, expecting fair treatment in a forum entrusted to fulfill the basic tenets of justice. Its reputation is delicately balanced on impartiality and fair play. A fundamental goal of a

court should be to identify and eliminate the damaging effects of systemic and non-systemic unfairness. If the perception exists that the courts are not free of bias, then the special role of the judiciary is blemished and trust is lost, damaging the very essence of the society the courts are designed to protect. Many forms of bias can be found within the judiciary, but for the purposes of this study, the focus of the research will be on gender bias. The definition of gender bias can be simple: unfairness based on gender (Supreme Court of Mississippi, 2002). Schafran and Wikler (1986, p. 5) define gender bias as "attitudes and behaviors based on sex stereotypes, the perceived relative worth of women and men and myths and misconceptions about their economic and social positions." Decisions made by judges, based not on the merits of the two participating parties, but on an objective criteria of a parent being a certain gender, constitutes bias. Gender bias within the court system is multi-dimensional and can manifest itself in many ways. Gender bias can be found in the language of the statutes and in the interpretation of those statutes. It can be intentional or unintentional, overt or subtle. It can be found in interactions between the court personnel as insensitive attitudes and disrespectful treatment (Supreme Court of Mississippi, 2002). Depending on where a researcher casts his/her net, results on gender bias can possibly reveal a slant towards men or women. For instance, if one were to look at child custody cases in which the woman had been physically abused, research shows overwhelming evidence that the abuser (the father) will receive very favorable visitation schedules, even at the detriment of the woman's safety (Aviel, 2014).

For the purposes of this research, the emphasis will be on gender bias as it pertains to family courts in the decisions regarding child custody. Culture, and in effect

family court, has had a monumental pendulum swing in its views of how child custody should be viewed and decided upon by our judges. This study will first explore how values and perceptions have changed in America since the Colonial era (pre-Declaration of Independence) and how the judicial system has arrived at where it is now. From relying on English law precedent in the 19<sup>th</sup> century to political action groups in the 1970's, that worked feverishly on public perception and within the halls of government to advocate for equal rights for all, bias has taken different forms for different reasons. After describing the historical evolution of court decisions regarding custody of children, this research will focus on gaining insight into the decisions made by judges and lawyers who work the custody cases in Illinois. Through a survey format, data was gathered from all Illinois counties, gaining the perspective of a sample of judges and lawyers to determine if perceived gender bias exists. Over 200 Illinois Circuit Clerk Judges and approximately 1700 Illinois attorneys who have self-identified as specializing in divorce law were sent surveys, using convenience sampling from three different web sites. The research will also try and replicate Dotterweich and McKinney's study, entitled, "National Attitudes Regarding Gender Bias in Child Custody Cases", which was completed in 2000. Their study looked at research from four states, Missouri, Texas, Washington, and Maryland, that focused on the perceptions of judges and attorneys that worked in family courts dealing with child custody issues. They identified similar questions from each state that dealt with the judges and attorney's perceptions, then compiled those questions onto a spreadsheet and analyzed the results to see if a national perspective could be found pertaining to perceptions of gender bias.

Illinois statutes share the same primary standard as the four states Dotterweich and McKinney analyzed, in that the welfare of the child was the primary consideration in making custody decisions (Dotterweich & McKinney, 2000). This new research will see if Illinois courts have the same perceptions of gender bias as four states that are different in terms of size, region of the country, and political orientation but share the same legislative philosophy. In other words, does Illinois fit into the national perspective that Dotterweich and McKinney were attempting to show when analyzing the data from four states?

Present bodies of work, to include Dotterweich and McKinney's study, have looked at these attitudes from players within the court system – specifically the judges and lawyers assigned to the courtroom. States, in recognizing the growing perception of bias within the family courts, set up task forces to study the perceptions and attempt to come up with remedies to address the concerns. Many states commissioned studies to recommend and formulate policies so as to be more equitable. A majority of the states recognized a growing perception with the public that an imbalance existed and the commissions attempted to study the problem. According to Wilker (1989), "Within the past 25 years, forty-two of the fifty states have established some form of task force or committee to study gender issues" (p. 14). The results were varied, and not very scientific, and stated that although there may be a slight bias against men in family courts, the bias was not prevalent enough to make a difference. This study centers on the custody aspect of the best interests of the child standard and the perceptions of the family courts within this model. The research focuses on how the players within the court system view presiding judges' decisions, specifically the judges who work in the same

system as the presiding judge and the attorneys that have their careers within the family courts that specialize in custody issues.



CHAPTER II  
A BRIEF REVIEW OF THE LITERATURE ON GENDER  
BIAS IN THE FAMILY COURTS

**Historical Perspective**

**Paternal Preference**

In studying the perception of the current state of gender bias in the family courts, it is important to understand a historical perspective on how men's and women's rights have evolved in American courts as they pertain to primary child custody. American law started as a derivative of old English and Roman rule, with their precedents and prejudices playing an integral role in early court decisions. Up through the mid to latter nineteenth century, courts showed an inherent right of custody to fathers. This fundamental right of the fathers created the presumption of paternal placement. Women and children were property of the man in the eyes of the court. From literally the time of the Pilgrims, women's basic rights were severely limited (Sexton, 1999-2000).

One author summed up the legal ramifications of a woman's role in society by stating that women were inferior, unappreciated, and without rights. He went on to say, "Married woman existed within the confines of an ironclad contract in which romantic love mattered little. A woman's money and possessions became her husband's property as soon as she said 'I do.' A colonial wife could not speak in public, write a will, or even lay claim to her own children! Husbands were responsible for family discipline and wife beating was legal" (Herbert Hoover Presidential Library Inscription, n.d.). Although

public sentiment and legal decisions did change from when that was written in the 1700's, equality in the family court system was not to be even considered for well over a century. Hofer (1980) offered one example of this type of paternal preference in the court ruling of the Wisconsin Supreme Court in 1895, which in effect, stated that the father's right of custody was in the best interests of the child. This presumption forced upon the mother the burden to show that the father was unfit. This presumption of paternal placement and inequality of basic rights put mothers in an almost impossible circumstance when standing in front of a court.

As societal ideals, values, and policies adapted to changing times, laws followed suit. In an effort to reflect shifts in societal values, the laws evolved and adapted. In the context of custody standards, the pendulum swung between two extremes (Reed, 2014). Decisions in the family courts were based for most of our history on the inherent right of the father. Originating in Roman and English law, common law viewed custody issues as an extension of property rights in general. During this time, women were legally incapable of entering into contracts or gaining employment. Since they were seen as unable to secure a financial future for themselves or make rational decisions, paternal custody was automatic and seemed the only chance children had for a productive future (Bajackson, 2013). This standard of decision making was so pervasive that courts would go to radical extremes to abide by the standards of society's values of their time. Examples of infidelity of the father was not looked upon as a variable to be considered for custody, however, a woman's infidelity was grounds to make her an unfit mother. One extreme example showed a man gaining custody of his children just days after murdering his wife's lover. Another decision exercised often by judges that would be

seen in today's societal ideals as barbaric, was the practice of passing over the mother for custody in favor of another male relative in the case of the father dying (Sexton, 2000).

As Colonial American ideals passed into post-Revolutionary America, the idea of the patriarch as the head of the family persisted, but a slow undercurrent took shape in the culture where children were not seen as property but as individuals within a family unit. Courts began, in the eighteenth century, to step in and protect individuals when the father was neglectful or abusive. In 1838, a Maine judge wrote on this growing change and stated that, "Children do not become property of the parents. As soon as the child is born, he becomes a member of the human family, and is invested with all of the rights of humanity" (Mason and Quirk, 1997, p. 215, 219). This began a gradual transition period in the courts that ran from the mid to late nineteenth century, in which the courts still showed preference for the patriarch but continued to exercise views that put the needs of the children as a factor. Absolute preference for the father made way to the apparent rule of fault. That "the children will best be taken care of and instructed by the innocent party" (Murray, 1996, p. 53). With the advent of fault as a determining factor within the family unit, primary gender in custody cases shifted to the woman. The wife was typically filing for divorce and able to prove fault. The mother gaining custody became a byproduct of this social convention. The idea of the child's best interest in custody awards was taking shape in the eyes of the decision makers - the judges (Peskind, 2005).

### **Maternal Preference and the Tender Years Doctrine**

The paradigm shift became complete early in the twentieth century when the laws formally evolved into Maternal Preference. With the shift of societal views on women and the subsequent laws governing women's rights, courts kept up with the times and

reevaluated the centuries old doctrine. During this time, women obtained greater social and economic power, thus making their ability to obtain better educational opportunities possible, leading to more of an ability to provide for their children's maintenance (Mason & Quirk, 1997). During this time period, advocates of women's rights added the element of "maternal instincts," re-establishing the idea from Victorian times that women were better able to care for children as an essential nature of their make-up, using this idea as a wedge for gaining more access to their children. Statutes were implemented to erase the old rule of paternal preference in order to place mothers on equal footing, but in fact, were interpreted by courts to prefer mothers, especially when the children were young (Peskind, 2005). Women's rights advocates at first referred to this ideal as the "Cult of True Womanhood" that later became known as the "Tender Years Doctrine" (Peskind, 2005). The court held that "for [children] of such Tender Years nothing can be an adequate substitute for mother love . . . [The mother] alone has the patience and sympathy required to mold and soothe the infant mind in its adjustment to its environment" (Jenkins v. Jenkins, 1921, p. 826). The presumption then, for the courts, favored the mother unless the father could show that she was unfit (Jenkins v. Jenkins, 1921). Common sense and the new laws governing women's rights showed that mothers were fully capable of securing a stable environment for their children both financially and psychologically. In fact, many social scientists developed theories that suggested that mothers were better suited to parent and nurture children, especially the younger ones. This approach of "motherhood and apple pie" in America appealed to the societal ideals of the nineteenth century (Bajackson, 2013). Being female was, in many instances, the sole or primary variable in determining custody.

Under the Tender Years Doctrine, every custody dispute between parents began with the presumption that maternal custody was best for the child. This presumption was primarily for children under the age of three during the mid to late nineteenth century. The father then had the burden of disproving the presumption by meeting the prevailing standard of rebuttal. If he failed, which typically happened, the mother was awarded custody. If he succeeded, he was awarded custody. Traditionally, fathers have been required to prove the mother "unfit" for custodianship in order to rebut the presumption" (Klaff, 1982). The Maternal Preference for younger children became the norm in common law and statutes in all of the states by the later part of the nineteenth century and the beginning of the twentieth century. The law seemed to accept women as having superior morals and nurturing skills, thus making them better suited to the care of their younger children (Mason & Quirk, 1997). By the beginning of the nineteenth century through the latter part of the century, this shift from a father's right to his children as property, to the mother's inherent capacity of being the better nurturer, showed a significant swing to the importance of the child's interest in custody disputes. Although it can be said that the Tender Years Doctrine was the norm, the change was gradual and not all encompassing. Many jurisdictions clung to the paternal preference once the child reached seven years of age, while others varied depending on the age of the child, the jurisdiction, or overall circumstances. It was felt that once the child reached seven years of age, the father's socio-economic status was in the child's best interest whereas prior to that age, when the child was still an infant and thus, in its tender years of growth, the mother's influence was essential for the child's well-being. The difficulty in understanding the apparent dichotomy of views between varying court's decisions on

child custody is that throughout history, the standard of paternal preference and the tender year's motherly preference is synonymous with the Best Interest of the Child Standard. Although most courts have been more vocal in equating the tender year's doctrine with the Best Interests of the Child Doctrine, decisions made by the early courts have used language that compels the reader that the judge's reasoning was in keeping with the Best Interests of the Child philosophy (Reed, 2014).

Three court cases, all within the same jurisdiction, show the evolution of thought in illustrating the best interest's standard. In *re Goodenough*, the Wisconsin Supreme Court in 1865 showed that the paternal preference remained the sign of the times in that the remarks of the court showed the father's rights were most important. However, within the decision, the court stated that they would make a best interests of the child determination. "But the court adhered to the fundamental rights of the father, which created a presumption of paternal placement. In effect, the father was in the best interest of the child" (*In re Goodenough*, 19 Wis. 291, 296 (1865)). The Wisconsin Supreme Court showed the slow shift of the country's societal values in 1873 in *Welch v. Welch*. The court held in their decision that the best interests of the child was their primary concern but then stated that all variables being equal, the father's rights would prevail (*Welch v. Welch*, 33 Wis. 534, 541-542 (1873)). The shift to protecting children in their "tender years" seemed complete with *Jenson v. Jenson*. The Wisconsin Supreme Court admittedly struggled over earlier case law that preserved father's rights, the court refused to take the child away from the mother due to the child's tender age. (*Jensen v. Jensen*, 168 Wis. 502, 170 N.W.2d 735, (1919)).

The custody pendulum completed its shift beginning in the first decades of the twentieth century. By this point, maternal presumption in most states had replaced the Tender Years Doctrine for all children, not just the youngest. Due to these three major factors, the industrial revolution, women's rights' movements, and the field of psychology, complete maternal presumption seemed to be the rule at the turn of the twentieth century (Sexton, 2000).

### **Best Interests of the Child Standard**

Another doctrine became dominant in the middle part of the twentieth century, known as the "Best Interests of the Child Standard." This concept was a hybrid of ideas that had parts of the Tender Years Doctrine and parts of the societal ideals that called for family members to be individuals in the eyes of the court as opposed to paternal property. The best interests of the child standard, took the presumption away from the father and placed the circumstances of the individual cases towards what was best for the child as a human being. This was then coupled with the Tender Years Doctrine that said, in essence, that the best situation for the child was the mother. This can be seen as confusing since history books tell us that the family courts followed the Tender Years Doctrine for the better part of the nineteenth century, however, the whole philosophy behind Maternal Preference was the judge's goal of looking out for the best interests of the child. The judge felt he was doing this by following the Tender Years Doctrine (Reed, 2014).

With emphasis on what is truly important, the child, advocates of the statute feel there is hope that there are clear guidelines that put the child's interests at the forefront of the judge's decision making. However, as pointed out by Reed (2014), "...courts have

struggled with distinguishing between the maternal presumption and the subjective nature of the best interest of the child standard”. Although the intent of the Best Interests of the Child Standard is laudable, many feel that instead of being a guideline for judges, it is nothing more than a feel good philosophy that causes more confusion than direction.

Illinois, like most states, uses “the Best Interests of the Child Standard” in determining custody of the children in any custody disputes seen by Illinois family courts. Whereas gender was a major variable in determining custody from the sixteenth century through the early part of the twentieth century, it is now illegal to use gender as a mitigating factor, let alone the driving force for the determination of custody.

According to Washington (2015):

Family courts will determine child custody in Illinois based on the best interests of the child. The court will consider the following factors in determining a child's best interests:

- Parent's wishes
- Child's wishes - a judge may interview the child in private
- Child's relationship with the parents
- Child's adjustment to home, school, and community
- Mental and physical health of all involved parties
- History of domestic violence or threats of violence against a child or another party
- Willingness of each parent to encourage a relationship with the other parent
- Whether either parent is a sex offender
- Whether either parent is an active military service member



- Witness testimony - a court may order a third party evaluation.

By law, the best interests of the child standard is applied by the presiding judge when determining where the children will live (custody), how much contact the parents or other parties have (visitation), and to whom the child support will be paid and how much. Nowhere is gender listed or implied as a basis for granting custody.

### **Transition: The Evolution from Rules-Based Adjudications to a Discretionary Standard**

It should be noted that none of these doctrines had clear cut time periods of delineation. Although it can be said that paternal preference was absolute from the beginning of colonial America, the Tender Years Doctrine and later the Best Interests of the Child Standard do not have such clear demarcation. Family courts do not always speak as one voice and the standards set forth by the courts were sometimes as frayed as each individual judge's preference and bias. Court decisions as late as the mid twentieth century clearly gave preference to the father, and yet many court decisions as far back as the early 1800's showed the best interests of the child as being the standard for their decision. Various states, for instance, started exploring a gender-neutral way of determining custody between 1840 and 1870 during a time where the statutes of many states held that children were the property of the father (Mercer, 1998). As stated earlier, the Maternal Preference, however, formally overtook both the paternal preference and the best interests of the child standard as an overall de facto rule of law for most of the nineteenth and twentieth century. Maternal Preference remained mostly unchallenged until the 1960's, when upheavals of the family unit began to challenge the traditional role of the mother. Two factors played a part in the shift in societal ideals: rising divorce rates

and men's group's assertions of sex discrimination in granting custody (Grossberg, 2001). Due to these societal and political pressures on the state legislatures, the time period between 1960 and 1990 saw states completely abandoning the Maternal Preference (at least on paper) for the best interests of the child standard. Much like the mid 1800's, the Best Interest of the Child standard relied on a gender neutral model but developed into a more complex entity, with more components than found in earlier attempts (Mason & Quirk, 1997). This standard largely prevails today in most states, however the debate still rages with underlying charges of Maternal Preference.

This gender-neutral way of determining custody, now known as the best interests of the child doctrine, had for its purpose the ideal of taking the decision making of who gets custody out of the hands of the parents and making the children more of a player in the process. Although on the face of it, this movement towards a gender neutral process seemed fair, actual court decisions still heavily favored women, showing to most that Maternal Preference was still the overriding standard. In the 1970's, the Uniform Marriage and Divorce Act tried to define more clearly the ideals of the best interests of the child doctrine by devising a five-factor model, giving children's wishes more weight within the courts. Despite this, the best interests of the child doctrine is still loosely defined from jurisdiction to jurisdiction and most men argue that Maternal Preference outweighs any attempts at gender neutrality (Bajackson, 2013). The best interests of the child standard seems, to many, to be more of a feel good philosophy than a concrete rule of procedure. This bias (Maternal Preference) can be argued as still the de jure practice just by looking at the statistical trends of custody decisions. Divorce data shows that there remains a stronger presumption in favor of the Tender Years Doctrine (maternal

presumption) than the best interests of the child standard (Reed, 2014). Legally, gender cannot be considered when making custody decisions, meaning both the mother and the father have an equal right to custody. According to Reed (2014, p. 163), “studies throughout the United States of America detailing that in adjudicated custody cases, a mother prevails over 90% of the time, or that she is granted sole custody four times more than the father”. Although these numbers have decreased slightly over time, this substantial divide is the norm throughout the country. In 1992, for instance, fathers were granted sole custody in all adjudicated divorce cases just 8.5% of the time. This is beyond the realm of sheer chance when theoretically, men are afforded the same opportunity in the court rooms, where judges are, by rule of law, using the Best Interest of the Child standard (Cook & Brown, 2006). Due to shared placement, sole custody decreased for the mother in 2001 to 59%, yet fathers still were granted sole custody only 7.1% of the time. (Cook & Brown, 2006). If the couples were unmarried, the numbers were even more extreme. In 1992, for instance, the mother was granted sole custody 99% of the time and the other 1% was shared custody. This means that within the context of the study, the father was never granted sole custody (Cook & Brown, 2006). That number decreased to 97% for mothers gaining sole custody in 2001, with shared custody in 2% of the cases and the father gaining custody in 1% of the cases. Based on past research, it is questionable whether the best interest standard is being fairly applied (Cook & Brown, 2006). This seeming departure from judicial rules and protocol, whether it be labeled gender bias or not, shows that the Tender Years Doctrine may be a more common approach, years after the government legislated it out of the states’ statutes.

Other studies have shown similar results. According to Joan Kelly's research, numbers have stabilized since the 1970's, where women have been given sole custody approximately 85% of the time (Kelly 1994). A 1989 study of over 24,000 divorcing couples conducted by the Massachusetts judiciary showed that the mother was given custody nearly 94% of the time. Although this study was conducted over 20 years ago, the standards conducted are the same today and the numbers, although slightly less extreme, are still very slanted to the mother (Massachusetts Supreme Judicial Court 1989). The U.S. Census Bureau shows that in 2009, over 80% of custodial parents are women (Grall 2011).

Courts have argued that these skewed results are not a form of bias and are justified by saying that the Best Interest of the Child is to be with the mother (Reed, 2014). Perceptually and empirically, the Tender Years Doctrine is still being applied by judges. Next this literature review will examine possible reasons why judges still view the mother as the "better" choice as the primary caregiver and how it may not be at odds with the Best Interests Standard.

The subjective nature of all the criteria that judges are allowed to consider grants the family courts a vast amount of power when deciding what is, and what is not in the best interest of the child. If a judge is allowed, which they are, to draw on his or her own personal experiences or background to decide these unique situations, and the statutes offer little guidance, then how are reviewing courts able to determine bias if a judge sees Maternal Preference and the Best Interest of the Child as being interchangeable (Reed, 2014)? Although judges may see their decisions as following the Best Interest of the Child standard, and the statute is so wide ranging that reviewing courts are not finding

judicial indiscretion, this does not mean that the current language of the statutes are as gender neutral as it was intended or necessarily in the actual best interests of the child (Reed, 2014).

### **Pitfalls of the New Discretionary Standard**

Courts are a mirror of societal ideals and the culture that it serves, many elements of present day culture may impact judicial beliefs/bias. Judges live within the same society, read the same newspapers and social media sites as their friends, and talk about the same societal woes over a cup of coffee all over our country. Media outlets shout out from behind their pulpits of the impoverished mothers, those poor, disenfranchised, downtrodden members of society that work two, sometimes three jobs. They are victims of a society that allow those rich, affluent fathers to go unpunished for not providing for their children. Headlines show us these truths: thirty-nine billion dollars left unpaid per year to some million plus mothers who are barely putting food on their tables, fathers who are fleeing out of state to avoid payment, mothers whose standard of living decreases thirty to forty percent after a divorce compared to fathers whose income level increases 25 percent (Boumil & Friedman, 1996). This phenomenon led to a wave of legislation and helped coin a new term for the present generation, the “deadbeat dad.” The deadbeat dad, those high-living fathers who are refusing to take responsibility for their former families are seen as an overall indictment towards all men. The internet literally has hundreds of thousands of web sites owing to this ongoing social problem. Is there a correlation between the public’s perception of deadbeat dads and a judge’s decision to predominately choose the mother from 85 to 90% of the time? (Kelly 1994; Reed 2014). Men are looked at in child support issues as either a deadbeat dad or a

deadbeat dad waiting to happen. If fathers of court cases from the past don't have the value system to support their children financially, then what makes society in general and judges specifically feel that they deserve sole custody of their children in the court cases in the present?

So who exactly is the media referring to when they refer to deadbeat dads? Most of the literature suggests that "deadbeat dad" is a genderless term used to describe the "absent parent" that has left some part of the financial obligation unfulfilled (Garfinkel, McLanahan, Meyer, & Seltzer, 1998). Distinctions are not made based on gender, however, it is universally accepted that men make up the vast majority of cases of spouses not paying child support, since the men are winning the custody battle less than 9% of the time, so when child support is not paid, it is the man showing non-compliance with the support orders. And remember, these men held in contempt for shirking their child support obligations are seen by the same judges who later in the day will be making a custody decision on who gains custody of the newest batch of children, the mother or the father. It's a vicious circle. Due to this, any non-compliance child support cases seen by the same judge has the man as the non-payer. How many deadbeat dads (the name even implicates the man) does a judge need to see in his or her courtroom before the image of an unfit father becomes imbedded in their psyche? The process is a self-fulfilling prophecy of nobility of the woman and lack of moral standing by the man (Garfinkel, et al., 1998).

Are child support default rates important to the gender bias debate regarding child custody and are the acts of these deadbeat dads rare? More important for purposes of this research, are these statistics important when dealing with judge's decisions concerning

custody. Furthermore, if judges are already predetermined to show a Maternal Preference, how is child support default proceedings affecting these judges when it is time to decide custody, knowing fathers are the culprits a vast majority of the time? It is estimated that approximately 23 million children are affected by uncollected child support payments each year (Boumil & Friedman 1996). As has been documented, complete and regular support payments are received in less than half of the cases in which court orders exist. The term deadbeat dad is coined because nearly 97% of noncustodial parents delinquent in their child support payments are male. A study published by the National Child Support Assurance Consortium reported that during the first year after the family break-up, 55 percent of children missed regular health checks, 36 percent were unable to obtain medical care, 37 percent lacked proper clothing, 26 percent were left unsupervised during the mother's work, 49 percent could not participate in school activities due to lack of money, and most importantly, 32 percent went hungry at times. It is understood that some circumstances exist in which fathers are unable to meet their obligations, however, most can provide support payments and choose not to because of reasons previously discussed, such as the visitation/support payment tug of war (Boumil & Friedman 1996).

Moral and social obligations are no longer the bond that shamed noncustodial parents as they once did in the 1950's and 1960's. Today, the norm to gaining compliance from the non-custodial parent in paying child support is through intimidation from government mandates and court orders. This changing rationale for child support, the moving away from traditional values, is apparent. Does this lack of loyalty to the family affect the children deeper than the short term needs of less food and clothing? It is

argued that these children growing up in single parent households, without the traditional ties of family, are affected significantly when they grow up and develop their own values about family responsibility (Boumil & Friedman 1996; Krauss & Sales 2000). A strong relationship exists between the “deadbeat epidemic” and the move away from traditional views (Boumil & Friedman, 1996). These fathers, without the traditional social and emotional ties to their children, have a profound effect on the future well-being of their children. It is argued that if enforcement of financial commitments can be ironed out, mothers may be more willing (or forced by courts) to comply with court ordered visitations and fathers, feeling more connected with their children due to the time spent together, are more willing to pay child support willingly. Although a sad fact, stronger child support enforcement weakens a father’s bargaining power with the custodial mother in regards to visitation privileges. Before the new system came to fruition, a father could informally trade child support for visitation. According to a recent study by the American Journal of Orthopsychiatry, 40 percent of custodial mothers admitted to interfering with visitation to punish fathers (Farrell, 2001). Although this number does not show frequency nor the circumstances surrounding such action, it is a battle cry for men’s groups that are fighting against stronger enforcement. Under the current system of stronger enforcement, the man is legally forced to pay while the woman is not required to reciprocate with visitation privileges (Farrell 2001). Although separate issues legally, these are all variables that are playing out behind the scenes of a child support case. All the judge perceives is a man who isn’t meeting his obligations towards his children. Regardless, in today’s real life world view, these deadbeat dads are bad news for men who are willing to roll the dice in future custody proceedings (Boumil & Friedman,



1996). Judges see the effect these father's attitudes and non-compliance of child support orders have towards the children they are obligated to protect. To think judges have the capacity to separate child support cases from child custody cases may be seen by many as naïve.

So why are custody issues so important to individuals specifically and society as a whole? Divorce is one of the most life changing experiences in a parent's life. For the children, a divorce is an upheaval of everything they've known, with the after effects to be felt long into their adulthood and their subsequent family dynamic when they have children of their own (Lowery & Settle, 1985; Gruber, 2004). The decisions made during this traumatic and trying time adversely impact the children and underscores the need for courts to truly make decisions that are in the best interests of the child

With so much at stake, it should be of utmost importance to understand if the current Best Interest of the Child standard is being left at the curb and being replaced, de jure, by Maternal Preference. Courts are given a great deal of latitude in applying the best interests of the child standard. This being said, it is nearly impossible to evaluate what is truly in the child's best interest. Judges are asked to predict the future. In their limited scope, courts are ill-equipped to make decisions of such a broad nature when viewing just a snapshot of what is really going on behind the scenes. Imagine hearing snippets of a family's dynamic from two opposing parties who are at odds with one another, whose purposes are often selfish and not in the best interests of the children, with lawyers giving them advice on how to "win". Facts are skewed and clouded by hostile parents, traumatized children, and manipulative lawyers. With this jaded picture, a judge must guess what the best possible outcome is for custody. As one researcher

pointed out, “The Best Interest of the Child standard is too subjective, offering no indication of priority or importance” (Warshak, 2012, p. 102). As a result, judges rely on personal presumptions, predictions, and as pointed out, very imperfect information (Reed, 2014). Statistically, the judge’s unwillingness to conform to state statutes is clear cut. Knowing the subjectivity of the best interests of the child standard, however, does not clear judges of scrutiny from accusations of bias in still using the Maternal Preference as the rule. Statistically, the judge’s unwillingness to depart from the maternal presumption and conform to state statutes is clear cut. Research cited earlier in this literature review has already shown the 90% rate at which the mother is granted sole custody in adjudicated custody cases (Reed, 2014). Other findings within this study have also been similar and range from 80 to 94% (Kelly 1994; Grall 2011. Hughes, J.R. (2000), estimates that women are granted custody up to 88% of the time and although the findings differ slightly, the end result remains the same. The U.S. Census Bureau shows the breakdown of adjudicated cases through 2007 in the graph below (U.S. Census Bureau, 2007). In Illinois, where the research for this thesis will take place, “mothers were awarded custody in nine out of ten instances” (Abraham, 1987, p. 332). That statistic has remained relatively unchanged over the years. “Exact projections of custody disputes determined by court litigation are difficult to calculate, but large-scale empirical studies completed in different jurisdictions have found that 6-20% of all child custody cases are eventually decided in the courtroom” (Krauss & Sales 2000).

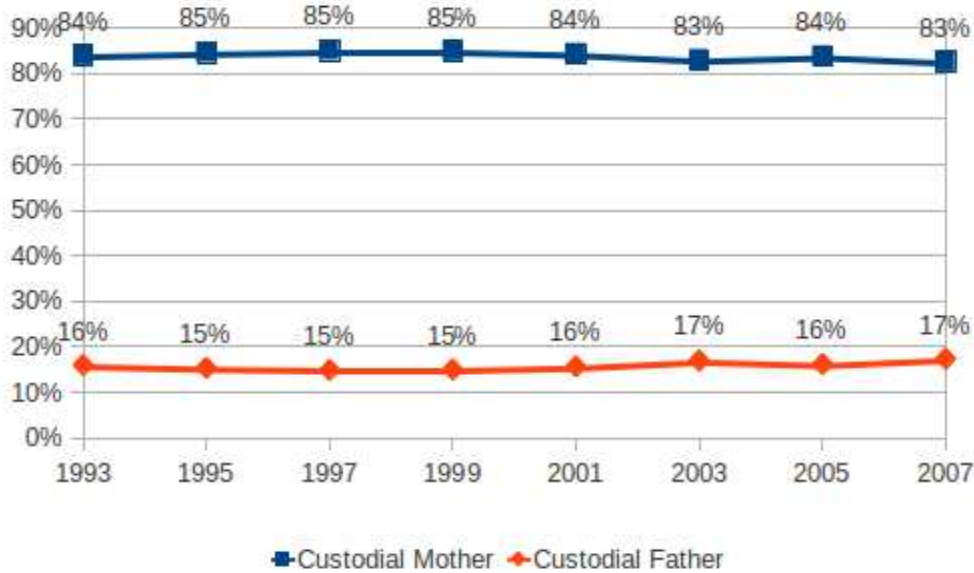


Figure 1. Custody breakdown by sex. Percentages representing the breakdown by gender of the person being awarded custody within the United States for each of the years between 1993 and 2007. The custodial mother is shown in blue and the custodial father in orange. Reprinted from the *United States Census Bureau/American FactFinder*, 2015, Retrieved from <http://www.census.gov/hhes/www/childsupport/cs07.html>. Copyright March 2016 by United States Census Bureau.

As we know, social science research is rarely absolute and the subjective nature of the research material may not tell the whole story. What do the actual players in the Illinois courts say in this matter? What are the perceptions of the judges and lawyers in these courtrooms say?

Since 42 of the 50 states found the topic of gender bias in the courtrooms important enough to assign state task forces to delve into the problem, the public and key state government figures obviously saw the potential for a problem. Of the task forces appointed, four issues were consistently addressed: the economics of divorce, domestic

violence, the courtroom environment, and child custody decisions (Swent, 1996). Eleven of the task forces studied court employment. Ten of the groups studied sexual assault and eight of the task forces looked at civil damage awards, judicial selection, and treatment of adults in the criminal justice system (Swent, 1996). Other topics were also studied by various states' task forces. Since this study is focusing on the Illinois task force, which was established in 1990, and the topic of child custody decisions, only pertinent information on the topic of bias regarding child custody will be addressed. This was needed for brevity since the Illinois Task Force on Gender Bias looked into many different areas in which bias existed, to include visitation orders where domestic abuse was alleged, the lack of enforcement and fairness in child support awards, the inappropriateness of the Illinois Courts in addressing claims of sexual abuse and domestic violence, and many others. Most of these auxiliary topics showed a serious bias against the mother, perpetrated by the father. This feeds into the complexity and the paradoxical nature of the family courts. Women, for nearly the entire history of our nation, have been subjected to bias and discrimination in our family courts and specifically in terms of issues involving the children. That being said, the task force finding for child custody issues was almost schizophrenic in their analysis of gender bias. On one hand, the task force found evidence that the mother was held to a higher standard of conduct that included assumption on the appropriateness of behavior stereotypically based on gender. An example given by one researcher was the father being admired for being the breadwinner but if a woman worked outside the home, she was criticized for being away from her children (Swent, 1996). On the other hand, Illinois, as was the case with most states, unjustly presumed that men were inferior parents to women (Swent, 1996).

Empirically speaking, if the woman is granted custody over 90% of the time and the man approximately 8% of the time, any talk of a woman being held to a higher standard or being unduly criticized for a double standard seems not to be insurmountable. Research for this thesis will focus on one piece of the puzzle; the perceptions of the judges and lawyers in Illinois courtrooms. Mirroring Dotterweich and McKinney (2000), this thesis will ask questions garnered from several other studies that pinpoint the judges and lawyers “attitudes toward the existence of gender bias in the handling of child custody cases” (Dotterweich & McKinney, 2000, p.1). Dotterweich and McKinney mailed survey instruments to judges and lawyers that worked in the family court system within the jurisdictions of Maryland, Texas, Missouri, and Washington. They picked these states due to each of these states having task forces that surveyed participants within the court system of their respective jurisdictions and tried to get a feel for the attitudes of the participants as they related to gender bias. Dotterweich and McKinney identified similar questions used by each task force that helped gain a perspective of potential gender bias in each of the states. The focus of Dotterweich and McKinney’s studies paralleled the state task force studies and is also the focus of this research. They first examined whether judges exhibit any gender bias in granting custody within their courtrooms. Secondly, whether judges perceive a judicial bias and if their perception was different than the judges. Lastly, do male and female attorneys have the same perception about judicial bias (Dotterweich & McKinney, 2000).

Their findings were that judges and attorneys within the system had vastly different perceptions of judicial bias in regards to gender. Just 15% of the judges surveyed felt that their fellow judges made custody decisions based on gender. However,

nearly half of the attorneys (49.9%) believed judges favored the mother in regard to custody awards. Furthermore, 56% of male attorneys believe judges always or usually make custody decisions based on the gender of the parent. Compare that number to that of female attorneys, where 33.6% feel judges always or usually make custody decisions based on gender (Dotterweich & McKinney, 2000). Their study suggests that a significant number of attorneys and specifically male attorneys, feel that the Tender Years doctrine still has a major role in determining custody awards. Their study also shows that attorneys' attitudes on gender bias is vastly different than that of the judges (Peskind, 2005). If asked the relatively same questions, will Illinois judges and attorneys view the same type of attitudes and perceptions in regards to gender bias relating to custody awards as did their brethren in Maryland, Texas, Missouri, and Washington?

## CHAPTER III

### METHODOLOGY

Illinois Custody laws have changed dramatically over the years. Whereas gender was a major variable in determining custody, it is now illegal to use gender as a mitigating factor, let alone the driving force for determination of custody. Literature has shown that societal ideals over the past 50 years have changed to where gender is no longer viewed as politically expedient or has the impact for custody awards as it did throughout most of American judicial history in terms of which parent is best suited to be the primary care giver (Swent, 1996). As stated earlier, states made laws (including Illinois) that stated, in essence, that gender could not be a variable (let alone the primary variable) in determining custody of children (Illinois Task Force, 1990).

This research mirrors closely the Dotterweich and McKinney (2000) study, examining perceptions of judges and lawyers within the family court system in regards to custody. In their study, they looked at research conducted by four states, Washington, Texas, Missouri, and Maryland, in which state task forces researched bias by sending out surveys, using various sampling methodologies to look at and address gender bias in the courts. Dotterweich and McKinney used a spreadsheet and found questions on each survey that were similar and tried to address the perceptions of the attorneys and judges in regards to the judge's decision making on child custody cases and was bias involved. These question's results were then combined to see if they could have a national perspective on gender bias. The purpose of the study is to discover whether attorneys and

judges perceive any favoritism toward mothers' or fathers' claims in the awarding of custody. The last two questions were designed to discover if perceptions existed in regards to any pre-conceived bias's held by the judge due to past bad experiences with fathers in their courtrooms in regards to the fathers poor performances in failed child support payments and like issues.

### **Research Questions**

The focus of this study parallels the issues considered by Dotterweich and McKinney (2000), who had tried to look at the state task forces' findings and provide a national perspective to the dialogue. The general focus for the questions posed to the judges and attorneys in Illinois were: Do judges believe that other judges possess or exhibit any bias in favor of males or females in resolving child custody cases? Do attorneys perceive a different level of judicial bias than judges? Do male and female attorneys feel the same way about potential bias" (Dotterweich & McKinney, 2000, p. 5)?

### **Hypotheses**

Several hypothesis were investigated within this research. The first is that attorneys inside Illinois' family court system perceive favoritism towards the mother by the presiding judge in child custody awards at a much higher rate than do judges. The null hypothesis is the following: there is no relationship between being an attorney or judge and their opinions on whether a presiding judge favors the mother in child custody cases.

The second hypothesis investigated is that in regards to child custody awards within the Illinois family courts, female attorneys are more likely than male attorneys to perceive that judges favor the mother in custody decisions. The null hypothesis for this



expectation is that no relationship exists between being a male or female attorney and their perceptions on whether a presiding judge favors the mother in Illinois child custody cases.

Lastly, the hypothesis for this research gives the following expectation: attorneys perceive that presiding judges have a bias against males at a much greater rate than judges do, thus favoring the mother in child custody cases, due to perceptions of males as deadbeat dads in regards to child support issues/default payments. The null hypothesis, simply put, is that there is no relationship between being an attorney or a judge and their opinions over favoring a mother in child custody cases based on the presiding judge's negative pre-disposition of males based on the actions of deadbeat dads within his or her courtroom.

### **Data Collection Procedures**

In this research, surveys were electronically mailed to a convenience sampling of attorneys and judges from all 102 counties from the state of Illinois. The sampling frame population is judges and attorneys who work within the family court system and have as a practice focus or emphasis on divorce. The lawyers are represented from all 102 counties, however, due to the very small sampling size in many of the counties and the limited access to some of the circuit judges emails, certain counties did not have representation.

For judges, although all Illinois Circuit Court Judges were considered, not all judges could be reached from several counties, thus not making it possible to represent all 102 counties. For the attorneys, it is more complicated. The total population for Illinois circuit judges is approximately 812. Since not all of the judges work or have worked on

child custody cases, this number may be substantially lower. Every Illinois Circuit Court Judge that gave access to their email was sent an e-survey. The judges were found by perusing the web site [www.illinoiscourts.gov](http://www.illinoiscourts.gov) that show all judges that work with the criminal and family court systems and by calling the chief administrators for the circuit judge's offices for email information. Since judges often rotate assignments, it was impossible to know which judges are residing as family court judges and which judges have previously been assigned. The e-survey is specific in stating that only judges with knowledge or experience within these courts will be asked to complete the survey.

For the attorneys, it was more complicated. There are more than 33,000 lawyers licensed to practice in the state of Illinois, however, not all work within the family courts in the area of specialty of child custody cases. The sample population for attorneys should be in the thousands. Lawyers do not specialize, for licensing purposes, in child custody cases. This study used self-reporting for the lawyers that specialize in divorce cases in general, and custody cases specifically. They were found within internet directories in which the individual lawyer or an office of lawyers specialize in divorce law/custody issues.

Initially, two sources were thought to have comprehensive lists of lawyers who advertise as specializing in divorce matters. The sources were [www.justia.com](http://www.justia.com) and [www.illinoislawyerfinder.com](http://www.illinoislawyerfinder.com). Neither list is exhaustive, however, they did represent a convenience sampling of attorneys fitting of this study. Most of the lawyers within these sites were listed as specializing in divorce/custody matters, and show the firm they are employed by. The sites have a link to the firm's website, which were supposed to be utilized to obtain emails for the e-survey. Problems were identified that made using these

lists exclusively, impossible. Instead, the same criteria was used but the web site [www.illinoislawyerfinder.com](http://www.illinoislawyerfinder.com) was utilized to find the emails needed to send out the e-surveys.

IRB approval was sought before any surveys were sent. The surveys were sent out during the early part of the Spring semester, 2016, and follow-up was done on three separate occasions until an adequate response rate was achieved. SurveyMonkey.com was utilized as the web based program to send out and receive the surveys. SurveyMonkey.com has security measures in place that makes the entire survey confidential and completely anonymous. The risk factor is very low on causing any type of damage to the participants. The results of the surveys were stored on a password protected computer, with only the author and committee members having access to the data. The results of each participant's survey was manually entered into SPSS for later analysis.

### **Survey Measures**

The primary attitudinal issue concerning child custody cases that is addressed in this article is thus, do a disproportionate number of attorneys and judges in Illinois continue to believe that custody decisions lean towards the mother due to her gender in spite of laws that find that practice illegal? Do the attorneys and judges within Illinois have the same type of perceptions found in previous research in states like Washington, Missouri, Texas, and Maryland, in that judge's decision still account for a parent's gender when rendering a decision? The survey contains nine questions. The survey questions were limited because there was a real concern that if the surveys became too long and

burdensome for the respondent, the actual number of surveys being completed would be greatly reduced.

The first three questions show the person's occupation, gender, and demographics. Questions four and five ask about child custody decisions favoring a specific gender. Questions six and seven speak to the financial welfare and employment status of the parents. Although two-income families are common today, male employees still tend to be paid more and have higher labor force participation rates than females (Economic Report of the President, 1996). Questions eight and nine were added to see if an association exists between child support defaults and child custody. These two questions are a departure from the Dotterweich and McKinney research and were added to see if a new variable might exist in determining if gender bias exists. Questions four through nine have responses of "always or usually," "sometimes," or "rarely/never." There is also a "please explain" after these questions in case the participants want to follow up on their answer. The exact wording of each question are in the appendix, however, for the purposes of this study, they are provided here as follows:

1. Are you a judge or an attorney in your jurisdiction? NOTE: For the participants that are judges, the questions below are asking...do you believe that other judges possess or exhibit these thoughts?
2. Are you male or female?
3. What IL County do you primarily work in?
4. Are custody awards made based on the assumption that young children belong with their mother?
5. Do courts give fair consideration to fathers?

6. Do courts favor the parent with financial standing?
7. Is custody denied due to employment outside the home?
8. Does public perception of Deadbeat Dads effect the decision making of the presiding judge when determining who to award custody to, the mother or the father?
9. Since the same judge makes decisions on child support defaults and awards child custody, does the poor performance of fathers (perceived as Deadbeat Dads) in regards to paying court ordered support payments effect the decision making of the presiding judge when it comes to awarding child custody?

The questions were formatted in previous research to assess the perceptions and recent experiences of the respondents regarding gender issues (Dotterweich & McKinney, 2000). Since my primary goal for the survey is to try and replicate the results in Illinois that were found in the four studies conducted in the states of Washington, Texas, Missouri, and Maryland, I felt the reliability would be greatly enhanced by using nearly the same survey tools. In reviewing the state task force's questions that were posed, Dotterweich and McKinney purposely picked similar questions in states that had the same Best Interests of the Child doctrine to try and determine if favoritism existed for either the mother or the father. I chose to use the same four questions that were used in the case study by Dotterweich and McKinney (2000) as the focal point of this survey, where they combined like-minded questions to see if bias existed.

This study also enhanced their earlier study by adding a component of a possible pre-conceived bias due to "Deadbeat Dads" the judges experienced in their courtrooms. The last two question were designed to discover if perceptions existed in regards to any

pre-conceived bias's held by the judge due to past bad experiences with fathers in their courtrooms in regards to the fathers poor performances in failed child support payments and like issues.

CHAPTER IV  
ANALYSIS OF DATA

**Overview of Data**

Over a two month period in the Spring of 2016, 1,910 surveys were sent electronically to attorneys and circuit judges in all 102 counties in Illinois. This included two reminder emails and several follow-up phone calls to the trial court administrators of all of the Illinois Circuit Judge's offices. Of the 1,910 surveys sent, 183 responses were returned; 160 (87.4%) attorneys participated and 23 (12.6%) judges. Of the 160 attorneys, 103 (65.9%) of the participants were male and 57 (34.1%) were female. Judges were not sent surveys in all counties due to lack of access to the judge's emails (see "Limitations" section below), however, attorneys from all counties were contacted for participation. In total, over 42% of the counties had attorneys or judges who participated. Forty-two percent, at first glance, may seem like a low participation rate, however, it should be noted that the difference between the largest counties and the smaller counties in terms of population, is substantial. For example, Cook County is the most populous county in Illinois at just over 5.2 million people and DuPage County is next at over 930,000. In contrast, the 15 counties with the lowest populations each have less than 10,000 residents. The three lowest counties, Calhoun County, Pope County, and Hardin County, each have less than 5,000 residents (United States Census Bureau 2015). With counties that have such low population centers, it can be reasoned that these counties have very low numbers of practicing attorneys as well. Although every county

in Illinois was represented in terms of receiving an e-survey, some of the counties with very low populations may have had only a couple of attorneys given the opportunity to participate. This greatly lessens the likelihood of having an attorney participate from the smaller counties.

### **Limitations**

When conducting the survey, several issues arose that necessitated a change in methodology. Initially, a convenience sample of self-identified family court attorneys advertised in [www.justia.com](http://www.justia.com) and [www.lawyerfinder.com](http://www.lawyerfinder.com) was proposed. Unfortunately, nearly all lawyers on these sites listed a business email address as their companies' web site's email, most commonly resulting in an electronic "fill in the blank" portal, instead of a standalone email, that made it impossible to electronically send an e-survey to individual attorneys. To increase sample size, [www.illinoislawyerfinder.com](http://www.illinoislawyerfinder.com), a site linked through the Illinois State Bar Association was used to locate individual email addresses. This web site had lawyers in every county in Illinois and showed specialties, specifically divorce and child custody. The original convenience sampling technique, was modified to add this website to the ones originally proposed.

The study was also limited by a lack of publically available Illinois Circuit Judges individual email addresses. Each trial court administrator had to be contacted by phone to request the judge's email address. Of the twenty-three circuit courts plus Cook County, five never returned my multiple attempts at contact (the Sixth, Twelfth, Seventeenth, and Cook County), while eight more refused to give me the addresses, either by outright refusing or asking me to send them the survey for the Chief judge's perusal and then saying no or not responding further. This was in sharp contrast to the



other states participatory rates in Dotterweich and McKinney's research where the surveys were sent and compiled by state bar association task forces and participation was very high. For instance, in Washington's study, the judge's had an 85% participation rate (Dotterweich & McKinney 2000). The current project had a participation rate for judges at just over 2.5%. As an interesting side note, several administrators said openly that the only reason they considered sharing my e-survey was that I had mentioned in our conversation that I was a retired police officer.

An additional limitation was noted in the wording of the last two survey questions concerning deadbeat dads. The questions were intended to be general questions about whether the high amount of "deadbeat dads" subconsciously affected judgement against men in specific cases down the road. After examining question response, it is possible that some judges interpreted the question more specifically. In essence, some read the question that if the male in a custody case were a deadbeat dad in a case previously seen by the judge, would this affect that judge's decision. Here are two examples of how the question was interpreted by the participating attorney: "There is established legal precedence holding that courts may use the nonpayment of support as one factor in determining custody" and "It should affect the decision. If a Dad doesn't want to contribute financially, he may not want to contribute his time to a child either." The wording of the questions regarding deadbeat dads may impact the interpretation of the responses.

### **Statistical Analysis**

In compiling the data, this research needed to determine if a statistically significant relationship existed between the perception of favoritism towards the mother

and occupation (attorney/judge) and between the perception of favoritism towards the mother and the gender of the attorneys. Two key questions needed to be answered: is there a correlation between these variables and if so, how strong a relationship exists. Since the independent variables (occupation and gender) are nominal variables and the dependent variable being measured is ordinal data, the statistical test, chi-square, was utilized as the best possible method for measuring if a significant relationship exists between the variables. Put simply, the chi-square statistic measures the difference between the observed counts and the counts that would be expected if there were no relationship between two categorical variables. A large difference is evidence of a relationship. Chi-square values indicate the probability that an observed relationship could have occurred merely by chance.

### **Results**

Table 1 is a compilation of the child-custody related responses from this survey. Each of the six questions will be examined separately. First, judicial opinions concerning whether any bias may exist will be studied. These attitudes will then be compared to those for all attorneys. Finally, the attorneys' responses will be analyzed by gender to see if significant differences exist.

Table 1

*Results for Responses of All Participants in Regards to Survey Questions*

Issue and Response	Attorneys			Judges
	All (n=160)	Male (n=103)	Female (n=57)	All (n=23)
1. Are custody awards made based on the assumption that young children belong with their mothers?				
Always or Usually	57 (35.6 %)	39 (37.9%)	18 (31.6%)	1 (4.4%)
Sometimes	67 (41.9%)	42 (40.8%)	25 (43.9%)	17 (73.9%)
Rarely or Never	25 (15.6%)	14 (13.6%)	11 (19.3%)	4 (17.4%)
2. Do courts give fair consideration to fathers?				
Always or Usually	65 (40.6%)	41 (39.8%)	24 (42.1%)	18 (78.3%)
Sometimes	70 (43.8%)	16 (44.7%)	24 (42.1%)	4 (17.4%)
Rarely or Never	14 (8.8%)	8 (7.8%)	6 (10.5%)	0 (0.0%)
3. Do courts favor the parent with financial standing?				
Always or Usually	2 (5.0%)	4 (3.9%)	4 (7.0%)	2 (8.7%)
Sometimes	10 (50.0%)	53 (51.5%)	27 (47.4%)	10 (43.5%)
Rarely or Never	9 (37.5%)	37 (35.9%)	23 (40.4%)	9 (39.1%)
4. Is custody denied due to employment outside the home?				
Always or Usually	3 (19%)	3 (1.9%)	0 (0.0%)	0 (0.0%)
Sometimes	74 (46.3%)	49 (47.6%)	27 (43.9%)	3 (13.4%)
Rarely or Never	69 (43.1%)	42 (40.8%)	25 (47.4%)	18 (78.3%)
5. Does public perception of Deadbeat Dads effect the decision making of the presiding judge when determining who to give custody to, the mother or the father?				
Always or Usually	14 (8.8%)	9 (8.8%)	5 (8.8%)	1 (4.4%)
Sometimes	44 (27.5%)	28 (27.2%)	16 (28.1%)	2 (8.7%)
Rarely or Never	86 (53.8%)	56 (54.4%)	30 (52.6%)	18 (78.3%)
6. Since the same judge makes decisions on child support defaults and awards child custody, does the poor performance of fathers (perceived as Deadbeat Dads) in regards to paying court ordered support payments affect their decision making of the presiding judge when it comes to awarding child custody?				
Always or Usually	21 (13.1%)	13 (12.6%)	8 (14.0%)	4 (17.4%)
Sometimes	66 (41.3%)	45 (43.7%)	21 (36.8%)	7 (30.4%)
Rarely or Never	51 (31.9%)	32 (31.1%)	319 (3.3%)	9 (39.1%)

## **Results for Cross Tabulations by Occupation (Attorneys/Judges)**

**Issue 1: Are custody awards made based on the assumption that young children belong with their mothers?** Just 4.4% of the participating judges believe their colleagues make custody awards based on the assumption that children belong with their mothers. However, over a third of the attorneys (35.6%) believe custody awards favor the woman. These numbers, at face value, seem to show that attorneys and judges have a vastly different view concerning whether custody awards continue to favor the mother, regardless of what the statutes dictate.

In attempting to see if there is a significant difference between attorney's perception of the issue and judge's, this study used the Pearson's Chi Square analysis to determine whether a statistically significant relationship exists between two nominal variables. Two cross tabulations, gender (independent variable) and custody decisions based on the premise young children belong with their mothers (dependent variable) and occupation, judge or attorney, (independent variable) and custody decisions based on the premise young children belong with their mothers (dependent variable) were conducted. As shown in Table 2, a significant relationship was found between the two variables (Chi square value = 10.939, df =3,  $p < .012$ ). Concurrently, the Cramer's V of .244 shows a medium to large effect size of the relationship.

**Issue 2: Do courts give fair consideration to fathers?** A large majority of judges (78.3%) feel that their counterparts "always or usually" give fair consideration to fathers, a much higher percentage than found in Dotterweich and McKinney's research in which 45.5% of judges had that perception. Attorneys, on the other hand, feel that in a majority of instances, fathers are not given equal and fair billing in custody cases. Fewer

than half (40.6%) of the attorneys “always or usually” feel that the father is given fair consideration and 43.8% answered “sometimes.”

A Pearson chi-square test was conducted to examine whether there was a relationship between being an attorney or judge and the dependent variable of whether courts give fair consideration to fathers. As shown in Table 2, the results revealed that there was a significant relationship between the two variables (Chi square value = 10.939,  $df=3$ ,  $p < .012$ ). Since the P value is less than .05, the relationship is statistically significant. Concurrently, the Cramer’s V of .244 shows a medium to large effect size of the relationship.

**Issue 3: Do courts favor the parent with financial standing?** Although women have narrowed the gap over the last several decades, the assumption still persists that the male is generally paid more and is employed longer. This question, therefore, is really asking if fathers are perceived to be favored in custody. In this research, judges were shown only 8.7% of the time to “always or usually” favor the parent with financial standing. Attorneys (5.0%), too, do not feel that financial standing is a major variable in determining custody.

A Pearson chi-square test was conducted to examine whether there was a relationship between the independent variable of attorney/judge and the perception that courts favor the parent with financial standing. The results revealed in Table 2 that there was not a significant relationship between the two variables (Chi square value = .728,  $df=3$ ,  $p < .867$ ). Since the p value is greater than .05, there is not a statistically significant relationship between the variables. The Cramer’s V value of .063 shows a small effect size.

**Issue 4: Is custody denied due to employment outside the home?** There is virtually no difference between the attitudes of judges and attorneys when looking at the attitudes of the relationship between a parent's employment outside the home and the rendering of a custody decision. No judges (0.0%) and only 1.9% of attorneys felt that custody is "always or usually" denied due to employment outside the home. An interesting side note, however, does show that although only 13.0% of judges felt their counterparts "sometimes" used employment outside the home as a variable, 46.3% of attorneys gave the same opinion of "sometimes" a bias existed.

A Pearson chi-square test was conducted (see Table 2) to examine whether there was a relationship between the occupation of judge or attorney and the perception of a parent's employment outside the home in regards to its importance in rendering a custody decision. The results revealed that there was a significant relationship between the two variables (Chi square value = 10.923, df=3,  $p < .012$ ). Since the p value is less than .05, the relationship between the variables is seen as statistically significant. The Cramer's V value is .244, which should be viewed as on the lower side of a large effect.

**Issue 5: Does public perception of deadbeat dads effect the decision making of the presiding judge when determining who to award custody to, the mother or the father?** As already addressed in the "Problems" section, Issues 5 and 6, that address the perception of how Deadbeat Dads may affect the subconscious attitude of the presiding judge against men, several comments by participants begs the question on whether or not the questions were misinterpreted. That being said, the judges (4.4%) believed that presiding judges "always or usually" awarded custody to the mother due to a negative public perception of deadbeat dads. Attorneys (8.8%) felt this negative public perception

affected the presiding judge's decision making "always or usually" in favor of the woman.

A Pearson chi-square test was conducted to examine whether there was a relationship between being either a judge or attorney and the public perception of deadbeat dads in effecting the decision making of the presiding judge when determining who to award custody to, the mother or the father. The results in Table 2 revealed that there was not a significant relationship between the two variables (Chi square value = 5.465, df=3,  $p < .141$ ). Since the p value is greater than .05, there is not a statistically significant relationship between the variables. The Cramer's V value of .173 shows a medium effect.

**Issue 6: Since the same judge makes decisions on child support defaults and awards child custody, does the poor performance of fathers (perceived as deadbeat dads) in regards to paying court ordered support payments affect their decision making of the presiding judge when it comes to awarding child custody?** Just 17.4% of the judges surveyed believe their counterparts make custody awards based on the premise that the poor performance of fathers in paying support payments affect their decision making when it comes to awarding child custody. Attorneys (13.1%) feel even less inclined to believe that presiding judges base their decision making on child custody awards on previous deadbeat dad cases by stating that judges "always or usually" award custody cases based on previous cases involving deadbeat dads.

A Pearson chi-square test was conducted to examine whether there was a relationship between being a judge or attorney and the poor performance of fathers (perceived as Deadbeat Dads) in regards to paying court ordered support payments affect

the decision making of the presiding judge when it comes to awarding child custody. The results, shown in Table 2, revealed that there was not a significant relationship between the two variables (Chi square value = 1.188, df =3,  $p < .756$ ). Since the p value is greater than .05, there is not a statistically significant relationship between the variables. The Cramer's V value of .081 shows a small effect.

Table 2

*Results for Cross Tabulations by Occupation (Attorneys/Judges)*

Response	Attorneys (n=160)		Judges (n=23)	
	Num	%	Num	%
<b>**Issue 1: Do you feel custody awards are made based on the assumption that young children belong with their mother?</b>				
Always/Usually	57	35.6	1	4.4
Sometimes	67	41.9	17	73.9
Rarely or Never	25	15.6	4	17.4
(no response)	11	6.9	1	4.4
Chi square value = 10.939, df =3, $p < .012$ Cramer's V = .244				
<b>**Issue 2: Do courts give fair consideration to fathers?</b>				
Always/Usually	65	40.6	18	78.3
Sometimes	70	43.8	4	17.4
Rarely or Never	14	8.8	0	0
(no response)	11	6.9	1	4.3
Chi square value = 10.939, df =3, $p < .012$ Cramer's V = .244				
<b>Issue 3: Do courts favor the parent with financial standing?</b>				
Always/Usually	8	5.0	2	8.7
Sometimes	80	50.0	10	43.5
Rarely or Never	60	37.5	9	39.1
(no response)	12	7.5	2	8.7
Chi square value = .728, df =3, $p < .867$ Cramer's V value = .063				
<b>**Issue 4: Is custody denied due to employment outside the home?</b>				
Always/Usually	3	1.9	0	0
Sometimes	74	46.3	3	13.0
Rarely or Never	69	43.1	18	78.3
(no response)	14	8.8	2	8.7
Chi square value = 10.923, df =3, $p < .012$ Cramer's V value = .244				

*(Table Continues)*



Response	Attorneys (n=160)		Judges (n=23)	
	Num	%	Num	%
Issue 5: Does public perception of Deadbeat Dads effect the decision making of the presiding judge when determining who to award custody to, the mother or the father?				
Always/Usually	14	8.8	1	4.4
Sometimes	44	27.5	2	8.7
Rarely or Never	86	53.8	18	78.3
(no response)	16	10.0	2	8.7
Chi square value = 5.465, df=3, p < .141 Cramer's V value = .173				
Issue 6: Since the same judge makes decisions on child support defaults and awards child custody, does the poor performance of fathers (perceived as Deadbeat Dads) in regards to paying court ordered support payments effect their decision making of the presiding judge when it comes to awarding child custody?				
Always/Usually	21	13.1	4	17.4
Sometimes	66	41.3	7	30.4
Rarely or Never	51	31.9	9	39.1
(no response)	22	13.7	3	13.0
Chi square value = 1.188, df=3, p < .756 Cramer's V value = .081				

### Results for Cross Tabulations by Gender (Male Attorneys/Female Attorneys)

**Issue 1: Are custody awards made based on the assumption that young children belong with their mothers?** In regards to gender among attorneys, 37.9% (number) of the participating males feel that the judge always or usually makes custody decisions based on gender while 31.6% (number) of female attorneys hold the same opinion. Combine that number with the percentage of male attorneys that say judges “sometimes” base custody awards on the assumption that children belong with their mother, which stood at 40.8%, and a very large percentage of male attorneys feel the mother is favored in some capacity. Compare these numbers against participating female attorneys, who felt the mother was “usually or always” favored (31.6%) or “sometimes” favored at 43.9%, and a perception of bias for both genders is revealed.

Table 3 shows a Pearson chi-square test was conducted to examine whether there was a relationship between attorney's gender and the assumption that young children belong with their mother. The results revealed that there is not a statistically significant relationship between the two variables (Chi square value = 1.589, df=3,  $p < .662$ ). The Cramer's V of .100 shows a small effect size on being a male or female attorney.

**Issue 2: Do courts give fair consideration to fathers?** Almost 4 in 10 (39.8%) of male attorneys feel that fathers "always or usually" are given fair consideration while 42.1% of female attorneys share that perception. This is in sharp contrast to Dotterweich and McKinney's research in which male attorneys (27.3%) were much less likely than female attorneys (41.1%) to have the impression men "always or usually" were given fair consideration.

Table 3 shows the Pearson's chi-square results, showing the potential relationship between the independent variable of gender and the dependent variable of the courts showing fair consideration to males. A Pearson chi-square test was conducted and the results revealed that there was no statistically significant relationship between gender and the perception courts give fair consideration to fathers (Chi square value = .756, df=3,  $p < .860$ ). Since the P value is greater than .05, the relationship is not statistically significant. Concurrently, the Cramer's V of .069 shows a small effect size.

**Issue 3: Do courts favor the parent with financial standing?** Male and female attorneys share the same viewpoint on this matter. Both are at 2.5% for having the perception that judges "always or usually" favor the parent with financial standing. This is different than Dotterweich and McKinney's research, which showed that female attorneys had a significantly different attitude on this issue than male attorneys (4% for

male attorneys versus 10.7% for female attorneys). A Pearson chi-square test was also conducted to examine whether there was a relationship between the independent variable of gender and the perception that courts favor the parent with financial standing. In Table 3, the results revealed that there was not a significant relationship between the two variables (Chi square value = 1.626, df=3,  $p < .653$ ). Since the p value is greater than .05, there is not a statistically significant relationship between the variables. The Cramer's V value of .101, which should be viewed as a small to medium effect size.

**Issue 4: Is custody denied due to employment outside the home?** When breaking down the difference of attitudes between male and female attorneys, 1.9% of male attorneys and no female attorneys believe that custody is “always or usually” denied due to employment outside the home. A Pearson chi-square test was conducted to examine whether there was a relationship between being a male or female attorney (independent variable) and the perception of a parent's employment outside the home in regards to its importance in rendering a custody decision. The results, shown in Table 3, revealed that there was not a significant relationship between the two variables (Chi square value = 2.139, df =3,  $p < .544$ ). Since the p value is greater than .05, the relationship between the variables is seen as not statistically significant. The Cramer's V value is .116, which should be viewed as between a small and medium effect size. The results, overall, show an agreement. As stated by Dotterweich and McKinney, “the overall consistency of responses from judges and attorneys, both male and female, indicates that employment outside the home is generally accepted by members of the legal system and is not a major source of perceived gender bias (Dotterweich & McKinney 2000).

**Issue 5: Does public perception of deadbeat dads effect the decision making of the presiding judge when determining who to award custody to, the mother or the father?** Looking at Table 3, male attorneys and female attorneys are identical (8.8%) in their perceptions of believing that presiding judges “always or usually” deny custody to the male based on public perception of deadbeat dads. A Pearson chi-square test was conducted to examine whether there was a relationship between being a male or female attorney and the public perception of deadbeat dads in effecting the decision making of the presiding judge when determining who to award custody to, the mother or the father. The results in Table 3 revealed that there was not a significant relationship between the two variables (Chi square value = .056, df =3,  $p < .997$ ). Since the p value is greater than .05, there is not a statistically significant relationship between the variables. The Cramer’s V value of .019 shows a very small effect.

**Issue 6: Since the same judge makes decisions on child support defaults and awards child custody, does the poor performance of fathers (perceived as deadbeat dads) in regards to paying court ordered support payments affect their decision making of the presiding judge when it comes to awarding child custody?** A small percentage of male attorneys (12.6%) and a comparably small number of female attorneys (14.0%) feel that presiding judges do not put much basis on their views of deadbeat dads and making a determination of a custody award for the mother or the father. A Pearson chi-square test was conducted to examine whether there was a relationship between being either a male attorney or female attorney and the poor performance of fathers (perceived as Deadbeat Dads) in regards to paying court ordered support payments affecting the decision making of the presiding judge when it comes to

awarding child custody. Table 3 shows the results, revealing that there was not a significant relationship between the two variables (Chi square value = .800, df=3, p < .850). Since the p value is greater than .05, there is not a statistically significant relationship between the variables. The Cramer's V value of .071 shows a small effect. Both Issues 5 and 6 suggest that deadbeat dads plays very little in the attitudes of judges and attorneys on their effect on presiding judges making custody awards for the mother or the father.

Table 3

*Results for Cross Tabulations by Gender (Male Attorneys/Female Attorneys)*

Response	Male Attorneys (n=103)		Female Attorneys (n=57)	
	Num	%	Num	%
Issue 1: Do you feel custody awards are made based on the assumption that young children belong with their mother?				
Always/Usually	39	37.9	18	31.6
Sometimes	42	40.8	25	43.9
Rarely or Never	14	13.6	11	19.3
(no response)	8	7.7	3	5.2
Chi square value = 1.589, df=3, p < .662 Cramer's V = .100				
Issue 2: Do courts give fair consideration to fathers?				
Always/Usually	41	39.8	24	42.1
Sometimes	46	44.6	24	42.1
Rarely or Never	8	7.8	6	10.5
(no response)	8	7.8	3	5.3
Chi square value = .756, df=3, p < .860 Cramer's V = .069				
Issue 3: Do courts favor the parent with financial standing?				
Always/Usually	4	3.9	4	7.0
Sometimes	53	51.5	27	47.4
Rarely or Never	37	35.9	23	40.4
(no response)	9	8.7	3	5.2
Chi square value = 1.626, df=3, p < .653 Cramer's V value = .101				

*(Table Continues)*

Response	Male Attorneys (n=103)		Female Attorneys (n=57)	
	Num	%	Num	%
Issue 4: Is custody denied due to employment outside the home?				
Always/Usually	3	2.9	0	0
Sometimes	49	47.6	27	47.4
Rarely or Never	42	40.8	25	43.9
(no response)	9	8.7	5	8.7
Chi square value = 2.139, df =3, p < .544      Cramer's V value = .116				
Issue 5: Does public perception of Deadbeat Dads effect the decision making of the presiding judge when determining who to award custody to, the mother or the father?				
Always/Usually	9	8.7	5	8.8
Sometimes	28	27.2	16	28.1
Rarely or Never	56	54.4	30	52.7
(no response)	10	9.7	6	10.4
Chi square value = .056, df =3, p < .997      Cramer's V value = .019				
Issue 6: Since the same judge makes decisions on child support defaults and awards child custody, does the poor performance of fathers (perceived as Deadbeat Dads) in regards to paying court ordered support payments effect their decision making of the presiding judge when it comes to awarding child custody?				
Always/Usually	13	12.6	8	14.0
Sometimes	45	43.7	21	36.8
Rarely or Never	32	31.1	19	33.3
(no response)	13	12.6	9	15.9
Chi square value = .800, df =3, p < .850      Cramer's V value = .071				

## CHAPTER V

### DISCUSSION, CONCLUSION, AND IMPLICATIONS

#### **Discussion**

The focus of this research parallels the issues gleaned from Dotterweich and McKinney's study that asks the questions, do judges believe that other judges possess or exhibit any bias in favor of males or females in resolving child custody cases and do attorneys perceive a different level of judicial bias than judges? Furthermore, do male and female attorneys feel the same way about potential bias? (Dotterweich & McKinney 2000).

This research centered on the same premise of Dotterweich and McKinney's study in 2000 that although the Tender Years Doctrine, which favored the mother in custody disputes, had vanished from state statutes, the perception it is alive and well is still prevalent. The goal of this research was to replicate the Dotterweich and McKinney's research that focused on four states, Washington, Maryland, Texas, and Missouri, and tried to capture the perceptions of judges and attorneys that worked directly within the family court system within those states. As an added research angle, two questions were added that addressed the possibility that circuit clerk judges had added public pressure and negative preconceived notions against fathers in general because they often had to deal with fathers that did not fulfill their financial obligations (i.e. deadbeat dads).

Four hypotheses were presented as part of this research. The first was that attorneys perceive gender bias in the courtroom to a much greater extent than judges.

Questions 4-7 address this hypothesis, with each question showing a direct or implied bias with an “always or usually” response or a “rarely or never” response. With the exception of question 6 that speaks of the mother or father’s financial status, the others had a statistically significant relationship, with a medium to large effect. All showed that attorneys perceive bias at a much greater rate than judges. With this hypothesis, we reject the null hypothesis. As a side note with this hypothesis, this research varied from Dotterweich and McKinney’s research on question four in that a large majority of judges (78.3 %) feel that their counterparts “always or usually” give fair consideration to fathers. This was a much higher percentage than found in Dotterweich and McKinney’s research in which 45.5% of judges had that perception. Since the question was worded exactly from the earlier research, it is possible that judges have become more enlightened over the fifteen plus years between studies. It is also possible that this studies’ sampling size wasn’t large enough to be reliable. Further research is needed to determine why these results varied.

The second hypothesis that female attorneys would believe that mothers were favored at a much higher rate than male attorneys. None of the four questions (questions 4-7) on the survey showed a statistically significant relationship regarding gender, thus, we failed to reject the null hypothesis.

Thirdly, the hypothesis that deadbeat dads within the system would have an adverse effect on a judge’s overall view of men and would lead the judges towards favoring the mother in child custody cases. Both questions regarding deadbeat dads showed no statistical significance and thus no relationship between being a judge and an attorney existed. We failed to reject the null hypothesis.



Lastly, the hypothesis that male attorneys would hold the belief that deadbeat dads' repeated appearances in family court would help favor a mother's chances of winning a custody award more so than with female attorneys. Again, there was no statistically significant relationship between gender and the question of whether deadbeat dads effected the judge's decision making, thus favoring the mother. We failed to reject the null hypothesis.

### **Conclusion**

This research was able to replicate the results of the Dotterweich and McKinney study in many ways and several takeaways can be gleaned from this research. First and foremost, the perceptions of judges and attorneys on identical issues still differ markedly. All but one of our questions (financial standing showed no significant relationship) that had the occupation of judge or attorney as its independent variable showed a statistically significant relationship with the dependent variable being analyzed. Judges' views showed they believed that the Best Interests of the Child Doctrine was, for the most part, being impartially administered in the granting of custody awards. This could be, however, because of the very small sample of judges who replied to the survey and the limited areas of response throughout Illinois. Some circuits in Illinois were just not represented due to either Chief Judges or their Trial Court Administrator not allowing the survey to even be viewed by the circuit court judges in their area. This calls into question the reliability of the relationship because of the small sample size of judges. It is unknown if judges carry the same attitudes in a large population center such as Cook County or DuPage County as in tiny populations of a Hardin County or Calhoun County. A large percentage of the attorneys, however, felt that mothers were disproportionately

avored in custody decisions. Our research did not show the differences between male and female attorneys being statistically significant as did the Dotterweich and McKinney study. It is unknown without further research on whether or not this was caused by the time lapse between studies, a smaller sampling size, or other variables but the significance of the relationship of gender and the effect size were minimal. Financial status also did not seem to be an important variable in the overall viewing of the gender bias argument in this research as compared to the Dotterweich and McKinney study. As stated earlier, an overall viewpoint can be made: attorneys perceive that mothers continue to be favored over fathers in custody cases while judges do not share this opinion. Dotterweich and McKinney's study could take that point one step further and say that particularly, male attorneys have the attitude that mothers are favored at a significant rate over female attorneys. This research did not show a statistically significant relationship in regards to gender.

### **Implications**

Results from this study are important to family court systems, the nation's bar associations, and American society as a whole. Dotterweich and McKinney point out three policy implications that are still true today. First, the nature of any perceived gender bias should be identified and evaluated. As the two studies have found, attorneys and judges have significantly different perceptions of the presiding judges' bias or lack thereof on identical issues. Studies and surveys monitoring these perceptions should occur more than once every 15 years to gauge changing views. "Such information would be instrumental in measuring the degree to which changes have occurred in attorney and judicial attitudes." (Dotterweich & McKinney 2000).

Secondly, judges should be more transparent. They should start each case with an opening statement that states emphatically that they are acting in the best interests of the child and will be serving neutrally, with their sole goal of being an advocate for the child (Smoron 1998). Furthermore, they should end each case with a complete explanation and rationale for their decision. With these kind of approaches, bar associations and task forces will have a better method of monitoring and measuring judge's decisions and help, over time, to reduce perceptions of gender bias.

Lastly, more studies are needed to more accurately measure bias in the family court system. Many studies being cited today are more than a decade or more old and may not keep up with prevailing attitudes and perceptions. New studies should focus on conformity of terms and measures. For instance, different studies have different meaning for the term, adjudicated cases. Most definitions include the concept of an adjudicated case is one in which a judge makes a decision to study and settle a dispute or conflict. In child custody cases, any case is an adjudicated case but that doesn't mean that both parties fought for custody. There are numerous cases in which the mother was awarded custody of the child where the father did not want custody in the first place. There are also numerous cases that the father wanted custody but was not awarded custody. Both are considered adjudicated cases. Statistics, as shown earlier in this research, show mothers being awarded custody in a vast majority of the cases, sometimes as high as 90% of the time. This figure, however, does not show the intent of the parties nor the attitude of the presiding judge. It does show, on its surface, a perception of bias against the father in many cases. Future studies that clearly define and differentiate the different cases could go a long way to either lessening the perception of bias or clarifying a real slant to

the Tender Years Doctrine. The law already states that using gender as a variable in child custody disputes is illegal. These approaches should help overcome attitudes of gender bias and bring into line the law with what is actually happening in our family courts.

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APPENDIX  
 SPECIFIC SURVEY QUESTION AND RESPONSES FROM  
 STATE TASK FORCE REPORTS

*Issue 1--Are custody awards made based on the assumption that young children belong with their mothers?*

A. Question in the Maryland Survey--Attorneys and Judges

"Custody awards to mothers are based on the assumption that children belong with their mothers."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	61.4	32.5	6.1	295
Female attorneys	34.7	45.6	19.7	239
Judges (all)	13.7	34.9	51.4	175

B. Question in the Missouri Survey--Attorneys and Judges

"In awarding custody, Judges indicate, by statement or action, that young children belong with their mothers."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	76.3	16.8	6.9	792
Female attorneys	58.0	30.9	11.1	207
Judges (all)	40.7	41.5	17.8	118

C. Question in the Texas Survey--Attorneys Only

"Sole managing conservatorship is based on the assumption that children belong with their mothers."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	50.0	35.0	15.0	1,443
Female attorneys	31.0	43.0	25.9	390

D. Question in the Texas Survey--Judges Only

"In general, sole managing conservatorship of children should be awarded to the mother."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Judges (all)	10.0	36.4	53.6	321

E. Question in the Washington Survey--Attorneys Only

"Have judges indicated through action or statement that their decision to award custody to mothers was based on a belief that children belong with the mother?"

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	24.2	52.0	23.8	281
Female attorneys	13.2	54.7	32.1	212

F. Question in the Washington Survey--Judges Only

"Have you indicated through action or statement that decisions to award custody were based on a belief that children belong with their mother?"

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Judges (all)	3.8	21.7	74.5	106

*Issue 2--Do courts give fair consideration to fathers?*

A. Question in the Maryland Survey--Attorneys and Judges

"The courts give fair and serious consideration to fathers who actively seek custody."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	26.8	44.4	28.8	295
Female attorneys	48.7	33.6	17.6	238
Judges (all)	80.5	13.8	5.7	174

B. Question in the Missouri Survey--Attorneys and Judges

"Judges give fair and serious consideration to fathers who seek sole managing conservatorship of their children."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	26.0	38.0	36.0	784
Female attorneys	25.2	41.9	32.9	234
Judges (all)	79.3	16.4	4.3	116

#### C. Question in the Texas Survey--Attorneys and Judges

"Judges give fair and serious consideration to fathers who seek sole managing conservatorship of their children."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	24.0	42.0	34.0	1443
Female attorneys	37.0	47.0	15.9	389
Judges (all)	10.0	36.4	53.6	321

#### D. Question in the Washington Survey--Attorneys Only

"Have judges given fair and serious consideration to fathers who actively sought custody?"

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	48.9	45.7	5.4	278
Female attorneys	57.5	40.6	1.9	212

#### E. Question in the Washington Survey--Judges Only

"How often have you awarded custody to fathers who actively sought custody?"

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Judges (all)	58.3	32.0	9.7	103

#### *Issue 3--Do courts favor the parent with financial standing?*

#### A. Question in the Maryland Survey--Attorneys and Judges

"The courts favor the parent in the stronger financial position when awarding custody."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	6.8	37.6	55.6	295

Female attorneys	16.9	44.9	38.1	236
Judges (all)	4.0	34.9	61.1	175

B. Question in the Missouri Survey--Attorneys and Judges

"In awarding custody, judges favor the parent in the stronger financial position."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	3.0	68.0	29.0	763
Female attorneys	9.0	48.0	43.0	212
Judges (all)	4.3	71.7	24.0	116

C. Question in the Texas Survey--Attorneys Only

"When the primary caretaker is in the weaker financial position, sole managing conservatorship of children is given to the parent in the stronger financial position."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	0.1	26.8	73.2	1,401
Female attorneys	4.1	36.5	59.4	394

D. Question in the Texas Survey--Judges Only

"In general, sole managing conservatorship of children should be awarded to the parent in the stronger financial position."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Judges (all)	2.5	11.3	86.2	319

E. Question in the Washington Survey--Attorneys and Judges  
Not applicable.

*Issue 4--Is custody denied due to employment outside the home?*

A. Question in the Maryland Survey--Attorneys and Judges

"Mothers are denied custody due to employment outside the home."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	2.0	11.9	86.1	295

Female attorneys	8.1	30.9	61.0	236
Judges (all)	1.7	15.0	83.2	173

B. Question in the Missouri Survey--Attorneys and Judges  
Not applicable.

C. Question in the Texas Survey--Attorneys Only

"Mothers are denied sole managing conservatorship because of their employment outside the home."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	0.0	5.0	95.0	1,443
Female attorneys	1.0	14.9	84.0	395

D. Question in the Texas Survey--Judges Only

"Sole managing conservatorship awards to mothers should be conditioned on limitations on their employment outside of the home."

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Judges (all)	1.6	5.0	99.4	318

E. Question in the Washington Survey--Attorneys Only

"Has a parent been granted custody on the condition that she or he not work outside the home?"

% Responding	Always/Usually	Sometimes	Rarely/Never	n
Male attorneys	2.3	5.7	92.0	262
Female attorneys	2.0	10.3	87.7	204
Judges (all)	0.0	0.9	99.1	106