

DISCIPLINED INTUITION: SUBJECTIVE ASPECTS OF JUDGMENT
AND DECISION MAKING IN CHILD PROTECTIVE SERVICES

A Dissertation

by

ROBERT S. DANIEL

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

May 2003

Major Subject: Educational Human Resource Development

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ABSTRACT

Disciplined Intuition: Subjective Aspects of Judgment and
Decision Making in Child Protective Services. (May 2003)
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This qualitative study was aimed at developing an understanding of how persons involved in the investigation or deliberation of child abuse and neglect cases think and feel about the process of weighing evidence and drawing conclusions from it. Twenty investigators, supervisors, and administrators employed by the Child Protective Services agency in Texas were asked to describe cases they had investigated or reviewed that had been particularly difficult because of conflicting or ambiguous evidence. They were also asked opinion questions about the agency's actuarial risk assessment instrument and the concept of preponderance of evidence. Finally, participants were asked to respond to two short case vignettes describing allegations of sexual abuse. Constant comparative and narrative analysis of interview data revealed that the process of case deliberation in CPS makes use of both intuitive and analytic decision-making styles, and there is a general movement from intuition to analysis as a case ascends the decision-making hierarchy. This movement entails a shift from narrative forms of thought and an outcome-oriented ethic to analytic forms of thought and a rule-based ethic. Though intuitive decision making is at least partly guided from personal experience and personal values, and does produce error because of that, it is nonetheless a form of rationality as capable of being guided by scrupulousness and fidelity to truth as analysis is. The personal value and outcome-oriented ethic that intuition brings to the decision making process not only cannot be eliminated, it is necessary to the program's achievement of its mission. It is recommended that the training of new investigators should, first, acknowledge the

large role that intuitive thinking plays in CPS decision making and, second, develop ways to help decision makers discipline intuition, in the words of one participant, and to create conditions that foster its optimal functioning.

DEDICATION

For my parents, who taught me the love of learning,
and my brother David, the original Dr. Daniel

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CHAPTER I INTRODUCTION

A woman named Carmen, who supervises a Child Protective Services (CPS) investigative unit in Austin, Texas, begins a story:

We had a two-year-old, nonverbal child who was being split *evenly*, so...and that's... that's one point that made it very difficult in this case. Half...half the week with mom, half the week with dad. Dad has a... um... a wife with other kids? Mom has a boyfriend and one other child. And he was coming back from visits with his father with *blisters* or *burns*. And... um... we just... we had no idea. So mom kept calling in these referrals: "Every time I get my child back, he has a burn or a blister."

Carmen goes on to explain that the blisters or burns were on the boy's hands and feet, also his lower trunk, including his buttocks and scrotum. "We took pictures," Carmen says, "and the pictures are *horrific*. They look like this child was held over a steam-pot, and it just *steamed* the skin off of this child."

The doctor who examined the boy in the Emergency Room couldn't tell whether the lesions were the result of burning or of an unusual skin disease, so the investigator working the case took the child to a dermatologist. The dermatologist said the boy did indeed have a skin disease and had not been burned. Just to make sure, Carmen asked the investigator to get a second opinion. The second dermatologist disagreed with the first, saying that very hot water or steam had caused the blisters. "When?" the investigator asked, hoping to determine from that whether the mother or the father, or either of their new spouses, was responsible. But the doctor could not make a good estimate about the time.

The investigator watched the child with both families, and he seemed to her to have a

This dissertation follows the style and format of *Narrative Inquiry*.

trusting, happy relationship with everyone, including the three older children who lived with the father and the stepmother, and the babysitter his mother left him with sometimes. Carmen and the investigator discussed the case with the regional administrators and attorneys. While it was still under investigation, the child was going back and forth as usual between the mother and father. One day the father took the child to the Emergency Room covered with bruises, having been “beaten black and blue,” says Carmen, “black and blue.” The father’s story was that the boy had shown up at his house that morning, having come from the mother’s, with at least some of the bruises, and had then later fell down at a picnic. The other children in the father’s house told the investigator, “One day we heard mom upstairs yelling, and then we heard a big old thump, and then we heard the baby crying.” It wasn’t clear, though, whether this was the same day the boy was taken to the hospital. Suspicion also fell on the mother’s new spouse, because throughout the investigation he had behaved belligerently to the investigator and shown a bad temper.

While the investigator was sorting out the possibilities, the hospital performed a long bone X-ray of the boy and found that he’d suffered a number of fractures at different times in the past. “Somebody’s been beating this child all his life,” Carmen says. The doctor said to the investigator, “I don’t see a place where this child *hasn’t* been hit or broken.” Since the medical evidence could not establish when these beatings occurred, *where* they had occurred could not be determined either. The judge who heard the case therefore ordered that not only would the victim be taken away from both families and placed in foster care, the mother’s infant daughter would be removed, too. The judge did not order the older children in the father’s home to be taken because, being of school age, they were seen daily by responsible adults outside the home. When long bone X-rays showed the infant to be free of injury, the judge ordered her to be returned home as well. The boy remained in custody at the time Carmen told me the story. His skin was being closely monitored so if any new blistering appeared he could be taken quickly to the dermatologist for diagnosis.

Carmen's investigator was, of course, devastated when she learned that the child had been beaten at least one more time as a result of her not taking him away sooner.

Carmen says she did her best to console the investigator: "No. Everything you did was approved by me. Everything you didn't do was approved by me. We've staffed this case a million times. So it's not your fault." Carmen adds that she and the investigator were told repeatedly by Carmen's boss, the Program Director, that they had done everything they should have. "But it's hard," Carmen says. "You sit there as a supervisor saying, 'What else could I have done? Why did I let this child endure this much more pain?'" She calls this case the most "horrific" she's ever dealt with, partly because, in the end, after all they had done, "We don't know. We don't know."

Hardly anyone comments on decision making in CPS without pointing out the importance of getting it right. Carmen's story clearly shows the cost of investigation and assessment failure. Because the degree of risk the boy faced was initially underestimated, because of the unusually ambiguous evidence, he had to endure further abuse. The infant girl was perhaps separated from her parents unnecessarily. Both kinds of error, the false positives and false negatives, are potentially disastrous to children, to families, and to their communities.

Carmen's story, however, is not primarily about the consequences of error. It is about the struggle against error, the great difficulty of achieving truth and justice in a case where the evidence is incomplete, conflicting, or vague. It's also about the emotional price of maintaining that struggle, especially when it falls short of its goals. This study, like a great many before it, is interested in what promotes or hampers accuracy in CPS decision making. Somewhat more unusually, it is also interested in the subjective aspects of that decision making. How do investigators, and those above them in the hierarchy, think and feel about the process of collecting evidence, weighing it, and reaching conclusions? Do personal values and experiences influence decision making? If so, how? Is such influence always for the worse, as many have assumed? Are there some values and experiences that can actually improve accuracy?

These are questions that have long been of interest to me as an investigator, an

evaluator of investigative reports, a trainer of investigators, and now as a researcher. When I began my graduate studies I had been working for number of years at a series of jobs related to the investigation of abuse and neglect in facilities for persons with mental illness and mental retardation. That particular field of investigation, when I first took it up, was still new, and no formal training for it had yet been developed. So all of us around the state of Texas hired into those first investigator positions proceeded more or less intuitively, taking statements from the people involved, collecting other evidence that seemed to likely to shed light on the matter, and then writing our reports more or less as we had written papers in college – presenting a thesis and supporting it with facts, expert opinion, and close inference. We brought to our work the habits of research, judgment, and argumentation we'd acquired through our general, liberal educations. We seemed to have gained a fundamental understanding of concepts like relevance, coherence, probative weight, and quality of argument. No doubt we would have been better off with specialized training, but for the most part, our *feel for inquiry* stood us in good stead.

When, later in my career, I became a receiver of investigative reports, rather than a producer of them, I discovered that what had come somewhat naturally to me and others never came at all to some, even after specialized training and years of experience. A surprisingly large number of investigators made what seemed to me obviously fallacious inferences from the evidence collected. Or they failed to understand what a case was really about, focusing on extraneous matters and ignoring the central issue. Or they left important questions unanswered, apparently not realizing why they mattered. These were not failures of procedure. They showed an absence of that feel for inquiry, that reflective judgment, or critical reasoning ability, without which facts never become evidence, and evidence cannot point to the truth.

I began to wonder what could be done in training or in supervision to foster, or perhaps simulate, a feel for inquiry in those who did not have it already when they came to our agency. This became a matter of some personal urgency when I became a trainer of new investigators. I thought, or hoped, that perhaps the right sort of exhortation, the

right examples, or the right exercises could at least make uneasy the sleep of reason and alert investigators to the most horrible possibilities of error. In a broader way, I began to wonder, too, what the feel for inquiry is exactly, what it is, in practical terms, to make sense of a mass of evidence, to be satisfied that one has arrived at the truth. I hoped to explore that issue as I began my Ph.D. program in Educational Human Resources Development. I wanted to understand the process of making investigative judgments and to learn what I could do as a trainer to make those judgments better.

A work that greatly influenced my early thinking about these issues was *Inside the Juror*, a collection of essays on juror judgment and decision making edited by Hastie (1997). The essays represented a variety of approaches to the understanding and modeling of the jury decision-making process. Most assumed the process to be a logical or semi-logical one whereby an initial belief state A would be impacted in some fashion by evidence E and give rise to new belief state B. This was interesting, despite the fact that none of the authors tried to assign values to any of the variables, even in a hypothetical who-stole-the-tarts type case, nor did they describe how this might be done. Also missing was any sort of explanation as to just what psychological mechanism caused or could cause changes in belief. So even though the practical application of these models was far from clear, I was intrigued by the possibilities. Could I, perhaps with a series of specially constructed case problems with known outcomes, find a way to measure the accuracy of trainees' judgments? And then could I act upon their judging process in different ways to find the explanations or exercises that would increase accuracy the most? After reading more deeply into the literature of judgment and decision making and taking my first research courses, I believed I was aimed at a standard HRD study, in which I would measure a group's level of performance, provide training of a certain type, then measure the performance again. When, though, I began to cast around for the means to accomplish this, I recapitulated a transformation I think many qualitative researchers had made before me.

I wrote a paper for a class that was my first attempt to explore in an organized way the questions with which I had begun my graduate study. Much of the research in the

judgment and decision making field proceeds from the assumption that the choices human beings make in practical situations are, or ought to be, rational. That is, they result, more or less purely, from a fundamental desire to get as much as possible of what one wants and avoid losing as much as one can of what one has. A decision follows therefore from a calculation of cost, risk, and expected benefit, one that should, when conducted properly, conform to the laws of the probability calculus. Researchers have found over and over again, however, that people fail to be rational in the judgments they make. They choose in violation of probability, even after its principles have been patiently explained. Even the intuitive judgments of experts, psychological diagnosis and prediction, for example, are almost always less accurate than decision models even when they model previous choices made by the same person.

Among the articles I read for that paper was one by Camerer and Johnson (1997), which also found the intuitive judgment by experts to be inaccurate and inconsistent. In passing the authors referred to a 1959 study by Goldberg, which found in general a 65% accuracy rate among neurologists trying to diagnose organic brain damage, but also found one doctor, reported to work slowly, who was right 83% of the time. This impressed me. It impressed me a great deal more, in fact, than the rule to which it appeared to be an exception. I realized I was much less interested in exploring further the construction and application of decision models than I was in finding out about *that guy*. I wanted to talk to him, see what thoughts and feelings he brought to his judgment tasks that made him superior.

Also, I became aware of the connection some researchers had made between judgment and ethics. Schön (1987), Langer (1989; 1997), and King and Kitchener (1994) all identified a certain kind of intellectual virtue, very much like Aristotle's *phronesis*, as the hallmark of excellence in judgment and in the solving of ill-structured, complex problems. These writers saw practical wisdom as neither knowledge nor skill, but as a principled way of applying knowledge and skill, a commitment to truth that faces inward as much as outward, a modesty before evidence that could not be captured in a protocol. These theories seemed to support the notion of the feel for inquiry and its

ethical underpinnings I had arrived at intuitively, as an investigator, a reader of investigative reports, and a trainer.

In the spring of 2000 I took my first course in qualitative research and came to see that valuable insight into the lives and activities of human beings could be gained by simply asking them questions, recording their answers, and analyzing the results, that there were, in fact, subtleties of thought and feeling that would reveal themselves no other way. In addition, by actually doing qualitative research, I found that it suited my abilities and interests in a way that quantitative research was never likely to do. Because of my experience as an investigator and some counseling training I had when I was getting my master's degree, I understood interviewing. So with a sense of both relief and trepidation I committed myself to the qualitative course.

I decided, for two reasons, to make Child Protective Services (CPS) the focus of my research, even though my area of specialization, as an investigator and trainer, had always been Adult Protective Services (APS). First, the literature having to do with decision making in CPS is much more plentiful. Second, unless I went to another state I couldn't hope to find many APS participants for the study with whom I wasn't acquainted. I thought investigators in my own agency might censor or tailor their responses on the chance that, despite assurances to the contrary, what they said would not be held confidential.

I did not have formal hypotheses when I began my research, though I did have expectations, developed both from my work experiences and my preliminary research. I expected to find that the role a person played in an organization influenced his or her decision making. For instance, it had long seemed to me that the amount of evidence seen as necessary to justify a validation of an allegation of abuse and neglect tended to increase as one moved up the agency hierarchy. Investigators would be more inclined than supervisors to validate in a case where the evidence was mixed or contradictory. Supervisors would be more inclined to validate than Program Administrators, and so on up the ladder. Whether this had more to do with differences in age, personality, bias, or philosophy among persons at different levels or simply with closeness to or distance

from the investigation, I didn't know, but was curious to find out. I also expected to find the case decision making of the participants showing the influence of personal factors – experiences, beliefs, acculturation – that were extraneous to the case evidence. In some of the staff members I would interview, especially those considered exemplary by others, I expected to see those virtues of discipline, scrupulousness, diligence, and fidelity that made up the feel for inquiry. In others I expected to see narrowness, predisposition, carelessness, and habit paving the way to judgment error. I hoped to gain insight into the nature of the differences between the two groups.

Though my findings have by no means settled the question of why people in higher-paying jobs weigh evidence differently from those who get less, or why some investigators have the feel for inquiry and others do not, I have gained a clearer understanding the nature of those differences, and succeeded, I think, in showing how they manifest themselves in the ways different persons perceive case facts, organize them into coherent narratives, and draw conclusions from them. Specifically, I have found the following:

- The process of case deliberation in CPS makes use of both intuitive and analytic decision-making styles.
- There is a general movement from intuition to analysis as a case ascends the decision-making hierarchy and as it progresses from intake to closure. This movement entails a shift from narrative forms of thought, outcome-oriented ethics, and a grounding in personal identity to analytic forms of thought, rule-based ethics, and grounding in group identity.
- Intuitive decision making is at least partly guided from personal experience and personal values, and does produce error because of that. It is nonetheless a form of rationality as capable of being guided by scrupulousness and fidelity to truth as analysis is.
- The personal value and outcome-oriented ethic that intuition brings into the decision making process not only cannot be eliminated, it is necessary to the program's achievement of justice. Intuition corrects for the excesses and

insensitivities of system, just as system corrects for intuition's bias and narrowness of focus. Doing right by the children, families, and communities CPS serves comes about through a balance of personal and organizational influences on decision making, of systematic and intuitive decision making. Such balance comes about through a conflict between the two that is never completely resolved and is continually experienced as a problem both by the organization and individual decision makers.

As Carmen, her investigators, and others in CPS make the judgments and decisions their daily routines put before them, they apply their identities, in all their various aspects, to situations that, through experience, they recognize to be of a certain type. They make decisions as members of an organization and as conscientious performers of specific roles within the organization, but also as persons with many other affiliations – based on culture, gender, class, ethnicity, ideology, personal history – that predate their organizational membership, continue to encompass it, and impose obligations on them they do not put aside as they do their work. It is the principled effort to resolve conflict among their various obligations that makes decision making in CPS morally as well as emotionally demanding; the sense they bring that one has failed in one's fundamental obligation is a big part of what makes cases like the one in Carmen's story "horrific." It is also that effort, however, that is constitutive of fairness in process and justice in outcome, not only for the individual decision makers, but for the agency as a whole, as it seeks to honor its sometimes conflicting obligations to children, their families, and their communities.

My research has strongly reinforced my belief that the feel for inquiry, conditioned as it may be by training, experience, and local rules, is essentially ethical in nature. Though this dissertation would most accurately be categorized as descriptive narrative research, which, according to Polkinghorne (1988), is "description of the narrative accounts individuals or groups use to make sequences of events in their lives or organizations meaningful" (pp. 161-162), I am tempted to characterize it as a work of descriptive philosophy. It seems to me now that what I have mainly done is show people

manifesting their ideas of the good as they understand situations and making judgments about them. These participants, whatever intuitive or analytic tools they use, apply the whole of their conflicted, but univocal selves to the decision-making task, and through it enact the full range of their beliefs.

Overview of Laws, Policies, and Procedures Governing the Investigation and Deliberation of CPS Allegations

In Texas, CPS is the largest branch of an umbrella agency, the Texas Protective and Regulatory Services Department (TDPRS), which also comprises Adult Protective Services and Child Care Licensing. It has about 5000 employees (Texas Department of Protective and Regulatory Services, 2001b).

Every CPS investigation begins with an allegation of abuse or neglect to a child. Texas law requires that any person who knows of or suspects abuse must report it, and a single 1-800 reporting number can be called from anywhere in the state. The number is widely publicized. In recent years, knowledge of the duty to report suspected abuse or neglect has become part of general training for teachers, providers of daycare, law enforcement officials, pediatricians, and others whose work routinely brings them into contact with children. The training also routinely includes recognizing the physical, emotional, and behavioral signs of abuse and neglect. In 2001 CPS in Texas received over 170,000 allegations (Texas Department of Protective and Regulatory Services, 2001a).

The intake worker enters basic information about the allegation into the Child and Adult Protective System (CAPS) database. The information includes the names of the reporter, the victim or victims, the alleged perpetrators, and others, known in the system as *collaterals*, whom the reporter believes may have knowledge about the incident. The worker also writes a brief narrative summarizing the reporter's information. Before accepting a report and forwarding it to the appropriate unit in the field, the worker must be satisfied that the intake information indicates that a child has been abused or

neglected, as defined by the Texas Family Code. These definitions are based upon definitions in the federal Child Abuse Protection and Treatment Act, first passed in 1974 (Smith, 2002).

According to the Texas Family Code, abuse of a child is defined, in part, as:

- mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- sexual conduct harmful to a child's mental, emotional, or physical welfare;
- failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- compelling or encouraging a child to engage in sexual activity
- causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Texas Penal Code) or pornographic;
- the current use by a person of a controlled substance in a manner to the extent that the use results in physical, mental, or emotional injury to a child; or
- causing, expressly permitting, or encouraging a child to use a controlled substance as defined in the Health and Safety Code.

Neglect of a child includes:

- the leaving of a child in a situation where the child would be exposed to a

substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

- the following acts or omissions by any person:
 - placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
 - the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

It is important to note that CPS accepts for investigation allegations that abuse or neglect is likely to occur in the future, not just those having to do with events in the past. In something of a sea change that has affected Child Protective agencies throughout the United States, CPS has begun to focus upon *risk* in its investigations as much or more

than if focuses upon incidents (Schene, 1996).

In addition to fitting one or more of the Family Code definitions of abuse or neglect, a CPS allegation must also have as its *alleged perpetrator* (AP) someone who has a continuing relationship with the child and continuing access to him or her. Alleged perpetrators can be a parents, guardians, managing or possessory conservators, foster parents, members of the child's family or household, teachers or other school personnel, or employees or volunteers at a child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides. Abuse or neglect alleged to have been committed by a stranger would not be investigated by CPS, but by law enforcement. Also, intake workers must screen out allegations that, by statute, would fall outside CPS' jurisdiction. Allegations involving children in daycare centers would be investigated by Child Care Licensing, another branch of TDPRS. Children receiving services from the state's Mental Health and Mental Retardation (MHMR) system, alleged to have been abused by MHMR staff, fall under the protection of a specialized investigative unit within Adult Protective Services.

Once an intake is forwarded, a supervisor reviews it to make a preliminary determination, using the same criteria as were used at the intake stage, whether it is suitable for investigation. Over 140,000 of the 170,000 intakes received in 2001 passed through these intake and supervisor filters to be assigned for investigation (Texas Department of Protective and Regulatory Services, 2001a).

CPS prioritizes its intakes based on how it assesses the degree of risk to a child. If there appears, either to the intake worker or to the field supervisor, to be immediate risk of death or serious harm to a child, a Priority I is assigned to the allegation, which requires that an investigation be initiated within 24 hours. Where there does not seem to be such a risk, the case is given a Priority II, which requires that an investigation be initiated within 10 days. Initiation means trying to interview each alleged victim, or, if the victim can't be found right away, at least one of the victim's parents or a collateral who has first hand information about the abuse or neglect.

The goals of CPS investigation are specified as:

- determining, with law enforcement help, whether abuse or neglect has occurred;
- assessing family functioning to see whether any child is at risk of abuse or neglect, and, if so, identifying strengths and resources that could reduce the risk; and
- intervening immediately to protect any child who is in danger.

The basic steps of a CPS investigation set out in policy as:

- interviewing and examining each alleged child victim, as well as any other children who live in the home;
- interviewing each of the alleged victim's parents;
- interviewing the alleged perpetrator of the alleged abuse or neglect;
- contacting "collateral sources," or other persons who may have knowledge of the alleged abuse or neglect; and
- conducting a criminal background check on the alleged perpetrator

Other evidence investigators routinely collect include photographs of injuries or incident scenes, statements from medical and other professionals, videotapes of a child victim's statement, and the child's school records.

Not all of these measures need be taken in every case. Policy permits closing a case after preliminary investigation shows that the situation does not meet statutory definitions of abuse or neglect, or, after interviews with the child victim and at least one parent, it is clear that no abuse or neglect has occurred or is likely to occur.

As CPS policy repeats many times, the primary purpose of a CPS investigation is the protection of the child, not the arrest and prosecution of child abusers. CPS investigators are expressly enjoined from gathering evidence or conducting any interview with the sole purpose of criminal investigation. Law enforcement is required to investigate jointly with CPS. Intake workers are required to relay all allegations of child abuse or neglect to whatever law enforcement agency has jurisdiction for criminal investigation over the area in which the alleged incident took place, even if the allegation does not fall under CPS jurisdiction. In addition, the local CPS unit must contact law enforcement before initiating an investigation of serious physical abuse or sexual abuse. The goal of these

requirements is to make clear, both for CPS and for law enforcement, that the CPS investigation is not a substitute a criminal investigation or even an aid to it. Law and policy say that CPS and law enforcement must investigate jointly. CPS investigators thus never have to give Miranda warnings to alleged perpetrators unless they are already under arrest. They are to defer to law enforcement investigators whenever the investigating officer requests it.

The investigation may reach several conclusions. When a preponderance of the evidence indicates that abuse or neglect occurred, the finding is “reason-to-believe,” commonly abbreviated by staff as RTB. In 2001, 25.2% of all investigations received this designation (Texas Department of Protective and Regulatory Services, 2001a). When it is reasonable to conclude that no abuse or neglect has occurred, the finding is “ruled out.” “Unable to determine” is the finding when neither RTB nor “ruled out” are appropriate.

In addition to determining whether abuse or neglect have occurred in the past, and who was responsible, the investigator must also estimate the likelihood of abuse or neglect occurring in the future. Risk assessment, according to policy, is a continuous process requiring caseworkers to assess and reassess the degree of risk to the child. Risk may exist in any of several areas, including the child’s vulnerability (usually a function of age, physical condition, availability of protection), the home environment, the quality of care the child receives, the caregiver’s ability to give good care, the presence of violence in the home, and the caregiver’s response to CPS. If the investigator finds that there are risk factors in the family, or that the family is able to deal with its risk factors in a way that keeps the child safe, the case is closed. If, however, the investigator determines that risk factors exist and the family cannot or will not address them, the designation “Risk Indicated” is applied. CPS then develops a service plan, elements of which may include the involvement of other family or community members, referral of the family to voluntary community services, the imposition of services by the court, the abusive parent leaving the home, either voluntarily or by court order, the nonabusive parent leaving the home with the child victim, or both parents voluntarily placing the

child out of the home. If none of these measures are feasible or if the parents refuse to cooperate, the investigator must seek supervisory approval to take the child away.

When an investigation has been completed, a finding of RTB has been reached, and a particular person has been designated as a perpetrator, he or she may request an Administrative Review of Investigation Findings (ARIF). An ARIF involves an informal hearing, convened by the regional director of TDPRS, or, more commonly, a designee, usually a CPS Program Director (PD). The convener reviews the original CPS report, gathers further information as necessary, and issues a written decision that upholds, overturns, or alters the original finding.

Should an ARIF go against a designated perpetrator, he or she may then appeal to the TDPRS ombudsman office. The ombudsman reviews the case record, the ARIF proceedings, and any other evidence deemed relevant. If the ombudsman agrees with the ARIF convener's decision, that ends the review process within TDPRS. If the ombudsman office disagrees, it sends an overturn recommendation to the Director of CPS. The Director may then overturn, but, if she and the ombudsman office disagree, she forwards the case to the TDPRS general counsel, who advises the TDPRS Executive Director on a final determination.

Table 1 shows the major decision points in a CPS case, what initiates them, what questions they must answer, who makes them, and their results.

TABLE 1
Decision Points in a CPS Case

Initiating condition or event	Decision Question	Decision maker	If yes	If no
Call to Statewide Intake	Does the allegation, if true, meet statutory definition of abuse or neglect?	Intake worker	Allegation forwarded to the field	Allegation rejected or referred to another agency
Receipt of an intake from Statewide Intake	Does the allegation, if true, meet statutory definition of abuse or neglect?	Supervisor	Case assigned for investigation	Allegation rejected or referred to another agency
Case assigned for investigation	How should the investigation be conducted? Who should be interviewed? How? Where? How many times? What other evidence should be collected?	Investigator, with supervisor consultation as necessary	—	—
Completion of investigation	Did the child suffer abuse or neglect as alleged?	Investigator, with supervisor consultation as necessary	Finding “reason-to-believe”	Finding of “ruled out” or “unable to determine”
Completion of investigation	Is the child at risk of future abuse or neglect?	Investigator, with supervisor consultation as necessary	Designation of risk, services offered	Case closed
Family declines services	Should a court order be sought to compel the family to accept services?	Supervisor, in consultation with superiors and agency attorneys	Court action sought	Case closed

TABLE 1 continued

Initiating condition or event	Decision Question	Decision maker	If yes	If no
Assessment that child is at risk	Should the child be removed from the home?	Supervisor, with input from the investigator	Child, with court approval, goes into placement with a relative or foster parent	Child left in the home
Designated perpetrator appeals a “reason-to-believe” finding; an Administrative Review of Investigative Findings (ARIF) is held	Did the investigation reach the right conclusion?	CPS Program Director	Finding confirmed	Finding reversed
Appeal of ARIF findings	Did the ARIF reach the right conclusion?	Ombudsman office, in consultation with CPS Director or designee	Finding confirmed; appeal process ends	Finding reversed

CPS policy prescribes a methodology for making each of these decisions. The aim is not to ensure positive outcome in every instance, which, of course, it cannot do, but to ensure rationality and defensibility process. No set of rules can anticipate all possible contingencies, especially in complex decision environments like that of CPS investigation. The effort, or pretense, to do so can only lead to absurdity (Howard, 1994). Policy, to be at all rational, must leave gaps for the exercise of a different rationality, that of the individual decision maker on the scene, even if it never acknowledges that such gaps exist and pretends, at least implicitly, to be absolute. Though CPS policy requires investigators to interview the alleged perpetrator, it sets no goals for that interview and does not specify what questions to ask. Although it says the investigator must determine, with the help of law enforcement, whether abuse or neglect has occurred, it lays out no protocol for making that determination. This dissertation

focuses on the rationality that fills the gaps in policy, the investigative judgment and decision making in CPS that is unstructured, subjective, and case-specific. I find, in the descriptions 20 persons engaged in CPS decision making give of the way they go about collecting evidence and drawing conclusions, the working of a rationality that is informed by personal ethics and experience, yet proceeds by collaboration with others and is oriented toward an idea of objective truth. Being largely intuitive, it recognizes its own fallibility, yet is reluctant to subordinate itself to more systematic forms of rationality. Despite the bias and narrowness to which it is prone, the intuitive judgment of its agents in the field embodies, more than does policy, the mission CPS has to protect children.

A better understanding of the subjective aspects of judgment and decision making in CPS investigations, to which I hope this study contributes, will lead to training, policy, and management designs that will recognize not only the ineliminability, but the value of intuitive and personally ethical decision making. Such designs would create working environments that fostered the optimal functioning of subjective rationality, minimizing its errors and maximizing its benefits.

The dissertation's structure is in the five-chapter tradition, with the findings rendered in four chapters instead of one. Chapter II reviews several general theories of judgment and decision making and reviews previous research on CPS decision making. Chapter III describes my methods for collecting and analyzing interview data. In Chapter IV I examine participants' intuitive and systematic approaches to decision making. In the first part of the chapter I show how investigators both rely upon narrative to help them assemble evidence into a case structure and also resist its satisfactions when it does not meet internalized standards of truth. In the second part I explore the ambiguous feelings participants have about the analytic decision-making aid they are required to use for assessing risk. These feelings are seen as related to sometimes ambiguous attitudes about the power they exercise and represent as agents of the state. Chapter V explores the working definitions that participants have of the concept of the preponderance of the evidence, the legal standard of proof CPS must use in reaching its judgments. In Chapter

VI the reactions of the participants to two case scenarios by Jackson and Nuttall (1996) are analyzed. I find evidence that the participants quickly, but provisionally, assign case facts to a particular story genre as a way of getting a handle on them. Chapter VII analyzes in some detail the interview of one participant, Frieda, whose uneasy combination of systematic and intuitive thinking is seen as representative of the way the agency as a whole uses both approaches to achieve justice in its decision making. Chapter VII summarizes the findings and considers some of their philosophical and practical implications. An Epilogue reports the reactions of some of the participants to the way I made use of their interviews in this dissertation.

CHAPTER II

LITERATURE REVIEW

In this chapter I introduce the theory of judgment and decision making that I think best explains my findings, Hammond's cognitive continuum. I then review the literature on case decision making in CPS and describe the efforts to create linear models using the decision-making factors identified in those studies. After outlining major theories of intuitive judgment, I explore the research demonstrating its biases and shortcomings. Other research showing the general adequacy of intuition, especially in ill-structured, time-pressured decision environments, is then reviewed. Finally, I link Aristotle's concept of practical wisdom to the judgment and decision-making research and suggest that intuition is most successful when exercised out of strong personal ethic.

Hammond's Cognitive Continuum

General theories of judgment and decision making have become plentiful over the last 50 years. Cooksey (1996) has identified 14 major theories. A majority of these are the classical, optimizing theories that have been developed by economists, mathematicians, and psychologists with the aim of creating models that could predict, aid, or even replace human judgment. Such models seek to determine the formal relationships among the various elements of judgment – the initial state of affairs, the goals of the decision maker, the strength and direction of the evidence, the expected outcome of various decision options – all of which are then assigned values and weights. Rational decision makers calculate the attractiveness of options as the product of likelihood and expected utility (Jeffrey, 1983), or they make other calculations in accordance with the probability calculus, such as the Bayesian¹ (Hastie, 1993). Other

¹ Bayes' theorem describes the logical relationship between prior and posterior states of belief. The probability of hypothesis H being true given evidence E is equal to the probability of E being true given H, times the prior probability of H, divided by the prior probability of E: $P(H|E) = \frac{P(E|H)P(H)}{P(E)}$.

major judgment and decision-making theories recognize that the conditions of the optimizing models are frequently not met in real-world situations. Decision makers' ability to make rational choice is "bounded" (Simon, 1997) by limited knowledge of the environment, by time constraints, by a cognitive incapacity to calculate probabilities, especially where there are large numbers of variables, and by uncertainty regarding outcomes. Furthermore, decision making is not an activity performed in cognitive isolation. It takes place in and is conditioned by particular social situations.

Hammond's decision theory (Hammond, 1996), which I will use as the framework for my analysis of the data in this study, though it fully endorses analytic, systematic decision making for appropriate tasks, does not accept that it should be the yardstick against which to measure judgmental competence generally. Problems are unsuitable for the exercise of analysis when models are unavailable or when there is a poor fit between the data and the model. And sometimes we have very good reasons to "wish to sacrifice the precision, the justifiability, the scientific, and technological arguments derived from analytical cognition for the advantages of robust, rapid, and easily produced intuitive judgments" (Hammond, 1996, p. 160). Hammond also disputes the common assumption that intuition and analysis are mutually exclusive, either/or methods of judgment. The great majority of judgments have an element of both, displaying, in Hammond's terminology, *quasirationality*, or common sense. Intuition and analysis, he argues, should be seen as the poles of a *cognitive continuum*. A given judgment exists as a point on the continuum, being closer to one pole or the other depending on a number of factors, the most important of which is the nature of the task that called for the judgment to be made. Good judgment results when there is high congruence between the mode of judgment and the task structure (See Figure 1). Hammond and his colleagues showed that as highway engineers solved a series of job-related problems, each with different task characteristics, the combination of cognitive techniques they used on a particular problem corresponded to that problem's particular mix of task features (Hammond, Hamm, Grassia, and Pearson, 1997).

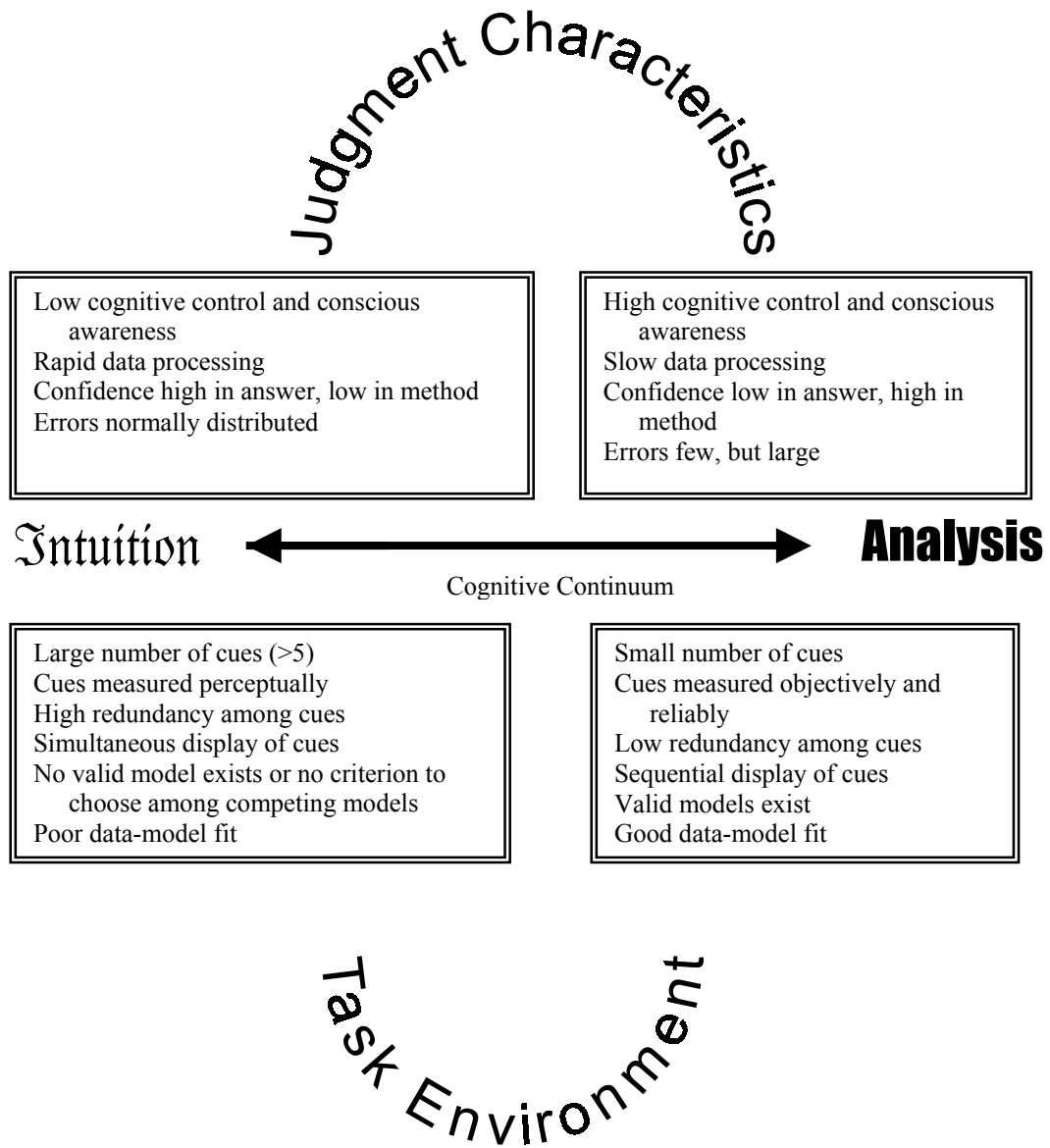


Figure 1
Hammond's Cognitive Continuum

Because human beings employ what Hammond calls *dynamic cognition*, there can be movement along the continuum. Time is an important factor. The longer it takes to reach a judgment, the more analytical tools become appropriate and available. Clarity, measurability, redundancy, and sequentiality of cues are also important. I will claim in Chapter IV that, at least partly because of these factors, the decision making in a particular case displays a general movement from intuition to analysis as it moves up the agency hierarchy. Also, individual decision makers can oscillate back and forth between intuitive and analytic cognition. If a more analytical approach fails to yield good results, the decision maker can adopt a more intuitive approach, and vice versa. We will see in Chapter VII how Frieda, a participant who, as Risk Director, reviews child death cases, makes use of both intuition and analysis in her work.

Hammond claims that his is the first theory of judgment and decision making to explicitly reject a dichotomous relationship between intuition and analysis. It embraces Kosko's "fuzzy principle" (1993, p. 18) that everything is a matter of degree. Most judgments are neither wholly intuitive nor wholly analytic. They are intuitive *and* analytic to some degree. Acceptance of this principle, Hammond argues, allows us to recognize and study the ways people combine intuition and analysis in their everyday, real-world judgments.

The task structure of child abuse investigation seems to many to lend itself to analytic, or systematic, decision making. The same variables are present to greater or lesser degree in every case. Investigation can provide detailed knowledge of the situation. Decision makers have time to deliberate. These factors, coupled with a sense of the error to which intuitive decision making is subject, have caused many in the profession to make efforts to move CPS decision making toward the analytic end of the continuum, hoping that systematization will make its outcomes as accurate as possible

and, even where there is inaccuracy, at least make its processes transparent and rational. Hammond defines analytic thinking as “a step-by-step, conscious, logically defensible process” (Hammond, 1996, p. 60), and this is just what policy makers would like CPS decision making to be.

The Search for Determinative Factors in CPS Decision Making

Much of the research on CPS decision making has had the aim of determining what factors the victims, perpetrators, and circumstances of previous instances of child abuse and neglect had in common. Knowledge of these factors can help CPS agencies determine whether the factors actually being used to make casework decisions are the ones they have intended should be used. Such knowledge can also help determine how to direct – through training, supervision, or protocol – the attention of investigators in future cases. Researchers look for factors either in the records of completed investigations or in the descriptions provided by the investigators themselves of what they did and thought during their investigations. Some researchers use both data sources. The tables on the following pages describe the findings in a number of such studies. They are separate tables for each of four decision types: validation (Table 2), designation of risk (Tables 3 and 4), removal of the child from the home (Table 5), provision of services (Table 6), and recommendation of court action (Table 7).

TABLE 2
Studies on CPS Validation Decisions

Study	Data Source	Factors Identified	Comments/Other findings
English, Marshall, Brummel, and Coghlan (1998)	Analysis of intake and post-investigative data in the records of all referrals (12,978) made to Washington State's CPS agency over the course of a year	<ol style="list-style-type: none"> 1. Child's age (allegations involving children over 5 significantly more likely to be substantiated) 2. Type of allegation (medical neglect cases more likely to be substantiated than other types of allegation, sexual abuse and physical neglect less likely) 3. Ethnicity (allegations involving Native Americans more likely to be substantiated) 4. Presence of risk factors (esp. dangerous acts on the part of the parents, family stress, and frequency of abuse/neglect allegations) 5. Referral from law enforcement, over and above cumulative effect of risk factors 	
Hetheron and Beardsall (1997)	Responses of 55 U.K. social workers and 55 UK police officers to four sexual abuse vignettes, a sex role inventory, and a questionnaire regarding women's sexualized behavior toward children	Gender bias in favor of women. Validation considered more appropriate when alleged perpetrators was a man.	Male participants recommended prosecution more frequently for male perpetrators; women recommended prosecution more frequently for female perpetrators.

TABLE 2 continued

Study	Data Source	Factors Identified	Comments/Other findings
Schwab, Baumann, and Gober (1997)	Analysis of case documentation for 2905 child abuse and neglect cases in the Houston, Texas area in 1993	Physical abuse: 1. Bruises/welts/extension cord marks 2. Child told parent about sexual abuse 3. Caretaker doesn't or can't control child 4. Facial head injury 5. Gives child drugs or alcohol/drug addicted baby 6. Inappropriate discipline 7. Children left with other caretaker who is unable to monitor them 8. AP admission with or without an excuse 9. AP asked to leave by family 10. Lack of parenting skills 11. Family takes allegation less seriously than CPS 12. Family has differing accounts of incident or no knowledge of it Neglect: 1. Facial or head injury 2. Caretaker arrested and no care provided 3. Caretaker doesn't or can't monitor children 4. Caretaker in bed 5. Shower or bath with child 6. Caretaker can't control kids 7. In appropriate discipline 8. Preschool kids left alone 9. AP admission 10. Lack of parenting skills 11. Unrealistic expectations of child 12. Family has differing accounts of incident or no knowledge of it	
Drake (1995)	Analysis of validated abuse cases in 8 high poverty and 7 low poverty areas	Concentrated neighborhood poverty a high risk for substantiated maltreatment	

TABLE 2 continued

Study	Data Source	Factors Identified	Comments/Other findings
Smith, Sullivan, and Cohen (1995)	Analysis of 504 Illinois sexual abuse and physical abuse/risk of harm investigation reports	<ol style="list-style-type: none"> 1. Physical abuse – low degree of assessed risk most important (negative indicator), also witness testimony, physical evidence, perpetrator input 2. Sexual abuse – victim input most important, also physical evidence, witness testimony, substance abuse 3. Risk of harm – extent of police involvement most important, also witness testimony 	
Haskett, Wayland, Hutcheson, Tavana (1995)	Semi-structured interviews with 20 Florida and North Carolina CPS workers regarding criteria used in deliberating their 10 most recent sexual abuse allegations; also analysis of 175 case reports produced by those workers	<ol style="list-style-type: none"> 1. Quality of child’s disclosure (most important factor) 2. Child’s affect and behavior 3. Presence of a custody dispute (much lower validation rates for cases with this factor present) 4. Age of child (allegations in older children more likely to be substantiated) 5. Race of child (allegations involving African-American children more likely to be validated than those involving white children) 6. Type of abuse <p>Prior history of substantiated or unsubstantiated abuse allegations not related to validation in present case.</p>	<p>“Case workers were significantly more certain of their decisions in cases judged to be valid than in cases judged to be invalid.” (p. 34)</p> <p>“Unfortunately, in nine cases, workers reported that they did not substantiate the allegations in part because the child’s behavior (e.g. good mental health status) was incompatible with that of an abused child.” (p. 41)</p> <p>“There were times when case workers struggled to express a particular feeling or intuition that contributed to their decision. We should attempt to understand this intuition better, as it may be equally as important as other factors.” (p. 44)</p>
Zuravin, Orme, and Hegar (1995)		<ol style="list-style-type: none"> 1. Family being African-American 2. Child being older 3. Report of severer allegation 	
Winefield and Bradley (1992)	Analysis of 3,228 Australian cases	<ol style="list-style-type: none"> 1. Source of report (higher for victims, police, social workers, and teachers; lower for nurses and related nonprofessionals) 2. Age of child (higher for older children) 3. Child having been the subject of a previous report 	

TABLE 2 continued

Study	Data Source	Factors Identified	Comments/Other findings
Giovanni (1991)	Opinion survey of 117 California, Idaho, and Virginia CPS workers regarding unsubstantiated reports	<ol style="list-style-type: none"> 1. Volume and quality of evidence 2. Motive and reliability of original report 	<p>In response to the question, "How do you feel when you investigate a case that is not validated?" most respondents expressed some degree of discomfort: frustration at having been unable to verify an intuition that "something is going on," uncertainty about having done a good enough investigation, embarrassment at having intruded into families' lives.</p> <p>"The majority [of respondents] would opt for taking the risk of the false positive over the risk of the false negative. While concerned with the rights of families where there is a conflict, the protection of children comes first even if on occasion it must be at the cost of unnecessary intrusion." (p. 61)</p>
Craft and Bettin (1991)	Interviews with 41 social work graduate students regarding their determination of risk in 4 fictional case scenarios	<ol style="list-style-type: none"> 1. Nature of injury 2. Consistency of parent explanation 3. Parental reaction 4. Respect toward child 5. Physical/mental abilities of parent 	<p>"Subjects consistently failed to request information regarding the condition of the home and the availability of community resources." (p. 114)</p> <p>"For medium risk cases where case information is of both a positive and negative nature, investigators need more information before a decision can comfortably be reached, suggesting that there may be some "threshold" of positive or negative attributes that must be exceeded before a decision can be comfortably reached." (p. 120)</p> <p>"When information uncovered in an investigation proves inconsistent, individual value orientations are likely to enter the decision-making process and influence decision recommendations." (p. 121)</p>

TABLE 2 continued

Study	Data Source	Factors Identified	Comments/Other findings
Schuerman, Stagner, Johnson, and Mullen (1989)	Interviews with 36 Cook County, IL supervisors and workers on their decision procedures and their own cases	<ol style="list-style-type: none"> 1. Presence of physical evidence 2. Whether the caretaker admits responsibility 3. Whether the child accuses the caretaker 4. Credibility of the child 5. Confirmation of abuse by collaterals or by the investigator 	<p>“Investigators are generally consistent in the factors they consider in making decisions and in the process of reaching conclusions.” (p. 11)</p> <p>“Investigators do not see the choice as one of taking protective custody of the child versus leaving the child at home and providing in-home services. They see the decision simply as whether or not the immediate safety of the child requires protective custody.” (p. 11)</p>
Eckenrode, Powers, Doris, Munsch, and Boiger (1988)	Representative sample of New York child maltreatment reports	<ol style="list-style-type: none"> 1. All allegations – report from a professional 2. Physical abuse – child being black or Hispanic 3. Sexual abuse – child being older and female, larger households, number of allegations and length of investigation 4. Neglect – child being younger, black, or Hispanic, presence of a prior report, origination in New York City 	<p>Overall validation rates: 48% for physical abuse, 39% for sexual abuse, 28% for neglect</p> <p>Anonymous neglect reports had a low validation rate compared to non-anonymous reports. Anonymous abuse reports were validated at the same rate as non-anonymous reports.</p>
Alter (1985)	Validation decisions of 73 CPS workers in four Midwestern states regarding 16 neglect case scenarios constructed to display different combinations of factors developed in worker interviews	<p>Pre-selected factors:</p> <p>Physical:</p> <ol style="list-style-type: none"> 1. Degree of physical harm observed 2. Age of the child 3. Frequency of alleged parental behavior <p>Abstract:</p> <ol style="list-style-type: none"> 1. Willful behavior of the parent (yes or no) 2. Parent-child relationship (positive or negative) 3. Parental social deviance (high or low) 4. Parental desire to change behavior (yes or no) <p>Yes for #4 and negative for #5 was the strongest determinant of validation. A majority of workers validated on either of these factors alone. The four abstract factors accounted for 23.7% of variance in validation decisions.</p>	<p>“Working together over time, workers develop common assumptions about how to define this boundary [between normal and deviant parenting behavior]. Because these assumptions remain almost wholly implicit, and because they fear public controversy in making them explicit, workers develop a high level of mutual, tacit understanding based on idiosyncratic language and symbols” (p. 109).</p>

TABLE 2 continued

Study	Data Source	Factors Identified	Comments/Other findings
Wolock (1982)	289 New Jersey case records and a questionnaire administered to 184 New Jersey caseworkers and assistant supervisors, eliciting reaction to a set of scenarios based on real cases	Family's socioeconomic status	"A psychological process takes place in which the typical or average cases in the total caseload of a district office come to serve as standard or 'referent' for judging the severity of cases... Similar situations will be treated differently by offices in the socioeconomically disadvantaged areas than by offices in the more socioeconomically advantaged areas." (p. 13)
Jason, Anderack, Marks, and Tyler (1982)	Analysis of 7502 Georgia CPS cases	<ol style="list-style-type: none"> 1. Not having natural parents in the home 2. Low socioeconomic status 	Other factors identified in previous studies – child's age, family's urban residence, early motherhood – may have resulted from greater social attention paid to persons in those categories
Rosen (1981)	Validation decisions of 162 New Jersey and Philadelphia CPS workers regarding 8 physical abuse case scenarios constructed to display different combinations of factors developed through literature review	<p>Pre-selected factors:</p> <ol style="list-style-type: none"> 1. Injury to the child 2. History of injury to the child 3. Emotional disturbances in the parent 4. Environmental stress 5. Unusual behavior of the child ----- 6. Vague explanation for the injury <p>All factors but the last were significant by themselves in participants' decision making. They are shown in descending order by decision making weight. Two way interaction effects: 1 and 2, 4 and 6. Three-way: 1, 5 and 6. Four-way: 2, 3, 4, and 6. Five-way: all but 6</p>	
Groeneveld and Giovanni (1977)	Analysis of 2400 cases gathered by the National Clearinghouse on Child Neglect and Abuse	<ol style="list-style-type: none"> 1. Source of report (higher for professionals, especially law enforcement, lower for private individuals) 2. Greater law enforcement involvement in the case 3. Age of the child (higher for older children) 4. Size of family (higher for larger families) 	

TABLE 3
Studies on Decisions Regarding Designation of Risk

Study	Data Source	Factors Identified	Comments/Other findings
Little and Rixon (1998)	Analysis of 20 physical abuse, emotional abuse, and neglect cases to determine degree of presence of 8 criteria developed by a team of social workers	For high risk: 1. Very negative caregiver ability 2. Negative caregiver ability plus very negative, negative, or ambivalent caregiver attitude	
English, Brummel, Coghlan, Novicky, and Marshall (1998)	Interviews with the investigators of 200 Washington State CPS referrals where the child was determined after investigation to be at high or medium risk	Substance abuse, for all types 1. Caregiver cooperation 2. Collateral contacts 3. Caregiver's recognition of the problem 4. Family history 5. Availability of resources	<p>“The primary factor influencing CPS worker decision-making is how much time they have to spend on an investigation and the resources available if they decide to intervene.” (p. 89)</p> <p>“Almost one in five CPS workers reported the primary role of the CPS worker is investigation, not assessment.” (p. 90)</p> <p>“Unless a CPS worker feels they can ‘prove’ the case, with either physical evidence, a collateral witness, confession, or strong child disclosure, they are unlikely to intervene unless the family is willing to cooperate or the risk is so high they are willing to take the case to court.” (p. 90)</p> <p>“Agency culture seems to be particularly important as a factor in CPS worker decision-making. These CPS workers reported feeling a lack of support from the ‘administration,’ above the line supervisor level, for their decisions... They also believe that political concerns result in the constant addition of new rules and regulations with which compliance is impossible.” (p. 91)</p>

TABLE 3 continued

Study	Data Source	Factors Identified	Comments/Other findings
English, Marshall, Brummel, and Coghlan (1998)	Analysis of intake and post-investigative data in the records of all referrals (12,978) made to Washington State's CPS agency over the course of a year	<p>Core group of factors relevant across decisions and types of abuse:</p> <ol style="list-style-type: none"> 1. Age of child (under 5 more likely to be assessed at higher risk) 2. Severity by type of abuse 3. Frequency of allegations 4. Victimization of others 5. Dangerous acts 6. Hazards in the home 7. Parenting skills 8. Nurturance/attachment/bonding 9. Recognition of problem 10. Protection of child 11. Substance abuse 12. History of abuse as a child 13. Past or present domestic violence 14. Stress 15. Social support 16. Cooperation with agency 17. Access <p>Two clusters of factors were identified -- one related to child vulnerability and another to the caregiver (11, 13, 12, and employment status).</p> <p>Other factors important in the overall level of risk: parental response to disclosure, level of attachment/bonding, and social support for caregiver.</p> <p>Factors that discriminate between high and low overall risk: Parenting skills, recognition of the problem, cooperation with the agency, protection of the child, frequency of the abuse/neglect, child's fear of the caretaker, caretaker stress, extent of emotional harm exhibited by the child</p>	<p>"Although there are differences in risk factors associated with different types of abuse/neglect/, the similarities between risk factors and abuse types are greater than the differences." (p. xviii)</p> <p>"For many cases there is inadequate documentation of risk, and assessments of critical risk factors are not documented or are documented as 'insufficient information to assess,'" (p. xvii) especially caregiver history of abuse as a child, of domestic violence, and of substance abuse, which are significant factors in recurrence of child abuse and neglect.</p>

TABLE 3 continued

Study	Data Source	Factors Identified	Comments/Other findings
DePanfilis and Scannapeico (1994)	Review of criteria used in 10 models designed to assess the safety of children at risk of maltreatment	Parent factor: Ability of the parents/caregivers to control their behavior Family/environment factors: 1. Life-threatening living conditions 2. Intense family conflict/stress or crisis that endangers the child's safety 3. Support systems Maltreatment factors: No consensus Intervention-related factor: Parents' level of cooperation	
Shapira and Benbenishty (1993)	28 Israeli social workers' risk assessment of fictional case scenarios	1. Signs of abuse and neglect (none, moderate, severe) 2. Child's physical/intellectual development (normal, inadequate, marked retardation) 3. Mother's relationship with the child (positive, indifferent, negative, abusive) 4. Child's social and emotional development (normal, inadequate, marked retardation)	"Practitioners are similar in their underlying strategies, but appear different because of inconsistencies in the way each uses information." (p. 18)
Waterhouse and Carnie (1992)	Analysis of 51 English sexual abuse cases; interviews with their investigators	1. Attitude of the non-abusing parent toward the alleged perpetrator (most important factor) 2. Access of alleged perpetrator to the child 3. Type of abuse (intercourse more significant than touching) 4. Age of child (younger children considered more at risk) 5. Alleged perpetrator's acceptance of responsibility 6. Parents' willingness to cooperate with the investigation 7. Quality of child's disclosure <ol style="list-style-type: none"> Specificity Circumstantial factors giving rise to opportunity Consistency over repeated tellings Corresponding changes in behavior 8. Psychological symptoms in the child 9. Physical signs of abuse 10. Child's attitude toward remaining at home	

TABLE 3 continued

Study	Data Source	Factors Identified	Comments/Other findings
Schuerman, Stagner, Johnson, and Mullen (1989)	Interviews with 36 Cook County, IL supervisors and workers on their decision procedures and their own cases	<ol style="list-style-type: none"> 1. Whether there is physical evidence of abuse or neglect 2. Whether the primary caretaker was responsible for the abuse 3. Age of the child 4. Severity of the abuse or neglect 5. Functioning of the caretaker 6. Potential for recurrence 	
Meddin (1985)	Interviews with two sets (81 and 134) of Midwestern CPS workers, using fictional case scenarios	<ol style="list-style-type: none"> 1. Age of the child 2. Functioning of the child 3. Cooperation of the caretaker 4. Functioning of the caretaker 5. Intent of the perpetrator 6. Current access of the perpetrator to the child 7. Severity of the current incident 8. Existence of pervious incidents 	

English (1997) synthesized the findings of previous studies and produced a list of 22 risk factors relevant to various CPS judgments. See Table 4.

TABLE 4
Risk Factors Identified by English from a Literature Review

1. Chronicity of child abuse or neglect	12. Supervision
2. Parenting skills	13. Physical injury/harm
3. Cooperation with agency	14. Substance abuse
4. Recognition of problem	15. History of child abuse or neglect as a child
5. Protection of child	16. History of domestic violence
6. Stress on caretaker	17. Caretaker impairments
7. Fear of caretaker	18. Social support
8. Emotional harm/abuse	19. Economic resources
9. Dangerous acts	20. Access/responsibility child
10. Basic needs	21. Victimization of others
11. Sexual abuse/exploitation	22. Hazards in the home
For judgments of overall risk, factors 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 were determinative. For judgments as to whether abuse or neglect had occurred, factors 1, 2, 4, 7, 8, 9, 10, 11, 12, and 13 were determinative. For placement decisions factors 5, 9, 14, and 15 were determinative. For judgments whether to open or close a case, factors 1, 3, 4, 15, 17, and 18 were determinative.	

TABLE 5
Studies on Decisions Regarding Removal of the Child From the Home

Study	Data Source	Factors Identified	Comments/Other findings
Rossi, Schuerman, and Budde (1999)	Decisions of 12 experts and 103 Michigan, Texas, and New York CPS workers on 18 summaries of real cases categorized by the researchers as “serious”	<ol style="list-style-type: none"> 1. Prior complaints 2. Perpetrator having threatened the child 3. Homelessness 4. Dangerous environments 5. Lack of family support for the caregiver 6. Criminal record 7. Low receptiveness to change 	<p>“There are some case characteristics to which the workers (compared to experts) apparently pay much less attention in their decisions, namely, receptivity to change, dangerous environment, and family negative to the caretaker.” (p. 594)</p> <p>“The overall structure of the decision making concerning cases was much more indeterminate than optimally desired. Decision making about serious abuse and neglect cases is inconsistent and lacking in structure.” (p. 595)</p>
English, Marshall, Brummel, and Coghlan (1998)	Analysis of intake and post-investigative data in the records of all referrals (12,978) made to Washington State’s CPS agency over the course of a year	<ol style="list-style-type: none"> 1. Provision of basic needs 2. Adequacy of medical care 3. Substance abuse 4. Recognition of the problem 5. Mental/physical/emotional impairment of the caretaker 6. Parenting skills 7. Frequency of abuse/neglect allegations 8. Protection of the child by the non-abusive caretaker 	
Wrightman (1995)	Interviews about placement decisions with 9 Illinois caseworkers who specialized in investigations of cocaine-exposed infants	<ol style="list-style-type: none"> 1. Infant symptomatology, comprising medical and behavioral symptoms 2. Caregiver-infant interactions, including touching, eye contact, and preparation for the infant’s return home (i.e., baby bed, clothing) 3. History of abuse or neglect 4. Criminal/mental health history 5. Substance abuse patterns 6. Caregiver’s parenting knowledge and skills 7. Strength of family support systems 8. Stability of home and environment; and 9. Agency linkage 	

TABLE 5 continued

Study	Data Source	Factors Identified	Comments/Other findings
Shapira and Benbenishty (1993)	28 Israeli social workers' risk assessment of fictional case scenarios	<ol style="list-style-type: none"> 1. Mother's relationship with the child (positive, indifferent, negative, abusive) 2. Signs of abuse and neglect (none, moderate, severe) 3. Parental cooperation during previous intervention 	
Lindsey (1991)	Demographics from a stratified sample of 9,597 U.S. cases involving children who had been removed and placed in foster care	Low family income, often secondary to single parenthood	
Pellegrin and Wagner (1990)	Removal decisions in 43 cases of validated sexual abuse	<p>In order of importance:</p> <ol style="list-style-type: none"> 1. Mother's compliance with the investigation 2. Mother's belief that the abuse occurred 3. Severity of abuse 4. Mother's employment status 5. Frequency of abuse 	42% of all victims were removed

TABLE 5 continued

Study	Data Source	Factors Identified	Comments/Other findings
Dagleish and Drew (1989)	Analysis of 152 Australian abuse cases to determine presence of factors identified through CPS worker interviews	<p>Factors used:</p> <ol style="list-style-type: none"> 1. Severity of abuse 2. Aspects of parenting (inability to meet child's needs, provide a nurturing environment, have reasonable expectations of the child) 3. Assessment of parents (disturbed, violent, abused as a child, alcohol/drug addiction, inability to form trusting relationships) 4. Aspects of marital relationship (stress over conflict, inability to communicate, violence) 5. Assessment of child (unusual behavior or characteristics, developmental delays, age-appropriate behavior) 6. Aspects of family social system (isolation, financial or housing problems, stress) 7. Family lack of cooperation (inability to recognize risk to child, unwillingness to work to protect child, lack of motivation for change) <p>Factors 1, 2, 4, and 7 contributed most to removal decisions. For perceived risk the factors accounted for 65.9% of variance, with factors 1, 2, and 7 being most predictive.</p>	"The use of explicit indicators for risk assessment can eliminate much idiosyncratic decision making." (p. 500)
Schuerman, Stagner, Johnson, and Mullen (1989)	Interviews with 36 Cook County, IL supervisors and workers on their decision procedures and their own cases	<ol style="list-style-type: none"> 1. Child's age 2. Severity of the injury 3. Primary caretaker's level of functioning 4. Potential for recurrence 	

TABLE 5 continued

Study	Data Source	Factors Identified	Comments/Other findings
Wells (1988)	Literature review	<ol style="list-style-type: none"> 1. Caregiver factors: immoral or illegal behavior, the mother being the abuser, substance abuse, admission of abuse, lack of impulse control, having inappropriate expectations of the child, unemployment, poverty 2. Child victim factors: hospitalization, temporary removal, involvement of more than one child, infancy, arrested development 3. Allegation factors: sexual abuse, emotional neglect, broken bones, visible sores, failure to thrive, delay in getting medical care, verbal hostility, having been reported by a professional 4. Investigation factors: being longer 	
Katz, Hampton, Newberger, and Bowles (1986)	Removal decisions of 185 Boston cases of children seen at a hospital	<ol style="list-style-type: none"> 1. Mother's involvement in the abuse 2. Child being under 6 3. Family having more than one stressor (such as pregnancy, unemployment, marital separation) 4. Child having non-serious injuries 5. History of previous child abuse <p>Socioeconomic class not a predictor.</p>	
Segal and Schwartz (1985)	Placement decisions in files of 424 children admitted to emergency treatment over a 6 year period	<p>Four factors taken together were discriminant:</p> <ol style="list-style-type: none"> 1. Place the child was admitted from 2. Time spent in the home 3. Age 4. Race <p>Weakest predictor was whether the child had been abused</p>	
Meddin (1984)	Questionnaires, 81 Midwestern CPS workers and supervisors regarding criteria for placement decisions and what placement decision they would make in a set of fictional case scenarios	<ol style="list-style-type: none"> 1. Risk to the child 2. Severity of the incident 3. Functioning and cooperation of the prime caretaker 4. Age of the child 	

TABLE 5 continued

Study	Data Source	Factors Identified	Comments/Other findings
Finkelhor (1983)	Analysis of 6096 Midwestern sexual abuse cases	87% of child victims were girls; families were at the lower end of socioeconomic scale; 78% of perpetrators were parents, stepparents, or guardians; higher rate of removal in sexual abuse cases than in physical abuse cases (17% vs. 12%); removal more likely if child is older	
Runyan, Gould, Trost, and Loda (1982)	Analysis of 8610 North Carolina CPS cases	<ol style="list-style-type: none"> 1. Perception by parents that severe punishment is acceptable 2. Substance abuse 3. Severe injuries requiring hospitalization 4. Abandonment of young children 5. More severe types of abuse Not significant were the ages of the children or the parents, more than 1 maltreated child being in the family, race, income, education	
Meezan (1978)	Questionnaire data and removal decisions by 164 New York City CPS workers from either traditional units or units primarily concerned with providing preventive services	Workers in preventive services units were less inclined remove children. They were more likely to believe that preventive services were useful and that foster care damaged children.	
Bradford (1976)	Importance rankings by 48 Maryland CPS workers of 25 critical incidents affecting removal decision making; incidents were those mentioned most often among over 300 incidents identified by 15 supervisors	<ol style="list-style-type: none"> 1. Parental potential for abuse 2. Vulnerability of child for abuse 3. Visual evidence of abuse or of a disturbed child 	

TABLE 6
Studies Regarding Provision of Services Decisions

Study	Data Source	Factors Identified	Comments/Other findings
Freeman, Levine, and Doueck (1996)	Analysis of 293 New York abuse cases	Younger age predicts more services, more visits and phone calls by caseworkers; no difference in substantiation rates by age	Age as a risk factor not ignored.
DiLeonardi (1980)	Analysis of case data from 12 Chicago child abuse and neglect demonstration projects	Presence and severity of injury, victimization of other children in the family, age of the child, admission of abuse by the parent, degree of child victim development, child's fear of parent, worker's perception of child-parent interaction, adequacy of parent in fulfilling parent role, alcohol or drug abuse, parent's expectations of child's behavior, presence of marital problems, parental self-control, parent's expression of hostility toward child, parents' receipt of welfare	"The assertion of one's authority as a protective service worker is easier with client accustomed to complying with public agency requirements." (p. 363)
Gordon and Gibbons (1998)	Analysis of cases of all types of allegations, from eight English Child Protection Committees and social services departments	<ol style="list-style-type: none"> 1. Poverty 2. Ten indicators of "vulnerability": <ol style="list-style-type: none"> a. A more serious referral incident b. A referred child under 5 c. An alleged perpetrator being in the same household as the child d. Previous recorded investigations for abuse or neglect e. Evidence of parent abusing drugs or alcohol f. Parent figure with a criminal record g. Parent figure having mental illness h. Domestic violence between adult partners i. Family being headed by a lone parent j. Reconstituted family <p>Vulnerability factors (esp. d, f, g, and h) more predictive of validation than poverty.</p>	"We did not find evidence to support fears that decision-making in child protection is so unreliable that local aspects of the system, rather than children's needs, determine their placement on protection registers." (p. 434)

TABLE 7
Studies Regarding Recommendation of Court Action Decisions

Study	Data Source	Factors Identified	Comments/Other findings
Craft and Clarkson (1985)	Decision of 73 CPS workers and 73 attorneys, all Iowan, regarding 16 physical abuse case scenarios constructed to display different combinations factors developed in previous study	<p>Factors used:</p> <ol style="list-style-type: none"> 1. Seriousness of injury 2. Previous injury 3. Consistency of the parents' explanation of the injury 4. Parental reaction to the investigation <p>Significantly more attorneys recommended court action than social workers.</p> <p>Factors 1 and 2 most predictive of recommended court action for both groups.</p>	<p>“Protective workers often claim they do not recommend court intervention in specific cases even though they personally believe abuse has occurred. The reasons given are that there is insufficient evidence to substantiate the case, or that the prosecuting attorney will not support their position. The results of this study indicate this is a false assumption.” (p. 172)</p>
Craft, Epley, and Clarkson (1980)	Decision of 38 CPS workers in a Midwestern state regarding 16 physical abuse case scenarios constructed to display different combinations factors developed in worker interviews	<p>Factors used:</p> <ol style="list-style-type: none"> 1. Seriousness of injury 2. Previous injury 3. Consistency of the parents' explanation of the injury 4. Parental reaction to the investigation <p>Strong interaction effects among the factors. The more that were present, the more likely the recommendation of court action.</p>	<p>“General tendency among child protective service workers not to recommend court action, particularly when there is a mixture of negative and positive characteristics describing the case” (p. 41-42)</p> <p>“Decisions may depend to a substantial extent on the biases of the individual worker and not on the characteristics of the cases being examined.” (p. 42)</p>

In a review of 42 factor studies published before 1992, Jones (1993) pointed out that the majority of them are limited by having small, unrepresentative samples, no comparison groups, the use of agency staff to record data, and reliance upon incomplete and possibly unreliable archival data. Even so, the high degree of overlapping findings in such studies indicates “considerable agreement among workers about the circumstances and indicators used at each stage of the decision making process” (Jones, 1993 pp. 245-6). Taken together, these studies portray CPS decision making as focusing mainly upon factors that are probative, relevant, and appropriate. Nonetheless, some non-evidentiary elements, like ethnicity and socioeconomic status, make themselves felt in the outcomes, and reliability is less than optimal even when different investigators

look at the same factors. Different investigators assign different weights to evidentiary factors, possibly, in some instances, as a result of racial, class, or other kinds of bias, and they take into consideration factors that have nothing to do with the evidence.

Decision-Making Models in CPS

The identification of relevant evidentiary factors and knowledge of the variance they each account for in cases that have been rightly decided raises the possibility that a decision making model could be created. Such a model would focus upon those identified relevant factors, *only* upon them, and would assign the right weights to each one, so that any one factor would have an impact on the outcome relative to its established importance. Investigators trained in the use of the model could then take it into the field and enter scores for each of the factors. When all the scores were entered, the model would multiply them by the weights, sum the products to produce an overall score, an objective measure to counteract the bias and inattention of the investigator.

Such models are generally not considered appropriate for making validation decisions. Theoretically, at least, the events of the past are fully available to investigation, and a calculation that an allegation is statistically likely or unlikely to be true would seem unnecessary, not to say potentially unjust. The future, however, is not, in principle, available to investigation, and a probabilistic assessment of the likelihood of future occurrence of abuse or neglect would seem not only appropriate, but a necessary condition for accuracy and fairness in decision making about removal, placement, and the seeking of court orders to impose services or revoke parental rights.

Efforts to create models for the assessment of risk began in the early 1980s (Baumann, 1997). Some models, called consensus-based, used factors developed by panels of experts or from the kind of studies outlined above. Others, called actuarial models, developed factors through statistical analysis of demographic case factors. These efforts have coincided with a philosophical shift in many CPS agencies from an incident-based approach to investigation, as taken by law enforcement, to a risk-based

approach (Cicchinelli and Keller, 1990, quoted in DePanfils and Scannapeico, 1994). The reservations that many experts have about the design and use of these models are touched upon in Chapter IV. Research has shown, however, that predictions of future harm based on risk factors achieve a significant level of accuracy (Grayson and McNulty, 1999).

The relationship that linear models should have with the intuitive decision making of human judges is a matter of debate. Some who see risk assessment models as benefiting CPS casework, like Doueck, English, DePanfils, and Moot, (1993) and Sheets (1992), nonetheless point out that such models should not and cannot replace the judgment of well-trained, experienced staff. Others, like Ruscio (1998), believe linear models should largely determine CPS decision making. That linear models in general are more accurate than subjective human judgment, even expert human judgment, has been established in dozens of studies in dozens of judgment situations (Dawes, 1994). The great watershed in this line of research was Meehl's 1954 book, *Clinical Versus Statistical Prediction: A Theoretical Analysis and a Review of the Evidence* (Dawes, 1982). Meehl marshaled the findings of previous studies in which intuitive predictions by psychologists of such numerical variables as the ratings of students who had just completed a Ph.D. were less accurate than a linear regression of constituent variables such as GRE scores, grade point averages, and ratings of letters of recommendations. Linear regression is only one of a set of possible operations that optimize the accuracy of a model's prediction, but even if some non-optimal operation is used, making it an "improper" model rather than a "proper" one, the experts are still outperformed. The linear model is therefore *robust*, retaining its superior predictive strength through a wide range of operations (Dawes, 1982).

Intuition Theories

Intuition is notoriously difficult to define, mainly because, as Hammond (1996) has pointed out, lack of awareness about the origins and workings of intuition is precisely

what makes it intuitive. Hammond himself defines intuition negatively, as “a cognitive process that somehow produces an answer, solution, or idea without the use of a conscious, logically defensible, step-by-step process” (1996, p. 60). Damasio (1994) has perhaps gone farthest in trying to explain the neurological mechanics of at least one kind of intuition. His decision-making experiments with people having brain damage have led him to the conclusion that intuition functions as a *somatic marker* attached, by learning, to a decision alternative that sets off an alarm when it is contemplated, directing the decision maker to other alternatives. Intuition saves cognitive bother by quickly narrowing the range of decision alternatives. Though non-rational, intuition nonetheless improves the accuracy and efficiency of decision making.

In one set of striking experiments, Damasio and his colleagues measured the skin conductance responses of persons learning to play a gambling game. The object of the game is to make as much money as possible, and avoid losing as much as possible, in drawing cards from each of four decks of cards. Each deck has mostly cards that award payment and some that exact penalties. Two decks give small payoffs, but also small penalties, and are much less risky than the other two, which offer larger payoffs and much larger penalties. After a number of draws from all the decks, participants began to show physical signs of anxiety as they contemplated reaching for the riskier decks. So it is, Damasio contends, that we come to *know* without knowing *how* we know or even, in some instances, *that* we know.

Damasio’s formulation is similar to the *affect heuristic* proposed by Slovic, Finucane, Peters, and MacGregor (2002). They postulate a process whereby memories of events, persons, and objects become associated with degrees of positive or negative feeling. When people make judgments they consult an “affective pool,” which allows the quick and efficient sorting of options by their associated affective markers.

Hogarth (2001) sees intuition as the interaction between two learning systems – the *deliberate*, which processes information in conscious, working memory, and the *tacit*, which is automatic, requiring no expenditure of cognitive resources, and takes place below consciousness. The tacit system marks the frequency of occurrences in the

environment, notices and remembers conjunctions and emotional experiences, and is also adept at identifying patterns. Intuition derives from deep familiarity with a particular environment. When a stimulus offers itself to perception, a preconscious filter determines whether to store it, react to it, or send it up into consciousness. Intuition, which Hogarth says may be thought of as a kind of expertise, occurs when a recognition or association in the tacit system suddenly erupts into deliberative consciousness.

Klein's (1998) understanding of intuition is quite similar. He and his associates have studied what they call naturalistic decision making in settings where there is severe time pressure, the stakes are high, information is inadequate, and goals are often unclear – a prime set of conditions, Hammond would say, for the exercise of intuition. Klein's first subjects were fire commanders, who manage fire fighting crews as they work to put out fires. He asked them to tell stories about both typical and atypical fire emergencies they had overseen. He expected to find confirmation of the classical decision making model, according to which, one identifies at least two options, determines a method of evaluating them, evaluates them, and picks the option with the best score. Klein found, however, that decision makers in the field never made decisions this way. Instead, "their experience let them see a situation, even a nonroutine one, as an example of a prototype, so they knew the typical course of action right away" (Klein, 1998, p. 17). The fire commanders thus did not choose among two or more options. At any given time, they *saw* but one option, and they acted upon it until events showed it was not working. Klein calls this *recognition-primed decision making* (RPD). It is essentially the identification of deep principles at work in a given situation coupled with an understanding of what groups of problems have in common.

The RPD model is illustrated by a story from one of Klein's subjects. A fire commander, a lieutenant, believed he had saved the lives of several of his crew by using extrasensory perception:

It is a simple house fire in a one-story house in a residential neighborhood. The fire is in the back, in the kitchen area. The lieutenant leads his hose crew into the

building, to the back, to spray water on the fire, but the fire just roars back at them.

“Odd,” he thinks. The water should have more of an impact. They try dousing it again, and get the same results. They retreat a few steps to regroup.

Then the lieutenant starts to feel as if something is not right. He doesn't have any clues; he just doesn't feel right about being in that house, so he orders his men out of the building – a perfectly standard building with nothing out of the ordinary.

As soon as his men leave the building, the floor where they had been standing collapses. Had they still been inside, they would have plunged into the fire below.

Upon questioning, the lieutenant was able to recall some of the cues that were available to him before he made his decision to pull the firefighters out of the house. He had no suspicion that the fire was really in the basement, but was aware, at a level below consciousness, that the behavior of the fire was unusual. The living room, where the crew was standing, was hotter and quieter than it should have been had the fire really been in the kitchen. The fire therefore did not fit the lieutenant's stored mental pattern of a kitchen fire in a small house, even though he could not, at the time, have said why; nor at any time could he have described his stored mental pattern with thoroughness and precision. He had knowledge he did not know he had, and it expressed itself in his consciousness as a vague sense of discomfort and dread, what he later believed was a flash of ESP. In Damasio's terms, the fire commander at an unconscious level felt the alarm set off by one his somatic markers. For Klein, it is this movement of decision making from a conscious following of rules to an ability to function at an almost wholly intuitive level of perception that is the hallmark of naturalistic decision making expertise.

Intuitive Judgment Found Lacking

Concerned more with how naturalistic decision makers function, rather than how well, Klein does not undertake to evaluate his fire commander's decisions against any

sort of standard. He does not examine the possibility that if, instead of an experienced fire commander in the scenario above, there had been a mobile linear model with sensors attached, measuring noise volume, room temperature, and fire reaction, the decision to evacuate would have been made even sooner. Klein does acknowledge that the recognition-primed decision making model can and does err, when an expert lacks experience, lacks information, or clings too long to a mental model that should be abandoned, explaining away contrary evidence.

Other researchers have found that intuitive decision making suffers from a great deal more than that. The very processes that make it efficient, they say, make it full of holes. One reason is that human experts tend to rely on *nonlinear* cues in their decision making (Johnson, 1988). One kind of nonlinear cue is the *configural*, where the cue's value derives in part from the value of another cue. Someone on a long driving trip, for example, considering an overnight stop at a particular motel, will assign weights to the motel's positive cues (seems quiet) or negative cues (looks expensive) depending upon how tired he or she feels and how far it is to the next town. Another nonlinear cue is the so-called "*broken leg*" cue, one that, when present, trumps other cues. It takes its name from a scenario in which one is asked to predict whether another person will go out for dinner on a given night. If the judge learns that the person in question has recently broken a leg, that cue's weight will likely be given determinative weight, in disregard of other values that would normally be considered, like whether the person has gotten an invitation or has a habit on eating out that night of each week. Ganzach (1994) has found that experienced CPS workers also display a high degree of configularity in their decision making.

Experts' use of nonlinear cues would seem to be applications of their knowledge of the interrelatedness of behavioral and environmental factors in client homes and to reflect extensive knowledge of the domain. How is it that their judgments suffer compared with those of linear models? Dawes (1982) suggests it is because people in general, and experts in particular, are "much better at selecting and coding information than they are at integrating it"(p. 394). That is, they cannot process a disparate mass of

evidence without seriously undervaluing or overvaluing some portion of it. Linear models, precisely because they are not sensitive to anomalous or inconsistent cues, are less apt, on average, to leave important evidence out of consideration.

One of the many efforts to model juror decision making, the stochastic model, postulates a “freezing” of the judgmental process in response to a critical event. This would occur when the decision maker encounters a piece of evidence that functions as a “broken leg” cue and trumps any other evidence that may already exist or has yet to be introduced (Kerr, 1993). Even so, confidence in the accuracy of one’s judgment continues to increase with the introduction of new information (Oskamp, 1965). This burgeoning illusion of correctness results from the new evidence, if it does not fit the now-completed decision model, being undervalued or misinterpreted so that it does fit (Tversky and Kahneman, 1982a).

Camerer and Johnson (1997) give several possible reasons why experts rely on configural rules and why they can lead to error. They are used because they are faster and more convenient than the weighing and balancing of a possibly large number of parameters. They also seem to arise naturally from explanations of past cases. Configural rules can lead a decision maker astray, however, because even though they often arise from unusual cases, they are thereafter applied generally. Also, small errors inside a particular cue, which would have minimal impact as part of a linear model, would have much larger impact as a “broken leg” cue.

Another major line of research that demonstrates systematic weakness in human judgment and decision making goes under the general name “heuristics and biases.” Its founders, Kahneman and Tversky, and their followers have, in study after study, shown that, when faced with any sort of assessment of probability, people use rough and ready rules of thumb, or heuristics, that are often biased away from true odds. People equate likelihood with *representativeness*, judging an event more likely the more it represents its parent population (Tversky & Kahneman, 1982b). For example, after reading a description of a man as “intelligent, but unimaginative, compulsive, and generally lifeless,” and having been good at mathematics in school, but not so good in social

studies and humanities,” Tversky & Kahneman, 1982b, p. 92), subjects in an experiment assign a high probability to his being an accountant, when asked to rate the likelihood of each of several possible descriptors. They say it is unlikely that the man plays jazz for a hobby, but rate the combination “is an accountant who plays jazz for a hobby” as having a *higher* probability than “plays jazz for a hobby” alone. The resemblance of the combined condition to the set of given factors causes subjects to overlook fact that the probability of two propositions both being true is necessarily less than the probability of either one being true by itself. Nisbett, Borgida, Crandall, and Reed (1982) speculate that emotionally interesting information is likely to be overweighted because it calls up existing schemas, or scripts. One then follows that script, losing sight of the evidence at hand.

Tversky and Kahneman have also found that intuitive decision makers also fall prey to an *availability* bias, whereby they “estimate a frequency or probability by the ease with which instances or associations could be brought to mind” (Tversky and Kahneman, 1982c, p. 164). Because of the prevalence and power of unreliable heuristics like representativeness and availability, Kahneman and Tversky take issue with other theorists who say that human beings do apply elemental logic in their decision making, though badly, moving from a state of prior belief, through application of evidence, to a state of posterior, or new belief, on the whole following Bayes’ theorem. Kahneman and Tversky argue strongly that people are not bad Bayesians. They are not Bayesians at all (Kahneman & Tversky, 1982a).

The dangers of the representativeness and availability biases for CPS investigators are manifold. The perpetrator factors identified in the research outlined above, or others distilled from an investigator’s experience, can create an assumption that an *alleged* perpetrator having those characteristics is likely to be guilty. Investigators may also assign the same weights to evidence in the present case that the evidence in their last case, or in that big case last year, had or should have had. The net result, Fincham, Breach, Moore, and Diener have suggested (1994), is an inflation of substantiated cases.

Other kinds of what Edwards and von Winterfeldt (1986) have called “cognitive

illusions” that would seem to pose a threat of error to CPS decision making include:

- Confirmation bias

Once people arrive at a hypothesis concerning a given body of evidence, they tend to discount, undervalue, or misinterpret additional evidence that does not fit the hypothesis (Lord, Ross, and Lepper, 1979). Schutlz-Hardt, Frey, Luthgens, and Moscovici (2000) found that confirmation bias occurs in group decision making, just as it does in that of individuals. Russo, Medvee, and Meloy (1996) found that confirmation bias can exist even before a hypothesis is formed, that it can arise from a non-evidentiary preference for one of two or more possible outcomes.

- Elastic justification

According to Hsee (1996), decision makers are often tempted to base decisions on factors they know they should ignore, such as personal loyalties, preferences, and associations. These factors often exert an influence on the decision process through the way the decision makers interpret the justifiable, or legitimate, decision factors. This is particularly apt to happen when the justifiable factors are elastic, or ambiguous in nature, requiring interpretation before they can be used as evidence.

Parental non-cooperation with the investigation, identified in the research as validation and risk factors, has the elastic character Hsee describes. The investigator can find it present or not present, assign it greater or lesser weight, and attribute it either to the stress of the situation or to an effort to thwart an investigation liable to reveal their crime. Personal feeling could easily influence the interpretation of this factor.

- Motivated reasoning

Boiney, Kennedy, and Nye (1997) found that when decision makers are motivated to support a particular conclusion, they adopt decision strategies most likely to yield the desired conclusion.

- Groupthink

Janis and Mann (1977), summarizing Janis' previous work, use the term *groupthink* to characterize the way groups fail to consider alternatives and weigh evidence conscientiously in their efforts to reach unanimity. The characteristics of groupthink include:

- Absolute faith in the group's ethics, blinding members to the moral implications of their decisions;
- Collective efforts to rationalize in order to discount warnings which might lead the members to reconsider their assumptions before they recommit themselves to their past policy decisions;
- Stereotyped views of rivals and enemies as too evil to warrant genuine attempts to negotiate;
- Direct pressure on any member who expresses strong arguments against any of the group's stereotypes, illusions, or commitments;
- Self-censorship of deviation from the apparent group consensus; and
- A shared illusion of unanimity.

Kelly and Milner (1996) performed documentary analysis on the case conference minutes in four child death cases in Great Britain, in an effort to determine the group decision-making processes at work, and then apply the model to the specifics of each case. They found that groupthink manifested itself in the case conferences as uncritical support for the first alternative suggested by a powerful member, lack of disagreement, pressure on dissenters, and limiting representation of other agencies and professions at meetings.

The way a case was initially framed was also seen to have a determinative affect decision making. In their early assessments in each of the death cases, the CPS investigators had identified a number of deficits in the children and in their environments, such as developmental delay, poor care, and not being taken to school. Removal of the children from the home and placing them in

foster care would have created an opportunity to overcome the deficits, but would also have meant the loss of the parent-child relationship. Once the cases were formulated as choices between potential benefits and certain losses, the caseworkers began to underestimate the significance of the deficits they had identified.

Finally, the conference minutes revealed that group polarization took place. That is the tendency of groups to move from an initial moderate position of caution or risk tolerance to a polar position of the same character. Once the decision-making teams adopted a moderate tolerance of risk to the child, they were soon able to tolerate more and more of it.

The three processes – groupthink, group polarization, and framing – permitted the caseworkers in these death cases to overlook and even suppress dissenting viewpoints and to commit increasing levels of resources to a course of action that was failing to provide adequate protection to the children in their care. Kelly and Milner say that as long as a group has control over its procedures, it will not engage in measures that could serve as correctives, such as appointing a devil’s advocate or holding second chance meetings. The very processes the group would be trying to correct for would cause these measures to be deleted or undervalued.

- The teller-listener extremity effect

Gilovich (1987) found that when person A retells to person B a story told by person C about him or herself, B will form a more extreme impression of C, positive or negative, than A did. Gilovich attributed the difference to the fact that the reteller tends not to reproduce situational elements in the original account, making the original narrator’s behavior seem more volitional. Inman, Reichl, and Baron (1993) sought to test this explanation by getting retellers to include situational factors in their narratives. They found that the number of “situational bits” communicated by retellers did not, however, affect the hearer’s judgment to a significant degree. The authors speculate that one possible cause of the

extremity effect may have to do with the reteller's access to the nonverbal behavior of the original narrator, which the hearer of the reteller's second-hand account does not have. Another possibility is that the account given by the original narrator was rehearsed, well organized, and chronological, whereas the retelling was comparatively unstructured. The listener, therefore, has to work harder cognitively to understand the story, which leaves less capacity for taking into account what situational information is provided.

Kelly and Milner (1999), in a second study of CPS case conferences in Britain, found that the way a case was framed, by the person who presented it to the group, was generally predictive of the outcome. Initial portrayal of a child being at risk would result in the group's embarking on a course of increasing commitment of resources. Self-justification, on the part of both the initial presenter and the group, would thwart consideration of alternatives. The child's degree of risk would seldom be reevaluated.

- Acceptability and rationalization heuristics

Tetlock (1997) found that decision makers who do not feel committed to a particular decision outcome often save cognitive effort by making decisions they believe will be acceptable to the decision's prospective audience. When decisions already made are challenged because of negative outcomes, decision makers are motivated to put forward as many reasons as possible to justify the decisions. Says Tetlock, "By generating supportive cognitions, decision-makers who practice defensive bolstering blind themselves to changing policy in ways that would better promote their long-term values" (Tetlock, 1997, p. 673).
- Feedback ambiguity

Hogarth in 1981 challenged the validity of many of the heuristics and biases studies, saying that their focus upon decisions as isolated events involving unfamiliar decision situations overlooked the adaptive nature of real human judgment, how, over time, it uses feedback from the environment to refine its methods and improve its accuracy. Ten years later, however, Hogarth, along with

colleagues Gibbs, MacKenzie, and Marquis (1991), expressed skepticism of the value of feedback. Since it carries information about both the nature of the task and the quality of one's performance, one cannot be certain, for example, whether one's score on a test has more to do with one's knowledge of the subject or the teacher's manner of grading. This ambiguity can make feedback unreliable as a guide to better performance, especially in environments that do not offer an ideal balance of rewards and punishments. Brehmer, too (1980), has found the usefulness of feedback limited by the way decision makers use it. Cognitively ill equipped to recognize the probabilistic structure of a task environment, they look for, and erroneously find, simple causal rules to account its stimuli.

- Rule of optimism

A tendency among social workers to give the most positive interpretation possible to parents' behaviors, to provide the least coercive intervention possible, to overlook contrary evidence, and to have a general belief in the relativity of all judgment, was suggested by Dingwall and Eekelaar (1984).

- Differences in cue weighting

Differences in judgments made by CPS investigators even when using the same judgment criteria was a finding in several of the factor studies summarized above: Shapira and Benbenishty (1993), Rossi, Schuerman, and Budde (1999), Craft, Epley, and Clarkson (1980). Einhorn (1974) found this lack reliability to be a feature of even expert intuitive judgment. The weights that different experts assigned to the same cues in a judgment task vary widely. Good *calibration*, or the accurate, consistent assignment of value to variables (Lichtenstein, Fischhoff, and Phillips, 1977) is difficult to attain. Rossi, Schuerman, and Budde (1999) hoped to arrive at an estimation of the error rate of CPS investigators by comparing their removal judgments to those of experts. They were defeated, however, by the lack of agreement among the experts themselves, because of wide variations in cue weighting. This led Rossi et al to conclude that CPS

decision making was probably rife with both the false positive false negative types of errors.

Other sources of judgment error have been uncovered through research into CPS practice. Munro (1996, 1999) examined the reports of 45 official inquiries into the conduct of British child protective agencies in cases where a child had died from abuse or neglect after agency involvement had begun. She assumed that all 45 deaths represented mistakes on the part of the CPS caseworkers that handled the cases, but of these, some were avoidable mistakes and some were unavoidable. A mistake may be considered unavoidable if the tragic outcome could not have been predicted from the evidence, which was as complete and as thoroughly understood as possible. Avoidable mistakes involve failure to collect relevant evidence or to understand the significance of evidence collected. Munro sees in the inquiry reports strong evidence of caseworkers' general unwillingness to alter their beliefs. A powerful form of confirmation bias allowed casework decisions to be ruled by early, positive opinions about families. Conflicting evidence was discounted or ignored and alternative explanations of collected evidence were rejected out of hand. Munro attributes this in part to agency bias toward keeping families intact and maintaining Dingwall and Eekelar's (1984) "rule of optimism." In addition, caseworkers gathered too little information about families, and various persons involved in the cases too often failed to share or pay attention to what information they had.

McGovern (1991) and O'Donohue and Fanetti (1996) have also noted that confirmation bias, in the form of failure to consider alternative explanations of evidence in child sexual abuse cases, has led not only to judgment error on the part of CPS workers, police officers, physicians, and psychologists, but to the imprisonment of wrongly accused parents. In at least one study, however, consideration of alternative explanations did not increase judgment accuracy. Mandel, Lehman, and Yuille (1994) found that, while CPS workers tended to make few unwarranted assumptions and generated more hypotheses regarding evidence than college undergraduates did, their decision making accuracy was exactly the same.

Drury-Hudson (1999) found that new CPS workers, compared to workers with at least ten years' experience, had little knowledge of theory, research, and legislation related to the field. This lack of knowledge impaired the novices' ability to recognize risk in a hypothetical scenario, and would, in general, Drury-Hudson says, cause them to rely on their "own values about children and families when making decisions about the removal of children from the home" (Drury-Hudson, 1999, p. 154).

Summarizing previous research, Gambrill (1997) listed the various cognitive and environmental factors that hamper accurate decision making by caseworkers. Barriers include:

- Limited knowledge: incomplete or misleading information;
- Limited ability to process knowledge: jumping to conclusions, inflexible use of basic strategies, limited use of different methods, selective perception, defining problems too narrowly (framing), stereotyping, focusing on vivid events (representativeness), faulty memory;
- Poor problem-solving methods: vested interest in certain outcomes, a focus on winning arguments rather than finding the truth, too much interest in social approval, reliance on unreliable rules of thumb, ignoring feedback from previous bad decisions;
- Inadequate background knowledge and investigative skill;
- Emotional bias: fatigue, anxiety, anger, low tolerance for ambiguity, wishful thinking, unrealistic expectations for quick success; and
- Obstacles in the task environment: large caseloads, lack of clear agency policy, contradictory demands, time pressures, distractions, pressure to conform.

Intuitive Judgment Found Not So Bad, After All

Reviewing this long list of things that can and do go wrong with intuitive judgment, one might wonder if the proponents of linear models are not right in wanting to strip it of decision-making authority whenever possible. Some theorists, however, have challenged

this gloomy portrait. Dawes and Mulford (1996), for example, have shown that overconfidence at low levels of accuracy and underconfidence at high levels of accuracy can be explained entirely by the regression effect. Similarly, Gigerenzer (2000) has argued that much of the heuristics and biases research has been flawed by focusing on single trials or instances. Probability, understood as patterns of frequency in large sets of data, does not and cannot concern itself with the characteristics of a single member of that set. Take, for example, the experiment cited above, concerning possible descriptors of an intelligent, but unimaginative man, as being an accountant, playing jazz for a hobby, or doing both. The fact that most people choose “both” as being more likely than the less likely of the two single descriptors, even though the “both” condition contained the less likely one in it, purportedly demonstrated the existence of the representativeness heuristic. Gigerenzer showed that when the problem is posed properly as a frequency estimation, asking how many of roomful of 100 intelligent, but unimaginative persons were likely to be accountants or accountants and jazz players, the heuristic disappears.

Gigerenzer contends that decision heuristics, rather than being lazy substitutions for a fully rational decision making process *constitute* the real-world, adaptive rationality that people use to their benefit every day (Gigerenzer, Todd, and the ABC Research Group, 1999). Such “fast and frugal” heuristics are essentially algorithms that set rules for guiding and stopping searches through alternatives and for making a final decision based on the results of the search. The decision rule can be as simple as letting a single reason determine a choice, no matter how many the search produced, or eliminating alternatives until only one remains. If these heuristics are evaluated by their practical utility, and not compared, as a process, to the workings of the probability calculus, they do not come off so badly.

That human beings are inherently bad at processing ill-structured data is disproved by the most basic act of perception, according to Hammond (1996). Following the psychologist Egon Brunswik, Hammond argues that the environment offers our senses *multiple fallible indicators*, which appear to us strongly or weakly, and which we must then use to fashion our judgments and behaviors. Brunswik’s *lens model* shows how

external stimuli are inductively transformed into perception and judgment. Every perception is an inference, is necessarily quasirational, and is a judgment within an ill-structured domain, based upon large amounts of simultaneously presented evidence. We are all expert perceivers; our competence is demonstrated continuously by our successful adaptation to a dynamic environment.

To hold that intuitive judgment is fundamentally valid is not to say that error never happens or that any of the susceptibilities and frailties identified in the research do not exist. A feature of human judgment that theorists often overlook, however, is its ability to self-correct over time and adapt to environmental demands. This, as we saw earlier, was Hogarth's initial take on the value of decision feedback (1981), though he later (1991) came to consider it tempered by an inherent ambiguity as to whether feedback conveys information about performance or environment. Not knowing why a decision turned out wrong will indeed make it difficult to know which element of one's decision making to change, and one could easily change the wrong thing first. Even so, the message that change is necessary is received and acted upon. That change will produce new and somewhat less ambiguous feedback, which will in turn be acted upon through the making of additional change. The ambiguity makes this process inefficient, but does not prevent progress. The same reply may be made to Brehmer's (1980) objection that feedback cannot give corrective help if the decision maker fundamentally misunderstands the probabilistic nature of the task structure and continues search for simple determinative rules where none exist. These fictitious rules may be simple compared to the probabilistic reality, though they do admit of a certain degree of configural complexity. Rules may be changed, though, and new rules may be added in response to negative feedback, achieving over time an increasingly useful, if steadily unwitting approximation of the reality.

Asare and Wright (1995), for the purpose of analyzing judgments made by auditors addressing a task in which a number of hypotheses were initially viable, distinguished between *errors*, caused by incomplete knowledge of or incorrect application of the probability calculus, and *mistakes*, which they defined as departures from task-specific

standards. The auditors did, as expected, make normative errors such as failing to adjust probabilities for the elements of a hypothesis set when one element was eliminated and maintaining an initial belief its warrant has been discredited. Nonetheless, because the auditors had substantive expertise, they were able to review evidence skeptically, code it appropriately, and consider alternatives before reaching judgment. This led to correct decisions and high performance. Errors, in other words, did not lead to mistakes.

In addition to adaptation over time and domain-specific procedural knowledge, decision makers' awareness of potential evaluation by others also exerts a corrective effect on the judgment process. Lundgren and Prislin (1998) found decision makers possessed of *impression motivation*, a desire to maintain good relations with other decision makers, though they modified beliefs in the interests of social harmony, were objective in their gathering and processing of information, more so than decision makers motivated by *defensiveness*, which occasioned the bolstering and protection of a conclusion already reached through restriction of evidence search. Adding *accuracy motivation* to either impression motivation or defensiveness fostered more balanced information seeking, even if it did not eliminate biased thinking altogether. Boiney, Kennedy, and Nye (1997) identified what they call a *reasonableness constraint*, a de-biasing effect resulting from the need to justify a judgment process or outcome to others. The reasonableness constraint does not fully eliminate bias created by motivated reasoning, but it does oblige the decision maker to display the minimum bias necessary to reach the desired conclusion. It would seem to follow that the greater the socially imposed reasonableness constraint, the less the decision-making bias. Curley, Yates, and Abrams (1986) found that ambiguity avoidance in decision making was attributable to anticipation of a decision being evaluated by others. Tetlock (1997), too, has found a strong de-biasing effect in pre-emptive self-criticism, which is reliably induced by the prospect of having to be accountable for decision processes and outcomes to an unknown audience. And Garfinkel (1967) found that it is a desire to conform to the assigned social role that motivates jurors to choose what is legal over what they privately consider fair, to delay judgment, and to base outcomes solely on the evidence presented.

Phronesis

A fourth corrective to bias and probability blindness in intuitive decision making is the exercise of what Aristotle called *phronesis*, the intellectual virtue often translated as prudence, which is described in the *Nichomachean Ethics* (Aristotle, *Ethics*, VI, 5, trans. 1941) as the ability to deliberate well, to make judgments about what is best to do, both for oneself and for others. It is concerned, as opposed to *sophia*, or theoretical wisdom, with the present and with concrete human problems.

In none of the factor studies or judgment procedure studies summarized above, where “expert” judgment was the object of study, did the researchers distinguish among participants by *degree* of expertise. They operationally defined expertise as the possession of credentials, degrees, position, or years of experience. They did not try to determine which of the experts were superior in terms of procedure or outcome. That some experts are more expert than others seems obvious, however. In Johnson’s study (1988) of medical school faculty selecting interns and residents from an applicant pool, the best expert outperformed the worst expert by 42% and the expert average by 26%. That person even beat a linear model by nose. Camerer and Johnson (1997), citing Goldberg, said a well-known neurologist, who worked slowly, achieved an 83% accuracy rate in his diagnoses, compared to 65% for his colleagues.

According to Langer (1989), most experts, having become so practiced at a task they do it mindlessly, are apt to become trapped in counterproductive cognitive habits. They continue to follow a routine even after it no longer yields benefit. Langer advocates *mindfulness*, the three characteristics of which are the continuous creation of new conceptual categories, openness to new information, and constant awareness of other points of view. These traits would seem to be correctives against the lure of the inappropriate configural rules and the overweighting of “broken leg” cues that tend to drag down the effectiveness of expert judgment.

Similarly, Kitchener and Brenner (1990) postulate a Kohlberg-like developmental

scheme for reflective judgment, the seventh and highest stage of which is characterized by an awareness of the provisional and fallible nature of knowledge. Stage 7 persons understand that even well-structured problems are capable of certain answers only within a clearly defined context, that uncertainty in real life situations is ineliminable, but that conscientious epistemological effort yields serviceable truth. King and Kitchener (1994) suggest that in order to acquire reflective judgment during their college years, young adults must become acquainted with ill-structured problems within their areas of expertise, must learn what it means to justify beliefs, and must receive both intellectual and emotional support as they progress. Provided these conditions are met, students attain an openness to alternatives and non-confirmatory evidence that stands them in good stead, whatever judgment task they undertake.

These theorists are, in essence, offering intellectual virtues as antidotes to the potential insensitivity and carelessness of intuitive judgment: a blend of enterprise and humility, an awareness of limitations coupled with a willingness to be alive to new possibilities. They furthermore maintain the possibility these virtues may be learned, even in the process of learning the expertise itself.

Schön (1987) points to *artistry* as the difference between higher and lower levels of competence in a given practice. Artistry is defined as “an exercise of intelligence, a kind of knowing, though different in crucial respects from our standard model of professional knowledge” (Schön, 1987, p. 13). It is the intuitive knowledge that Klein and Hammond describe and it allows practitioners to negotiate situations that have a high degree of uncertainty, that do not fit pre-conceived patterns, or that involve questions of value.

Artistry cannot be learned, Schön says, in a classroom, though it can be learned through coaching. He advocates the use of *practica* in professional education, the creation of an educational space in which the student practice doing the work of the profession under one-to-one tutelage and in a low-risk, supportive environment. This allows the student to acquire the crucial component of artistry, *reflection-in-action*, an ability to engage in sensitized perception and critical thought while engaged in the work activity. Since this ability involves subtle, tacit, even inexpressible dimensions of

thought and feeling, it cannot be realized except in context and cannot be conveyed except through embodied, personal, continuing example.

Practical wisdom, Aristotle's *phronesis*, is for Schön, then, a real and attainable quality. And, like the other writers taken up in this section, Schön links practical wisdom to ethics. It is, as he says, a kind of knowledge that is not like other knowledge. Nor is it a skill. It is a way of applying knowledge and skill, an ethical commitment to evidence, a modesty before it that can never be captured in a protocol. For Aristotle, *phronesis* is a kind of knowingness one needs in order to be good. That which separates the wise from the merely expert may be a kind of goodness one needs in order to know.

It should be pointed out that some critics consider error in CPS decision making to go beyond the foibles of individual investigators or groups, and thus would not be subject to amelioration by adaptation over time, domain-specific expertise, even if exercised with intellectual virtue, or accountability. Howitt (1992) argues that certain biases are woven deeply into the *theory* of child protection because they justify the agencies' power to intervene. No correction from within can therefore have any effect. Self-serving theory causes investigators to regard certain caretaker characteristics – poverty, step-parenthood, single parenthood – as red flags, and because CPS agencies seldom waver from a course of intervention once it has begun, errors that result from such labeling should be regarded not as isolated events, but as resulting from a process at work in every investigation.

Taking a wider perspective still, some experts (Hill, 1990; Jones and Gupta, 1998) contend that the social construction of child abuse and neglect as aberrant behavior on the part of individual parents hampers our ability to understand its true nature. Poverty and cultural patterns created by social inequity are more responsible for the mistreatment of children than are the actions of a few stupid, indifferent, or overwhelmed caretakers. The definitions of child abuse and child neglect, expressing, as they do, the political will of a privileged minority, may themselves be the most significant source of decision making error in CPS. Furthermore, just as the role of individual parents is socially exaggerated, so, too, is the role of the individual CPS investigator. When a child already

on the CPS caseload dies or is seriously injured because of subsequent abuse, politicians and the press tend to scapegoat the worker assigned to the case, right along with the abuser. Doing so permits continued belief that the community is good and the CPS system is good, and that all we need to do to keep everything good is punish malefactors, along with the lazy government employees who failed to do their jobs properly. Such scapegoating has a devastating effect on investigators and upon the quality of their work. “Staff become depressed, anxious, and demoralized, and as a result, their work becomes both defensive and routinized” (Jones and Gupta, 1990, p. 103).

Nonetheless, as Nurius, Kemp, and Gibson found (1990), CPS workers, despite being aware of social and environmental factors that affect decision making, nonetheless believe that it is primarily a responsibility of the individual person and that characteristics of the individual decision maker, such as flexibility, balance, and intuitiveness, contribute more to sound decisions than supervision and even co-worker consultation do. It is that sense of responsibility and virtue among CPS investigators that is the primary object of this study.

CHAPTER III

METHODOLOGY

Between May 10, 2001, and January 11, 2002, I interviewed 20 employees of the Texas Department of Protective and Regulatory Services (TDPRS), all of whom worked in or with the agency's Child Protective Services (CPS) program. Nineteen of the 20 had some role in the investigation or deliberation of child abuse or neglect allegations. Eleven were investigators; two were supervisors; two were Program Directors (PDs), who supervise supervisors; one was an attorney; and one was an ombudsman, who handles appeals from designated perpetrators who believed allegations against them were wrongly validated. The twentieth interviewee was a CPS policy maker who had recently been a trainer of new CPS workers and before that an investigative supervisor. Sixteen of the 20, including all the investigators, supervisors, and PDs, worked in what the agency refers to as Region 7, a 30 county area centered around its headquarters in Austin. Most worked in Austin itself, but three of the investigators, one of the supervisors, and one of the PDs worked in rural parts of the region. The attorney, the ombudsman, the policy maker, and one of the Risk Directors had statewide responsibilities. Figure 2 shows the participants' positions on an abbreviated organizational chart for CPS.

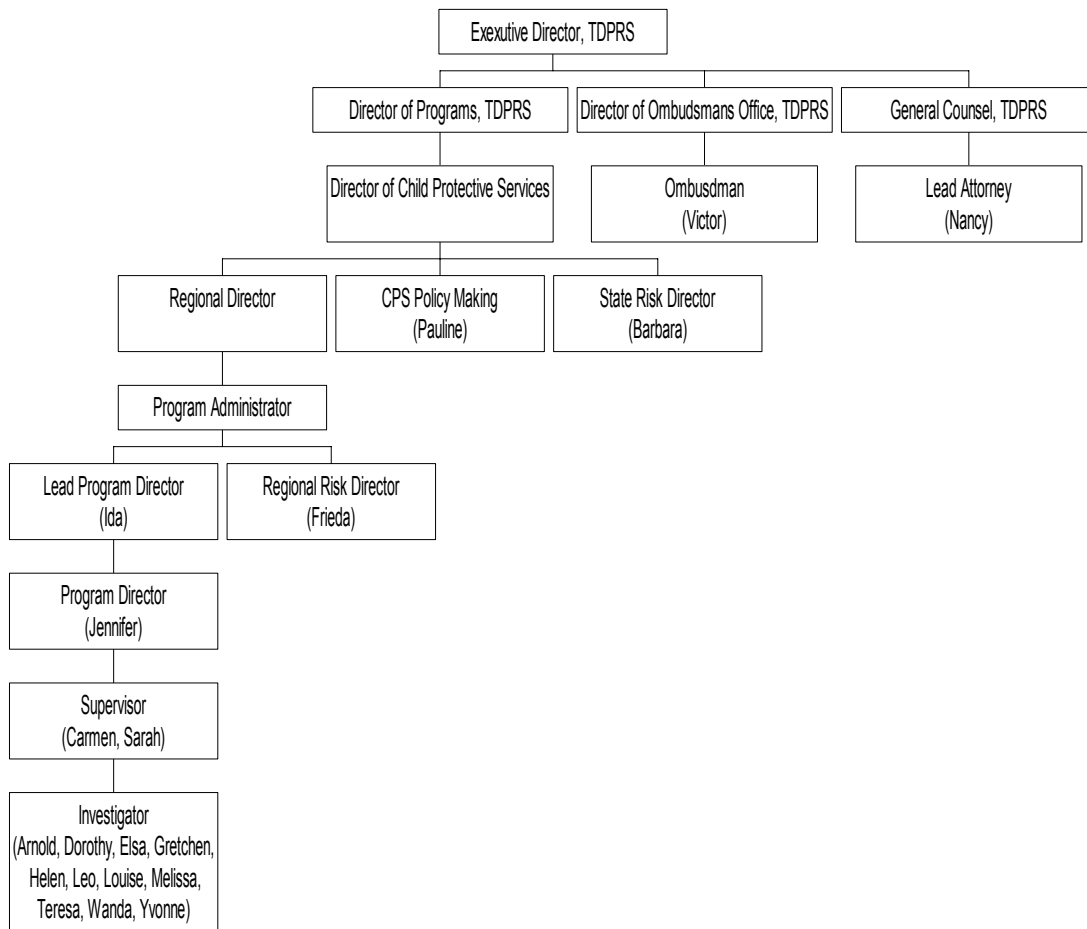


Figure 2
Partial Organization Chart for CPS in Texas

Before beginning my interviews, I sought permission from the top administrator of Region 7, the Regional Director, to approach persons in the Region to request interviews. She gave it, with the understanding that I would interview staff during work hours. She also asked her lead PD for Travis County to suggest which investigators I might approach first. That person gave me a list of eight persons, all of whom agreed to be interviewed. At the end of each interview in that first round, I asked each participant if he or she knew of any other investigators who might be willing to take part. In this

way I got the names of several more persons, nearly all of whom agreed to be interviewed. I also approached a few participants because of the positions they held (the ombudsman, the attorney, the Risk Directors, and the Program Administrators), as it became my goal to have representation from each of the six positions having responsibility for investigating or deciding individual cases.

Each interview lasted between one and two hours. I did second interviews with nine of the 20 participants. My original intention was to do second interviews with everyone, but two of the investigators who gave first interviews didn't return calls or respond to e-mails about second interviews. In one instance the participant had seemed reluctant and ill at ease during her interview, and I believe she avoided a second one because she found the process disagreeable. In the other instance, though, the first interview had seemed to go well. It seemed possible, then, that job pressures were such that she felt she couldn't spare the time for further participation. Also, with the investigators, one of my main goals for the second interview was to have them analyze a pair of case scenarios, described below, and most of those I recruited later in the in data-gathering phase were administrators. I feared they might feel they had less time for multiple sessions than the investigators did. So, with the second half of my participant group I tried to do as much as possible in a single, somewhat longer interview and didn't ask for a second one.

Each participant signed the consent form approved by the university's Institutional Review Board (See Appendix A). I have given all the participants made-up names. No documentation identifies the participants by their real names.

My general goal for all the interviews I conducted was to discuss judgments and decisions the participants had made about child abuse investigations with which they had been involved. To that end, I asked each of them to give me case narratives, and I used a variety of questions to solicit them. Typically, I began each interview by asking the participants to describe their roles in the investigation or deliberation of abuse and neglect allegations and the nature of the judgments they were called upon to make. Then I would request examples. I would ask them to describe a case they had investigated or

reviewed recently, or a case from any point in their career that had been particularly difficult to decide, because of conflicting or ambiguous evidence. Most CPS investigation follows a well-worn track. The nature of a case is often apparent from a glance at the initial intake or from the first minutes of an interview with a child victim. They are, as Teresa, an investigator participant put it, *blatant* in one way or another. My assumption was that asking about non-blatant cases would produce better data. Klein, who also asked for stories about “tough cases, nonroutine events” (Klein, 1998, p. 189) in his research among fire commanders, called doing so the “critical decision method.” He had found that experts respond with generalities when asked simply how they are effective or how they use judgment. Narratives about unusual cases, on the other hand, afford “a pathway into their perspective, into the way they are seeing the world” (Klein, 1998, p. 189).

As the interview progressed, I would try to prompt additional narratives by asking, when an investigator, say, delivered an opinion as to the value of a particular interviewing approach, “Can you give me an example?” or “Are you thinking of a particular case?” Or, as recommended by Chase (1995), I would ask “How did you learn that this was important?”

In addition to seeking out case narratives, I asked participants’ opinions on several subjects related to investigative decision making. I asked what made someone a good or bad judge of evidence. I also wanted to know whether they found the program’s Intranet Risk Assessment Tool useful and how they conceptualized the legal standard of proof “preponderance of the evidence.” Also, I asked whether and under what circumstances they had found “reason-to-believe” in cases involving two categories of allegation that are notoriously problematic – physical neglect and emotional abuse.

When I interviewed investigators, except for the two with whom I wasn’t able to get second interviews, I presented them with two short case vignettes, developed by Jackson and Nuttall (1997), describing allegations of sexual abuse. In their study, 655 social workers, pediatricians, psychologists, and psychiatrists, 72% of whom had direct experience working with sexually abused children, rated each of 16 vignettes, based

solely upon the evidence presented, on a 6-point scale from “very confident it did not occur” to “very confident it did occur.” The two vignettes I used were those whose averages were closest to the 3.5 null point of “unable to determine” (3.38 and 3.77). I did not ask my participants to rate truth likelihood in the same way, however. I simply asked them, in an open-ended a way as possible, what reactions they had as they were reading. Once they had given an initial “take,” I followed up with questions such as:

- If this were all the evidence available in the case, how would you decide it?
- What additional evidence would you like to collect before deciding?
- What features of the case strike you as the most significant? Why?
- What makes this evidence difficult to analyze?
- Does this case remind you of any of your own?

I would also pursue whatever issues the participants themselves raised in connection with the vignettes.

I believe I enjoyed good rapport with all the participants, except for the one instance already mentioned. I did all but one of the interviews in the participants’ own offices. (That person, not the same one I seemed to make uncomfortable, only had a cubicle in a big office building, so we used a vacant classroom in my building.) Because I had contacted them through the agency E-mail system or had been referred to them by someone within their program, they knew I also worked for the Texas Department of Protective and Regulatory Services, too, although in a different branch. And during our conversations I freely made reference to my own investigative experience with Adult Protective Services. These factors, and, perhaps, the unstructured, conversational tone I tried to maintain, seemed to make nearly all the participants feel at ease in talking to me. For the most part, I was surprised and gratified by the candor participants displayed.

I tape recorded each interview and transcribed 22 of the 29 of the interviews myself. I did not aim for a high level of exactitude, as, for instance, Linde (1993) does, with notation to indicate overlapping or contiguous utterances, or as Ochs and Capps do (2001), with notation specifying the speed and volume of participants’ speech and

measurement of pauses in tenths of a second. Instead, to save transcribing time and to enhance readability for the analysis stage of the research, I rendered the conversations as simple play scripts, putting my words and the participants' in alternating paragraphs, marking mine with an "I:" I should say, too, that from the start I supposed I would analyze the interview data almost entirely at the paragraph and sentence level and would not have need of more finely focused transcription. This assumption, not surprisingly, proved correct. In very few instances have I attributed significance to pauses, parts of sentences, or individual words. I did, however, try to reproduce the exact wording of the participants' responses (but not my own), including all their "ums" and "ahs." I indicated both pauses and incomplete thoughts with ellipses. I italicized words the speaker strongly emphasized. Occasionally I bracketed observations of conversational behaviors. I also bracketed words I wasn't sure I understood correctly from the tape.

Here is an excerpt from the transcript of my interview with Pauline:

I: Did you feel like that you were a fairly good reader of people before you started work at CPS?

Yeah.

I: And did you feel like you were a fairly assertive person before you started in CPS?

[long pause] I don't know if CPS had anything to do with... my ability to be assertive. I... I don't know, Robert, it... it may have. I al... I just attribute it to... I'm getting older. It's more of a maturity thing of... figuring out what's worth a fight, what isn't worth a fight, what's... per... what my personal investment is. And, me picking and choosing situations of... you know, how assertive I'm going to be to get what I want. Um... but, you know, when I was in the field, Robert, I didn't feel like it was about me. It felt like it was about the kids. And it's easier for me – I mean, just my personality makeup – it's easier for me to advocate for others than it is to advocate for myself. I've always been like that. And so I think when I was in the

field it was just a way of... of expressing that, that it wasn't about me. It was about what I can do to get in there and help that little guy.

I: Well, going back to that intuition thing, I feel like I cut you off before you had a full chance to answer that. You do think it can play a positive role in keeping oneself safe as an investigator, and knowing when something's screwy and needs pushing. Can it... Have you had occasion to think... to be misled or see it mislead people you were supervising?

Um... I think, Robert, I've seen it misused in, you know, with Vera's child death. You know, her intuition was, you know, this is nothing; I'm going to walk away. And I... I think it's that we make those decisions so quickly that we tr... that we rely on our intuition, and we hope that it's, um... You know, I think that the more you do this – you're in this business – the more maybe *disciplined* your intuition is? It's a little more f.. fine-tuned than it.. when it was in 1990 when I started this. But I think I've always been able to... to read people and to... and to empathize.

I: That's a good phrase – disciplined intuition.

That's kind of what I think it is.

I: ...may make that the title.

There you go.

I paid for seven of the interviews to be transcribed by others. I edited those transcripts carefully, correcting errors as I compared them with the tapes, and bringing the format, style, and level of detail into uniformity with the transcriptions I had made.

My primary means of analysis was the constant comparative method of Glaser and Strauss (1967). My goal was to identify similarities and differences in the ways the participants talked about various topics. I used the N5 software program to code the contents of each transcript as belonging to one or more of a number of categories. I did not create any categories before I began to code, but did so as I felt the need. After I had gone through all the interviews I had a total of 28 categories. As I went along I stopped

using some I had created in favor of others, and occasionally transferred data from one category to another. In selecting and grouping the data I was guided by the same questions that had guided my interviewing: How did investigators reach conclusions about the evidence they gathered? How sure did they need to feel before committing themselves to a particular judgment? How do they use intuition? What sources of judgment error were they aware of in themselves? In others? In the system? How do they feel about the agency's risk assessment tool? The categories that had most in them after I had coded all the interviews, and from which I drew material for analysis were:

- Caseload volume (501 sentences from 15 interview transcripts)
- Burnout/cost of job (619 sentences from 17 interview transcripts)
- System agency (398 sentences from 11 interview transcripts)
- Development/hierarchical difference (1262 sentences from 22 interview transcripts)
- Preponderance (676 sentences from 19 interview transcripts)
- Risk Assessment Tool (751 sentences from 17 interview transcripts)
- Emotional abuse (401 sentences from 13 interview transcripts)
- Intuition (357 sentences from 10 interview transcripts)
- Group decision making (231 sentences from 11 interview transcripts)
- Characteristics of good investigators (597 sentences from 17 interview transcripts)
- Case narratives (4918 sentences from 24 interview transcripts)
- Decision points (253 sentences from 12 interview transcripts)
- Cues (406 sentences from 11 interview transcripts)
- Role persona (572 sentences from 13 interview transcripts)
- Techniques (investigation and deliberation) (958 sentences from 17 interview transcripts)
- Bias/personal mission (603 sentences from 13 interview transcripts)
- Linda scenario (981 sentences from 13 interview transcripts)
- Harry scenario (862 sentences from 14 interview transcripts)

- Custody (727 sentences from 16 interview transcripts)
- Interaction among roles (458 sentences from 11 interview transcripts)
- Bureaucratic/legal obstructions (425 sentences from 9 interview transcripts)

I never bothered to create a hierarchy for the coding categories, as the software allows. I simply printed out “reports” of the text in each of the coding categories, and wrote the findings chapters (IV-VII) directly from them.

In addition to developing various themes via the constant comparative method I have also subjected a number of narratives to analysis. My goal was partly to add illustrative depth and richness to the thematic findings, but more than that I wanted to see what the narratives revealed about the participants’ emotions and thought processes as they did their investigations. Nothing absolutely prevents cant and conventionality from taking narrative form, of course, but, like Klein, I found that participants’ narratives are, in general, more revealing than opinions. Stories not only tell, they embody. The story of an investigation, especially when rendered with vividness and detail, reproduces the inferences and deliberations that lead, or, sometimes, fail to lead, to a final determination. And not all of these inferences would gain admission to a generalized account of how investigations are done, in many instances because, however pivotal to the investigation they were, they were not conscious. They were based on personal associations or beliefs that the investigator would know, were he or she to recognize their existence, ought to be excluded from any decision-making role. So though they are self-reports, narratives tend to be less filtered and synthesized than characterizations of experience that make up opinions or generalizations, and therefore may be considered *analogs* of experience, as well, providing something like direct observation of the actual investigative process.

In analyzing narratives I have not used any particular method. I have not distilled stories to produce core narratives (Mishler, 1986) or rendered the participants’ data as stanzas (Gee, 1985). I have paid much more attention to the stories’ content, their full content, than to their form. I have simply, as Clandinin and Connelly (2000) describe, looked for “narrative threads, tensions, and themes either within or across an

individual's experience and in the social setting" (p. 132). To a great extent, the threads, themes, and tensions I found were those that I set out to look for, having either been in my mind since my days as an investigator and a reader of investigative reports, or having emerged during the interviews or their transcription. As Riessman (1993) has observed, commenting on Mishler (1991), transcription more or less *is* analysis; decisions we make concerning the arrangement and display of data necessarily reflects our understanding of its meaning. That my analysis was largely complete by the time I started to write the findings came as a happy surprise to me. The work of transcription had been like crossing an enormous bog; every step sank deep in the mud, and progress was appallingly slow. I anticipated that writing the findings would be more of the same, but instead it was as though I'd emerged from the swamp onto a hard, level road, by the side of which somebody had left a BMW with the keys in it. In only one instance did I become aware of a theme after I had finished transcribing: That was the way the participants fitted Jackson and Nuttalls' Harry scenario (1997) into a number of different story genres as a way of getting a handle on it. I feel sure, however, that if I were to return to the data again I would find new themes and correspondences, so rich is the data contained in the interviews.

Another aspect of the interviews to which I have given short shrift is the performative. I have taken it for granted that the participants in this study were not simply providing information about their cases and their judgment processes. They were endeavoring to represent themselves to me, and to anyone who might read what I write or hear what I say about them, as good investigators and good people. This did not prevent many of them from revealing mistakes they had made, but that was always within the context of having learned from those mistakes and become better investigators because of them. Because I assumed all of the participants to have this performative motive, and to approximately the same degree, I have not made it a subject for analysis.

When the Chair of my Committee, Dr. Carolyn Clark, read the first draft of the full dissertation she thought I had perhaps not done enough to conceal the identities of the

participants. Though I had used made-up names for them, I had given each person's real job title, in some instances, their real work location. Dr. Clark is also a strong believer in the principle that qualitative research is, or should be, a collaboration between the investigator and the participant. So she urged me to give the participants a chance to comment on the material and negotiate changes. I discuss the reactions I received in an epilogue (page 206).

CHAPTER IV

INTUITION AND ANALYSIS IN CPS

The process of investigating and deciding child abuse and neglect cases within CPS is spread out over the full expanse of what Hammond et al (1997) calls the cognitive continuum that runs from intuition to analysis. As we saw in Chapter II, Hammond claims that most human judgments are *quasirational*, made at a point on the continuum at least some distance from either end, displaying both intuitive and analytic aspects. The point along the continuum at which a particular judgment is made depends on the structure of the task at hand. Good judgment results when there is high congruence between the mode of judgment and the task structure. If there is plenty of time to make a decision, the elements involved can be measured, and a decision protocol for it has already been developed, then an analytic approach will produce the best results. If time is short, the elements are not measurable, or even fully knowable, no valid protocol exists, and the decision maker has a good mental map of the task environment, intuition is appropriate. CPS decision making can display both sets of characteristics, particularly at different points in the case. During investigation, when facts are still being gathered, judgments about child safety and about the conduct of the investigation must sometimes be made in the absence of complete information and under time pressure. Later, when the evidence collection has all been done and the issue of the child's safety has been at least temporarily resolved, conditions become favorable for the tools of analysis. Also, the ambiguity and partiality that evidence may have for investigators and supervisors is seldom reproduced for decision makers further up the ladder. The process of making verbal and written reports of cases simplifies and refines the evidence; those who rely only on those reports to make decisions are more likely to see it, and the issues it raises, as clear-cut.

We see a general movement, then, from intuition toward analysis as a case progresses from intake through investigation to deliberation and resolution. The same movement can be seen in the decision-making styles of individual persons as they gain

experience on the job, and in the CPS decision-making hierarchy, with investigators and supervisors generally nearer the intuitive end of the continuum, and administrators nearer the analytical end.

Since Tolman first used the term “cognitive map” (1948) to describe how rats respond to stimuli indirectly, through mental representations of the environment, map and landscape metaphors have often proved useful for describing the synthesizing of experience, the refinement of procedural knowledge, and the formation of theory (Azevedo, 1997; Girere, 1988; Ziman, 1978). As Gieryn (1999, p. 7) has put it:

People navigate not just streets and highways, but the culturescape: we wend our way through or around entrenched institutions, decide which rules to apply where, subvert expectations by exiting, discern the signs given off by material objects, locate events in some historical narrative – and we routinely do so quickly and effortlessly.

The intuition-to-analysis movement I am suggesting readily lends itself to the same kind of comparison. The moment a person enters unfamiliar life territory – starting at a new job or school, forming a new relationship, moving to another country – he or she begins to build a mental representation of that territory, in order to gain navigational skill. The formation of that representation, or map, is, in its early phases, like the formation of the land itself, when the earth is still new. Change is rapid and massive. Mountains are thrown up, chasms open, glaciers tear new valleys, seas burn away. As time passes, these violent, prolific events subside. The land settles, falls under the plow, and the great formations are replaced by sharply demarcated fields, changes to the boundaries and features of which happen not through natural cataclysm, but through the workings of commerce and law.

All the participants in this study believed that their ways of making decisions served them well and that they made many more right ones than wrong ones. There was a concomitant tendency among those participants whose decision-making style was closer to one end of the cognitive continuum to feel that those nearer the opposite end were

prone to judgmental error because of it. This is particularly true of those whose tasks or temperament are strongly analytical.

It's difficult to get people to be analytical and... uh... actually take a step back when they're putting their documentation together or considering a given situation.

Especially in CPS, I think, it's easy to forget that you're dealing with an entire system and not just an alleged victim. And the way that you go about your investigation can either aid your ability to get the information or preclude you from getting it. If you alienate everybody at the beginning of that investigation by rescuing the victim, then you're not likely to get enough information to make sound decisions. If you have to have some respect for that... the entire system you're dealing with, and I think many don't.

The speaker here is Victor, who works in the ombudsman office of TDPRS, CPS' parent agency. He reviews, and often reverses, investigation findings from all over the state, when designated perpetrators appeal "reason-to-believe" findings against them. He regrets not being able to support conclusions reached at the local level, but he is often prevented from doing so by what he considers to be inadequacies in the investigation. These inadequacies stem, in Victor's view, from investigators' becoming so committed to achieving a certain outcome in a case that they pay insufficient attention to investigative procedure. One can imagine the outrage an investigator might feel over Victor's contention that premature rescue of a child can forestall comprehensive evidence collection, but in fact, Victor, too, is aimed at having the case reach a successful conclusion. The rescue he is deploring will only be temporary if the reasons for it are later shown to be faulty. For him, punctilious adherence to policy is the only way to achieve the desired outcome, and the more purely utilitarian view he believes some investigators have, which allows them to select means to achieve ends, and which can conceive of policy not as a necessary condition for success, but as a possible hindrance to it, is short-sighted and morally objectionable. Victor embraces a rule-based

ethic, in which all good follows from correct process and nothing good ever follows from violating it. Also, he clearly sees his primary ethical obligation as an agency decision maker is to the agency itself. What is good for the agency will also be good for its clients and their families. Though he does not say so explicitly, Victor seems to believe that the investigators whose findings he must overturn, who do not respect the system, are instead feeling an obligation to themselves, to their sense of right and wrong, to their self-image as heroic rescuers, and to their private notion of truth. His own values call for individual desires to be subordinated to the good of the whole.

Nancy is a CPS attorney who worked as an investigator and supervisor before she went to law school. She complains that the tendency of many investigators to form broad, intuitive judgments about families often keeps them from thinking in terms of the *evidence* that she and other agency attorneys must produce to get judges to issue protective orders:

In training we try to tell them don't use conclusory words, like, you know, uh... that the parent was "in a stupor." Say, you know, "Their eyes were glazed over. They couldn't seem to talk. They didn't seem to have focus." Or, you know, describe... you know, the filth. "The filth is on the floor in the kitchen, the roaches and the rats and... you know." If you are specific and give that information, you may *have* the evidence that you think you do.

Nancy says she has had great difficulty in getting front-line staff to see her point. "It seems," she says, "like you go... we go over it and over it and over it and it's really difficult to... to, for caseworkers, it seems like, to understand."

We had one training, for instance, where they were saying the mother had... uh... I think it was the child was alleged to have been sexual abused, and... sexually abused, and so... uh... we were doing sort of some mock questioning to the caseworkers, and we were trying to get... The question was, they were trying to say

that the mother... There were things about the mother that were consistent with her being the parent of a sexually abused child. And so we were saying, "What... Tell us how, with this mother, how... What things and dynamics in the family indicated to you...?" And they would say, "The mother has poor self-esteem." And so we're like, "Okay, does every mother whose... has poor self-esteem, does that indicate to you that there might be sexual abuse in their family?" You know. And they just... they would just say these things that were sort of like... global social work statements that... that were, you know... that *I* know they really do mean something, and I believe they probably are exactly right in what they're saying, and they know what they're talking about, but they can't explain it in a way that makes sense to someone who's not a social worker, particularly, you know, within the legal system. It's like you can't say that, you know, mother is low... has low self-esteem and, I don't know, has an alcohol problem or something. So that leads me to think her child's been sexually abused. It just doesn't go there.

A psychiatrist or psychologist, Nancy says, might be able to get away with testifying that a person has low self-esteem, even if this were no more than an impression, but a social worker cannot. Like Victor, Nancy freely admits that intuition can be a valuable aid to investigation. Victor says "gut feelings" are tools that investigators "have to use." And while Nancy sees some benefit in the increased prescriptiveness of policy and documentation that CPS has imposed on investigators since she was in the field, she sees, too, that nowadays "system can drive the case more than the social work skills and abilities sometimes." Intuition can be sufficient grounds for investigation judgments, in other words – who to talk to next, whether a person is telling the truth or not, what documents to check – but not for final judgments, especially ones that have significant impact on people's lives. To be credible and persuasive in court, investigators have to portray themselves as systematic decision makers. It has to be apparent that during an investigation the processes of evidence collection, analysis, and judgment were sequential and discrete. Analytic decision makers find it easy to work backwards from

any conclusion they reached and say what evidence and what inferences led to it. Intuitive decision makers, though, do not so much make judgments as feel them, and they are often not able to give a good account of their origins. Consequently, they may find it difficult to refute a claim that their judgments come, at least in part, from emotion or bias. But we were *there*, they answer. We saw. Front-line employees consider it unfair that truth they capture from being on the scene should be devalued because they lack the right sort of degree. They would also remind their analytic superiors that the costs of *not* acting on a perception of risk, however one came by it, can also be high. Gretchen, an investigator with three years on the job, describes how an intuition she had in one case made her aware of, and prompted her to act upon, an abusive situation:

Sometimes if there's a certain amount... well, you just *know*. There's a little bit of a gut instinct, you just *know* something's the matter. You have no injury, you have little things, like going to visits, somebody's home, and all the lights are out in the middle of the day, and it's just pitch black inside. There's no TV on, but there's two people wide-awake in the house. And you're just... you know, you just kind... You're thinking, "That's just not how normal people sit around... during the day. What's going on?" Um... and this was a child who had spina bifida and was a medical neglect. Mom just was not meeting his needs. Um... and I just knew... I mean, and she was...she looked... she and her boyfriend were sitting around in the dark. That... and she had a negative UA [urinalysis], so I didn't have drugs, and we had no allegations of previous drug use. She didn't have any history, and neither did the boyfriend. And I was just... I could simply not figure that out. But I knew something was just deeply, deeply... the matter. It was a 9-year-old kid who should have been able to take care of his, his disease a little bit better than he was. And mom should have been able to take care of his disease, for as long as they'd been dealing with it. And... um... we were able... and I remember really fighting for that... we were able to eventually remove on a medical... neglect. And we took him *and* his brother, um, and I really fought with the D.A. on taking the brother. And we

had the kids in care for... for a while, and they started feeling safe and they started talking – they were being sexually abused in the house by both parents.

The judgment Gretchen describes herself making about the people sitting in the dark is certainly far along the continuum from Victor's position as he described it above. Gretchen displays all the qualities he lamented – a prizing of her own perceptions above what was revealed through prescribed method, a utilitarian justification of actions by their results rather than their conformity to a set of rules, and lack of identification with the system as a whole. Had she been without those qualities, however, she would have closed the case, and the abuse of the second child would have continued.

I asked Gretchen if she ever found out what the parents were doing sitting in the house without lights on, and she said she never did:

If I were investigating *now*... That's... cause I'd only been working for about three or four months when that happened. I just...I was... I remember being intimidated as hell, walking into that situation and just thinking, "This is weird," but not being able to say anything. If I were to go out on an investigation now and walk into a house like that, I would say, "What the hell are y'all doing sitting in the dark?"

Analysis is the application of a method or model to a situation. A single analytic judgment later proven either right or wrong does not by itself validate or invalidate the particular method used. Only a series of trials can establish efficacy. If 90 out of a hundred judgments made using a particular technique are accurate, the technique may be considered sound despite the ten misses. Intuition is, and is felt to be, the application of oneself. All the decision maker's experiences, emotions, and beliefs are at least available to the process. Since intuitive judgment is rendered whole, often in a single flash of insight, the decision maker often has no awareness of all, or even any, of the decision's inputs or processes. Whatever the nature of these, however, they are indisputably one's own, and the judgment is necessarily expressive of one's general worth in this sphere of

activity. An intuition proven right is personal vindication. One proven wrong demonstrates personal fault, in perceptiveness, in understanding, or in both.

Helen, an experienced investigator, suffered the disaster CPS investigators fear most, the death, by abuse, of a children on their caseloads. Helen had investigated an abuse allegation involving an eight-year-old child whose behavior had suggested she was being abused in some way, but who would never admit that anyone had hurt her, never made what in CPS is called an *outcry*. Without it, and without physical evidence, which was also lacking, Helen had no choice but to close the case. Some months later the child's father beat her to death. Helen describes the effect this had on her:

When I heard about that, it just took me as shock, cause I was thinking, "God, a kid on my case... just died." And... it kind of made me second-guess myself at that time. And I had been doing this for seven years by that time. And it was like, "Wait a minute. What did I miss? What could I have missed?"

I used to not ask so many questions. I was kind of like, "Okay, yeah." You know, I'd ask the normal little questions, but now I find myself digging deeper, and asking a lot, lot, lot more questions, questions they probably wouldn't even think you would ask.

I have to make a list to say, "Okay, when I get out here [...] make sure I ask this, cause you got so many things running through your mind, you'll forget, so while I'm on the spot I want to make sure... I ask this one specific thing from this case, cause... that could make a big difference.

I'm a little bit more systematic... just trying to get a little bit more. And starting to dig a little bit more, being a little bit more complex, instead of just looking at the top problem. I kind of get all of 'em now.

Helen, as we'll see later in this chapter, remains a highly intuitive decision maker. But the child's death has caused her to lose some of the confidence in her intuition that she had formerly. She is trying to compensate for what she now considers the

inadequacies of her former methods, by adopting some of the tools of systematic decision making. She no longer relies on her intuition to tell her what questions to ask; she makes lists.

Pauline, a policy writer who has worked as an investigator, supervisor, and trainer, says she used to tell her students about a friend of hers named Vera who was assigned a case of a ten-month-old child on whom someone had seen bruises:

Vera went to this house, knocked on the door; it was eight o'clock in the morning. This very well-dressed, very articulate, friendly woman answered the door. And Vera identified herself as being with CPS. The woman said, "Vera, I appreciate you trying to do your job. I just got a new job. I've got to be there at 8:15 or I'm going to lose my job. Can you please meet me back here tonight at 5:30?" And Vera said, "Okay." And she walked away, and then the next day she went back, or that evening, whenever they had agreed to a meet, she went back to the house and the client wasn't there. And so Vera just kind of...you know, we get so many cases that she kind of put it on the back burner. And a couple weeks later somebody calls law enforcement because there's this horrible stench coming out of the house, and law enforcement responds, and they find this infant had been murdered and was in the house. The... the dead body was in the house.

Louise, another experienced investigator, tells of a case she had in which the allegation was risk to a small child because of possible violence of the father toward the mother, both of whom were Haitian. Louise investigated, found no cause to remove or impose services, and closed the case. A short time later the father took the child to Haiti and murdered her in front of his wife's family. Like Pauline's friend, Vera, Louise felt she had been fooled by the father's appearance of respectability. "I can still see him sitting in this chair," she said, indicating the one next to me in her office, "legs crossed, business suit, using these big words, and saying everything I needed to hear." Like

Helen, Louise says she was crushed by the incident and blamed herself for being so taken in.

These terrible failures to see past appearances, to recognize the hidden danger, and prevent children's deaths naturally haunt everyone who had anything to do with them. The investigators and their supervisors try hard to learn the lesson – that appearances can be deceiving, that intuitions come from within as well as without – and commemorate the dead with permanent changes in the way they think about investigation and their abilities. Nevertheless, none of the participants in this study, even those who had suffered calamities, and even the administrators who are strongly conscious of the judgment errors caused by false intuitions, felt that intuition did not or should not form a significant part of the investigative process. They feel that no systematic method of investigation can do justice to the subtlety and complexity of even the simplest family situation. Investigation, done conscientiously, *requires* the application of one's whole self, fallible though it is. To shut down one's receptivity to impressions and insight in order to avoid error would be to close oneself off from sources of information that can save children's lives, and often do.

Asked what separates good investigators from average ones, Gretchen, whose parents-sitting-in-the-dark story we heard above, says:

I think it just... there's... um... a skill at being able to pick up the small details, of being able to, one, recognize when something... to... I think it has to do with trusting yourself. Something doesn't sound right; it doesn't jog right. Whereas somebody else might just, "Oh, that must be just me... seeing that." And not really... If something, when you're in investigations, if something doesn't seem right, find out why. If the explanation doesn't quite jibe, if you just have that funny feeling, then look into it. Just don't dismiss it.

Leo, whose generally more analytic style of investigation we'll explore in the next section, also says intuition is what distinguishes good investigators. He defines intuition as "a certain ability to kind of connect with people and get a sense of what's going on."

He adds:

I have a real inquisitive mind in terms of, you know, taking guesses and hunches and following through with those. And nine times out of ten I've been pretty right.

Well, maybe not nine, but seven or eight out of ten, I've been pretty... pretty close.

Pauline, whose friend Vera walked away from the house in which a child was later found dead, told that story to new investigators as a warning about the power of assumptions to mislead. She never meant it to deter them from heeding their intuitions. She says she would say to them, "You got to pay attention to those subjective things, those things that you're sensing." They not only light the path of investigation, they can also keep investigators themselves from harm in the dangerous situations they have to go into. In a phrase I've borrowed for the title of this dissertation, Pauline says the more experience investigators acquire, the more "disciplined" their intuition becomes. For Hogarth (2001), intuition is the result of unconscious learning within a particular knowledge domain. He has argued that intuition can be "educated," or improved, if learning environments are organized such that the feedback it provides is unambiguous, reliably rewarding good performance and negatively reinforcing bad. By this view, intuition is disciplined, or trained, by definition, however unschooled it feels in contrast to the methods of analysis. The disciplining Pauline describes may be seen as the attainment of expertise in what was really a rational, and deliberative process from the beginning.

Carmen, a supervisor, speaks, quite respectfully, about the differences she sees between her sensibility, as one who is every day immersed in the details of casework, and that of administrators like Victor and Nancy:

The program directors, the regional directors, they're *completely* out of the field.

They are completely, and there is a completely different chain... or...or thought

process that goes into doing their job than doing a supervisor's job. Um... their job is to make sure that *we're* doing our jobs... You know? And they kind of forget how tough it is. Um... but their thought processes... you have to (laughs)... um...you have to... um... remind them about people not wanting to be cooperative in the field. Um... you have to remind them that we're looking at it from a totally different perspective...

Carmen's belief that those in higher positions, whose mental map of the CPS landscape may once have been like hers, heavily marked for hazards and unknowns, have naturally and necessarily lost their field perspective from lack of use. Their tasks are different now, and their sensibilities have changed in adapting to them. Carmen seems to be trying not to be pejorative about these differences, but implicit in her remarks is a sense that the administrators' maps have become artificial to some degree and no longer reflect the realities of the landscape. "You have to remind them," she says.

The "reminding" Carmen speaks of is both mutual and pervasive. In CPS decision making, intuitive and systematic forms of judgment constantly remind one another of what they are missing and what they are getting wrong. This happens up and down in the hierarchy and across functions within the organization. It also happens within cases and within individual decision makers.

Reliance upon and Resistance to Narrative

The intuitive and analytic domains of the cognitive continuum correspond to Bruner's two modes of thought (1986), the narrative and the paradigmatic. Paradigmatic thought is logical and scientific. It proceeds by categorization and is aimed at finding general causes. Narrative thought is particular; it is concerned with specific action taken by a specific person, the intentions that led to the action, and the consequences that follow. Though both modes deliberate chains of cause and effect and have explanatory power, they are "irreducible to one another" (Bruner, 1986, p. 11). In no instance may a

categorical proposition be fully rendered as a narrative, and no narrative may be fully rendered as a categorical proposition. Though the cognitive continuum rejects a sharp demarcation between the functions of intuition and analysis, it recognizes that one may predominate, depending upon the nature of the particular decision task. In the same way, the narrative mode of thought may predominate with certain persons traveling over a certain portion of the judgment landscape.

Pennington and Hastie (1988, 1993a, 1993b) have demonstrated the narrative character of mental representations jurors create to absorb and understand the evidence presented in a trial. Analysis of interviews with “mock” jurors who reviewed evidence from a real trial showed that their mental representations combined trial evidence with inferences about that evidence (actions, motives, mental states) in a story structure. A juror’s particular story structure determined his or her verdict.

After viewing a videotaped trial “mock” jurors were asked to say whether each of a set of utterances characterized evidence that had been presented. Included among statements that correctly represented evidence were inferences about the evidence that had not been presented. Participants were more likely to identify as evidence those statements, both evidentiary and inferential, that supported their own verdict. They were also less likely to identify as evidence those accurate statements about the trial evidence that did not support their own verdicts. “Mock” jurors were more likely favor presentations of evidence in chronological story form over evidence presented in random order or that displayed thematic organization.

Pennington and Hastie conclude from this body of research that story construction is the primary cognitive means of organizing and comprehending trial evidence. The materials used to compose the story are the evidence presented at the trial, the jurors’ own knowledge about similar kinds of events, and their sense of what makes a good, complete story. Four “certainty principles,” adapted from Thagard’s theory of explanatory coherence (1989), are applied to determine whether a given story should be accepted as true. These are:

- Coverage – the story’s ability to account for the totality of evidence

- coherence – the extent to which a story avoids self-contradiction (consistency), accords with one’s knowledge of the world (plausibility), and has no significant omissions (completeness)
- uniqueness – the degree to which a particular story has coherence and coverage in comparison to its possible competitors. Uniqueness governs how much confidence the juror feels in a given story.
- goodness-of-fit -- the extent to which the story fits the verdict category, the findings necessary to reach a particular outcome (e.g., that premeditation was a factor in a murder, which would be necessary for a guilty verdict in capital murder)

Stories are organized into units, or episodes, each of which begins with an initiating event, which causes the persons involved to exhibit psychological responses, to form goals, and take actions that lead to certain consequences. A story may be considered a “hierarchy of episodes,” at the top of which is the central account of “what happened.”

The fitting of presented evidence into story frames is, by Pennington and Hastie’s description, a spontaneous, even involuntary process. To what extent the juror can control, direct, or modify it is unclear. It is at least possible that in this process, the juror is at the mercy of cultural templates, received assumptions, and personal bias. In other words, there is no accounting in this theory for greater or lesser degrees of accuracy in story construction, or story mapping, and no criteria for conscientiousness in the process.

Pennington and Hastie have also examined (1993a) the logical tools jurors use to make meaningful inferences from the raw data presented in the trial. Borrowing a logical calculus developed for simulating plausible human reasoning in computer programs, Pennington and Hastie described the basic inferential forms in story construction:

- deduction, which maps properties of a set onto a subset (All men are mortal. Socrates is a man. Therefore Socrates is mortal.)
- analogy, which maps properties from one set onto a similar set (They say frog meat tastes like chicken. Chicken is good. I will probably like frog meat.)

- induction, which maps properties of subsets onto other subsets of the same set (The Yankees have a very high winning percentage in World Series games. They are in the World Series. They will probably win.)
- abduction, which maps a subset with the same property as a set into the set (Intelligent people use big words. Murphy uses big words. Murphy may be intelligent.)

Each operation may take a spatial or a temporal form. Each may be used to make positive or negative attributions. Also, there are these operations:

- attribution, which asserts a causal relationship when all properties of a given subset are present
- alternative, which rejects one of two causes as unlikely when the other is known to be true
- contradiction, which rules out one of two mutually contradictory causes or properties as false

Together these operations, in different combinations, account for the great majority of reasoning found in a first person account of deliberation by a juror. In particular, Pennington and Hastie found that reasoning by negation, contradiction, and negative deduction was surprisingly common, as was reasoning by analogy from one's own behavior. Also there was frequent rejection of alternative causes and conditions.

Though Pennington and Hastie do not evaluate the quality of juror reasoning, many of the inferences they identify in their participants' reasoning are blatantly fallacious: "Asthma is associated with nervous problems. Johnson has asthma. Johnson has nervous problems" (Pennington and Hastie, 1993a, p. 147). "If someone were going to fight with me, I wouldn't want to go anywhere near them. Johnson is like me. If someone were going to fight with Johnson, he wouldn't want to go anywhere near them" (Pennington and Hastie, 1993a, p. 148). Once again, the problem of accuracy in product and conscientiousness in process is left unresolved.

Bennett (1997) has also described how stories function as tools with which jurors in criminal trials can understand a complex mass of evidence. His account differs from

Pennington and Hastie's in that he links the telling and hearing of stories to the basic structures of cognition, called frames or scripts by cognitive scientists, rather than to elements of logic. Within these structures associations are formed among the facts of a given case, the background information needed to make sense of the facts, and the social context within which the interpretation is taking place.

Bennett identifies three basic interpretive tasks a juror must perform when faced with trial evidence. First, the juror must determine the central action, the key event around which the evidence revolves. Second, the juror must determine the relationships among the various elements of the evidence as they bear upon the central incident. Finally, the juror must decide whether the symbolic elements surrounding the central action cohere, are complete and fully explanatory.

A story sets up connections among the elements of a case. Where an element seems to be missing, it may be supplied empirically, by other factual evidence. It may also be supplied through logic, or one's sense of language and of how the world works, or even an aesthetic sense of what symbolic relations are most pleasing:

The very process of building an interpretation by working back and forth among the three cognitive operations and testing the result both against the other side's story and against the standard contained in the generic frames of reference is what we mean ordinarily by being objective and fair. (Bennett, 1997, p. 96).

Bennett's account of narrative construction appears to be a more active and conscious process than that of Pennington and Hastie. An evaluator of evidence proceeds by trial and error, forming and testing hypotheses until a satisfying match of content to form is found.

Toward the beginning of each investigator interview I did, I asked the participant to tell me a story about a case they had had that was difficult to decide. Louise, an experienced investigator with a law enforcement background, told me about one that was still open:

I have one that I've been working for a while, and there were allegations that a mother was poisoning, or attempting to poison the child with arsenic... and the child was... um... tested, and it was determined that her arsenic... that the level of arsenic in her body was extremely high.

I: Where had the report come from?

Medical doctor. Um... and when I saw it, it frightened me, you know? It's like, okay, I see about this stuff on TV, but...

I: Yeah.

... to actually have to deal with something like... I mean, *arsenic*, you know... And so... um... my first thing was, okay, this mom is a bad mom, but after talking and interviewing, and... and... Mom had a criminal history background. She was dealing with depression and drugs and she had a couple of DWIs, and I said, "Well, maybe she is doing this," you know? And after really talking to her and talking to other references... um... I found that out it was not the case, that she was not doing this, and the way it w... the case presented to me was she was the only one that could have done this. She was the only one that had access to it...

I: Had you had this case from the beginning, or did you take it over...

From the beginning.

I: From the beginning. Had somebody other than the doctor actually... suspicions? I mean it was just...just the...

No, that.... The child was living with her father and stepmother, and the child was sick. Normal flu symptoms – cold, uh, cold symptoms. Vomiting, diarrhea, nausea, stuff like... just normal symptoms of a flu or a cold or a virus or something going on. And ironically the stepmom... um... told the doctor, "Well, check for arsenic." And the doctor did, and that's when we determined that the level was very high. Fortunately for the child and for our agency... um... after going through and... and dealing with it and reading doctor's reports and talking to people... um... the case was "ruled out," that.... It... arsenic, or this particular arsenic in the child's

body was not... um... enough, or was not a concern for anybody to think that anybody was trying to hurt or deliberately harm this child, and there was so many factors that could have come from this, such as sea food, some drinking waters contain it... so many... um... ways that arsenic can, can be... The father... um... or... owns... um... properties that have been in the newspaper for rat, rat infestation, and so the child could have gotten to it. I mean, it was pesticides and insecticides in the home...

I: Yeah, but what made the stepmom ask the doc...

That was *my* concern. You say, "Okay, test for... uh... what is it?... E choli... or something like that..."

I: Yeah, yeah.

And never test for arsenic, and that was my...

I: Unless it comes at the end of a long list of other stuff.

Right, okay, and... um... her reason, 'cause that... I was really focused on that...

I: Yeah.

And... and this was a custody battle kind of sort of thing.

I: Sure, sure. And you could envision a scenario where she'd give 'em a little bit to frame the real mom.

Exactly, and that's what I was thinking, and so we really... um... get into that... Law enforcement didn't see enough... because there was not enough substantial harm or risk to the child, but um... to this day, I'm still really concerned. Why would she say, "Test for arsenic"?

I: Yeah. Yeah.

And her reasoning for it... 'cause I asked the doctor, "Well, how did she say it without... bringing suspicion? You know, how did this come up? And she said she was concerned, too, she said, but the... she said that the stepmom mentioned that she had done some work... uh... as a dietician, and... how that, yeah... how that comes about I don't know, but she said that she had read about it or heard about it..."

I: Well, I mean, I guess, I guess... I guess a dietician needs to know if you

accidentally give somebody some arsenic, what to look for... That's weird.

It was really weird

I: That is weird. That's a weird story. What kind of vibes did you get from the... from the different people involved in the case?

Um... again... all the fingers were pointing at this mother.

I: Because of her history?

Uh-huh, her history, and... um... a judge had actually taken the child from her because of her history and given them to the father. Um...

I: What did you say it was? Depression? And what else?

Yes, she had just recently lost her mom, and she turned to popping pills and drinking and... On one, or maybe two occasions she would drive under the influence with the children in the car, and so... that wasn't good. Couple of times she'd be out in public high and intoxicated and that's what... Then, of course, she's on probation for... um... the... you know, that type of scenario. But, you know, the whole time my eye... or my focus was on this stepmom, you know. Why, and you know, it still bothers me today. Why? That question is still there. Why ask for arsenic? I'm going to work very closely with the Travis County deputy. And... um...

I: Is this case still open?

No, he closed his case, as well. Because again, there was not enough. The toxologist from the Medical Examiner's office said that it... it just wasn't enough. And then the doctor, the primary care physician, put the child in the hospital and ran tests, and eventually it went out, and it's not coming back, and so... It was just basically determined as a one-time thing. Needless to say... um... good thing came out of it. The children were returned to the mom. Um... she'd gotten her life together.

I: Good.

And see, the ironic thing was mom had supervised visitation at Kid's Exchange. So she couldn't do it at home. She had to do it at Kid's Exchange, where the visitation is documented by someone who's... supervises the visits, and any... you

can't... Once you come in, you can't go out int... You know, if she says, "I'm hungry," and they go out and get hamburgers at McDonald's, they can't do that. Once they're in this room, visitation, you stay there. And the supervisor who's there shares in the food, as well. So... And I didn't also tell you that there were twin girls. Six year-old girls. Twins.

I: Twins.

And only the one was... um... sick with that.

I: That's a very strange case. And what possible motive could anybody suggest for her wanting to – the mom, I mean, for her wanting to do this? None?

None. None whatsoever.

Louise has told here a good investigation story and told it artfully. She refrained from divulging the key question in the case until it jumped out of *my* mouth. I got caught up in the narrative, forgot my listening role, and participated with her in a conversational effort to make her narrative attain full form and reach a satisfying conclusion. That goal eluded us, but the chase was momentarily exhilarating. All narrative activity, according to Ochs and Capps (2001), is “a tool for collaboratively reflecting upon specific situations and their place in the general scheme of life” (p. 2), and investigation narratives would seem to bring this function into sharp relief.

Typical of investigation stories, Louise's actually has two narratives in it. The narrative on the surface, the story's *process narrative*, is epistemological and existential. Its subject, or *fabula*, to use the formalist term, is, of course, the investigation itself. Its chronology is not that of the events that are the subject of the investigation, but that of her discovery of them. We hear first about the allegation, then about her interviewing, fact gathering, and evidence analysis, and theorizing. This structure is instantly familiar, of course, to readers of detective novels. Told from the investigator's point of view, they generally start with the discovery of a crime, wind their way through the hunting and analysis of clues to end just as Louise wishes hers could, with a revelation, one that

answers a crucial who, what, how, or why question, ties up the loose ends, and gives the reader a satisfying sense of seeing through to the truth.

The purpose of the process narrative is, of course, the construction of an ontological or essential *fact narrative*, one that orders and makes comprehensible all the elements of *its* fabula -- the actions, thoughts, and desires of the people in the case. This is, or aims at being, the story of what really happened. The fact narrative is thus embedded in the process narrative. Bal (1997) has identified several relationships that can exist between a primary and an embedded narrative. The embedded narrative may reflect, explain, or interfere with the primary narrative. Either one may control the other. On the one hand, the sought-after fact narrative would appear to be determinative for the investigation story as a whole. It is necessarily prior to the process narrative and furnishes its substance and impetus. The process narrative would seem limited to being a description of how and in what order the pieces of the fact narrative come together. It is the process narrative, though, that brings, or fails to bring, those pieces of the fact narrative together. The selective powers of that activity Geertz (1983) calls “imagining the real,” are absolute, yet it feels nothing so much as constraint. The process narrative never becomes complacent in the constitutive license it really has, but labors under an oppressive, almost filial sense of obligation to an idea of truth. The idea of truth, of course, has very worldly origins in a slowly developed sense of what others, particularly powerful others, agree upon, yet it is never identical with that and never quite loses its Platonic, otherworldly nimbus. The process and fact narratives generate one another and also frustrate one another as they try to reach satisfying ends. Though both have their own plots, characters, settings, and moods, neither can exist independently. In Louise’s story, because the process component failed to reach its proper end, the crucial facts remain outside the door, in darkness. This, of course, is a source of frustration to investigators, but it is a frustration they learn to tolerate in honoring their obligation to the truth.

This raises the question of how investigation stories can even *be* stories when they fail to have crucial components *of* stories, when dilemmas remain unresolved and behavior unexplained.

Here is Arnold, an experienced investigator:

You know, with each case it's... it's almost like reading a different book, to be honest with you. Each case is a different story behind it. Um...each family has different circumstances. It's kind of exciting, to be honest with you, because you're reading and looking into the book and as you get past the first chapter you're moving on to the second and third and you're kind of "Okay" and as the book narrows down toward the end and you're like, "Okay. Either the family's going to make it or we're going to have to take these other steps to make sure that they make it."

I: That's interesting. Is it like the interesting thing about it is just learning about other people's lives? Or the... the... are you immediately interested in finding out the answer to the question of whether there was...

A lot of times you really don't... really, truly know the answer? So it's more or less just finding out where that family is and what's going on, what's the dynamics. Becau... I don't think you ever truly know what's going on behind the scenes. You have an idea, but I've yet to say I've had a case and I know everything about this family, you know. And I don't think you'll ever truly be able to pinpoint because it could be something that somebody's blocked out in their mind from a childhood experience that's caused them to react that way. They just can't figure it out at this point.

Arnold finds his cases satisfying as books, as stories, even though, without a single exception, they leave important questions about character and even plot permanently unanswered. Since these unknowns exist in a narrative context, however, they have a *potential* discoverability, a realizable form – those lost childhood memories, for example – that charges with signification the darkness in which they remain. We may go a step

further and say that the investigation story, partial, obscure, and forestalled as it might be, perhaps even because of those qualities, delivers in unusually pure form the hunger for meaning that is the engine of story-making generally.

Stories made from first-hand experience are the main way that features appear on an investigator's mental map of the investigative activity. Successes create roads, passes, and bridges. Failures create swamps and deserts that have to be gotten around; they can also destroy roads and bridges that have been previously built. A story need not derive from experience, however, to have such an effect. Other people's stories, if they are vivid and relevant enough, can be just as powerful as experience in shaping one's mental representation of a domain.

A striking example of how this can happen is given by Jennifer, a regional administrator. She describes how difficult it is sometimes to get new investigators to see the risk in children's environments. She goes on:

I think I've seen too many child death reports. Uh...when I was at State Office I was on the statewide child death committee. And we hear stories about children drowning... Neglect cases. Cases we never investigated for physical abuse. We went in – dirty house. And here it is a month later and that child drowned. Um... I've heard so many of those horror stories that anything like that just gets my... gets me. And it's like, "Okay, I don't want any drowned kids. I don't want any babies in the... well. [laughs] Babies in the highway: We're not going to have that."

For Jennifer, the reading of those child death cases taught her, as well, if not as painfully as personal experience could, what kinds of innocent-seeming situations can lead to a child's death. Reading the cases alone created permanent features on her mental map of the CPS landscape, and she is trying now, with her newly hired workers, to duplicate those features on their mental maps, without them, and potential future victims, having to suffer their creation through disaster.

Pauline, in a less dramatic way, describes how, when she went to supervisors'

training, she benefited most from the narratives of the other class members:

When I walked away from that class, the only thing that I felt... in... made the class rich for me was the personal stories and experiences that the other supervisors had been through. They said, "Well, this is how... Let me tell you about the mistake that *I* made." And they were open about that, and... and... I, I thought about like that that makes a lot of sense. That made more sense to me than lecturing from the curriculum.

Sarah, a supervisor, had an open case in her unit at the time I first interviewed her. It involved an 18-month-old boy who had a broken femur. He was the youngest child of six in the home, four of whom were the father's from a previous marriage. One night the whole family went out to eat. When they came home the dad and five of the children went out to the garage and only the mother and the youngest child were in the house. According to the mother, she was watching television and the child was sitting on the carpeted floor playing with a towel. She went to the kitchen for a moment and heard the child, in Sarah's words, "kind of... yell." The mother said she turned around. The child was now lying on the floor crying. She tried to console him and couldn't. The father and the other children came in from the garage, and the mother said, "I don't know what's wrong with him."

They took the child to the emergency room, and x-rays showed him to have a spiral fracture of the femur. This kind of injury, an orthopedist told Sara's investigator, could not have resulted from the child falling over. It usually results from severe twisting of the leg.

Sarah and her investigator were now in the position of having to reconcile the expert opinion of the orthopedist and the testimony of the mother, which on its own terms seemed believable, and was not contradicted by evidence from any of the other family members. Sarah said:

Everybody's story checked out, exactly... as events of the evening went. They had all gone out to eat. "Once we got home, this is that," you know, everybody... totally consistent with the events of the evening. So the only person who was in that house at the time of the injury is mom. And she's just... You know, initially it's like, "I ca... I don't know. I don't know what happened." And she says, "I... I really don't." There's no previous history on this family. There's nothing going... I mean, the children all report... I mean, there's no... there's no drugs, there's no alcohol, there's no domestic violence. The police report that they've never been called out to the home. I mean, money-wise they're both working. Financially they're able to meet all... you know, the needs about six kids. I mean, there's all those risk factors that you look at. They're not there. So you still have this child with...this injury.

Sarah is remarking here on the absence of characteristics that an abusive household would usually have. These missing elements, though, in addition to being characteristics that permit ready categorization of the family as high-risk, are motives. It is *as* motives that drug and alcohol abuse, domestic violence, and poverty have the strong categorizing power that they do, from an intuitive standpoint. Even without knowing any more about the mother than that she lived under one or more of these conditions, we would find the fact that she broke her own child's leg in a sudden act of violence less mysterious. Though the act is not fully explained by such a context, it nonetheless acquires a general and potential explicability, much as a string of bizarre-looking words acquires translatability, though not translation, once it can be assigned to a particular language. Risk conditions associate the home, the family, the mother, and the child with a loose-jointed master narrative in which those who live squalid lives do squalid things to one another.

Since, however, the usual explanatory conditions do not obtain in this case, Sarah has to forage more widely for an explanation:

I mean, I have some suspicions. I don't know that mom actually did anything. I'm

not sure. But I have, you know... of course, I have... She's... younger than dad. She's got these four other kids whose... mother was killed in a car accident, about five years ago. And then dad married her, so she took on this big responsibility of somebody else's four kids, and then they have two other kids. So you can kind of [turn around.] Well, now they've just bought this new house. You know, so now there is some financial stress probably, although they don't admit to that. You know, she's kind of the primary caretaker for six kids. You know, so then you start looking at it that way, you... Well, I don't know, maybe this child wasn't a planned pregnancy, maybe she didn't want to have. And that, though she doesn't *say* that... But you look at all that, so... I said, "Well, we're going to go ahead and open it for services, and maybe something will come."

I: These suppositions about what might be, you know, the tensions that might be there. Did these get reported to you by your worker or are these things you've wondered about just looking at the... at the...?

Just wondered about. You look at it from a different perspective from outside, and you think, "Well, okay [...] let's see. You got six kids. That's a big stress level by itself. You just moved into a new house, that... you know, yeah, you've got additional financial responsibilities. You know, so you've got all these other things. 'Course, you've got four kids that aren't *her* kids." You know, cause we look at... all the things that could... that in other cases can be a stressful... stepparents... you know, that's... obviously... [...]

... Nobody's perfect, you know? Nobody's perfect. So that makes me suspicious right there. "Well, you've got six children, four of which don't belong to you. Not that you don't love them. But you've got teenagers in the house." Three of those four are teenagers. That's just...

Here we see the question of why the mother *might* have done it taking over, for the moment, the question of *whether* she did it. There can be no story without an assignation of motive, however tentative and speculative. Without it the cognitive schema that forms

the basic structure of narrative, that of SOURCE-PATH-GOAL (Johnson, 1993), can't be brought to bear on the case's assortment of elements, since there is no proper starting point for and no path toward the culminating event, the broken leg, which, without a reason for its being desired, is prevented from being conceptualized as a goal. Motive, as Ricoeur has said (1984), is one of a set of interlocking elements that distinguish mere physical movement from human action. And O'Toole, Turbert, and Nalepka have found, in their study of theories underlying the medical understanding of child abuse, that assignment of cause and motive is a crucial part of the construct and "is particularly important in diagnosing child abuse (1983, p. 358).

Had one or two of the other family members come in from the garage a moment earlier and seen the mother grab and twist the child's leg, Sarah's interest in knowing what her motive had been would not be as keen. A reliable witness to corroborate the doctor's opinion about the injury's cause would have rocketed the case into the "reason-to-believe" class. *Whether* would have been established on its own terms and not be forced into dependence on *why*. Sarah would have no doubt much preferred to settle the case that way, and have the motive question left for wondering about in an idle moment, because the psychological discomfort of uncertainty is certainly greater when both *whether* and *why* are unsettled. Also, a settled *whether* must, perforce, have a *why* in it somewhere, even if we can't see what it is. A witness would have permitted us to consider the broken leg to have been a goal after all, even though the source and path to it remained obscure. In a way, however much, Iago-like, the mother kept silent about her motive, or even continued to deny having done it in the teeth of persuasive evidence, our sense of being deprived of our story, and thereby the sense of the event, is greatly reduced.

Sarah considers one other possible explanation for the fracture besides the mother having done it out of stress:

... We haven't finished the investigation part, but yeah, I think it's going to end up being unable to determine. I mean, at this point it's hard to say. We're... I mean

there's the other piece of it that we're suspicious, but maybe one of the older kids actually did something and the parents are covering up for them. You know, those kinds of things. Maybe there's other issues. It... So there's all these things we just don't know. I mean, although the kids are all... they're in sports, they're in... they're great... they do good in school. The older kids, I mean... We were thinking, "Well, maybe one of those kids really are jealous of the baby." You know, there's just all those... I know, it's...

Hirt and Markman (1995) did a series of experiments to determine why imagining multiple outcomes for a decision tends to reduce bias and improve decision-making accuracy. They found that consideration of a second alternative, instead of bringing about an averaging with the first, or a lowering of probability estimates for both, forced a more realistic evaluation of the first. Both outcomes are tested in a judgment heuristic of simulation. Mental models of each outcome are imaginatively "run," and probability estimates are derived from the ease with which the different scenarios permit themselves to be imagined. Sarah's consideration the different narrative strands that might ultimately be part of a coherent, compelling fact narrative can easily be characterized as the running of mental simulations that Hirt and Markman describe. Narratives lend themselves very well to this sort of heuristic, and may, in fact, be what makes it possible. They have great mental vividness, they can entertain highly complex chains of causality, and they are modular, in that one can easily switch out different pieces of it. A story's events, settings, characters, or, as with Sarah's story, motivations, can be taken out and others substituted for them. Each new story can then be rerun mentally to see if it has better coherence, coverage, uniqueness, and goodness-of-fit than previous versions had. We see here just how narrative functions as a form of rationality. It is a means of generating multiple explanatory hypotheses and, at least in a preliminary and relative way, testing them.

Klein (1998) sees mental simulation as a key feature of his recognition-primed decision-making model. He sees it not only as the means whereby decision makers under

time constraints can quickly evaluate possible courses of action, but also as explaining the use of stories as a decision-making tool. Stories, for Klein, are “packages of different causal relationships” (Klein, 1998, p. 181). A finished one is like a report of an experiment, conveying the result of certain actions taken under certain conditions, and so becomes a repository for procedural knowledge. A story still under construction is still working its way toward knowledge, arranging and rearranging a changing set of elements, using, as a principle of choice, a sense of “storyness” distilled from the vast library of finished stories in memory.

A primary function of narrative, says Bruner (1986) is the *subjunctification* of reality, in the sense of postulating actions not as accomplished facts, but as contingent and hypothetical possibilities. Moreover, the possibilities are generally not created by random events impinging upon the story’s characters, but by different combinations of their desires, purposes, fears, and other features of their subjectivity. Sarah uses narrative to subjunctify the case facts and consider various possible affective and motivational links among them.

An interesting feature of her effort to find the story in this case is that it never takes up the doctor’s claim that the fracture could not have been accidental. She never considers the possibility, for example, that he was feeling so much stress over smaller Medicaid reimbursements, pressure from his HMO to see more patients, and rising malpractice insurance premiums that he misread the x-ray. There is, of course, no evidence to suggest that any such error occurred, and the likelihood of it is so small that launching a trial narrative in that direction would seem merely fanciful. Sarah’s acceptance, however, of the doctor’s opinion as foundational, rather than as testimony on the same footing with other testimony, is typical of the attitudes of participants in this study. CPS decision making relies heavily on expert opinion, to assess injury, to determine the credibility of child victims, to identify and quantify developmental damage, to profile accused perpetrators, and generally bring clarity and resolution. Disagreement between two experts in a case provokes a decision-making crisis for CPS in a way that other evidentiary conflicts seldom do. Since the disagreement has more or

less dethroned expertise within the boundaries of the particular case, a third opinion would hardly solve the problem, unless it were of a much higher order of magnitude than the first two. Such cases become the subject of interdisciplinary conferences, with regional administrators and the disagreeing experts in attendance. Should the experts continue to disagree, and the anchor chain not be mended, the case must be taken up the decision-making hierarchy, and bureaucratic authority must reluctantly substitute for that of expertise. I say reluctantly because, as I will in explain the next section of this chapter, people in CPS are comfortable wielding power only as they can think of it as being authorized by something other than the state. In addition to the principles of children being safe and families needing to stay together, the aims and institutions of medicine, and, by extension, psychology, are seen as providing just cause for CPS' power to intervene. To be deprived, even for one case, of ringing, confident clinical justification brings a sense of exposure.

Though Sarah searched for a story to help her make sense of her case, none of the narrative possibilities she came up with seemed especially compelling, and she had no thought of trying to prove one or another of them. In the following narrative, told by Melissa, an investigator with less than a year on the job, a fact narrative rises up out of the evidence that not only compels her belief, but rouses her to try and establish its truth:

I have a child death case right now that I'm working on, and I finally just... um... called... um... the investigator that I'm working with in the criminal side and said, um... "I know what you've ruled, and I know what the autopsy shows, but I have to tell you what I feel inside, because God forbid, something come... something like this happen in five years and I didn't tell someone how I honestly felt." And... um... he said, "Okay, just let me know what you're feeling." I said, and I told him, "I really feel like there was some criminal intent here, and I really feel like mom did something wrong."

I: What was the... how did the child die?

Um... four month old child died... um... of SIDS. That's what the autopsy report

ruled. Um... when I interviewed the mother the very next morning, she did not cry. She has not cried. I've been to her home several times and she's never cried. She was just real indifferent. And I'm a mother, and I know people do not react in the same way to... uh... trauma, and I know that there's the honeymoon period, but... w.... having a child and bearing a child, the love that is there is, it just incredible, and I think you would have to drug me to get me to talk to someone about my child dying. And I just think the situations... She was very defensive toward me. I asked her if she worked. She said, "I've been pregnant for two years. What do you think?" Uh... I asked her to tell me what had happened that day, before the child died, and, you know, she hasn't worked, she's not from this area, doesn't have a real support system as far as family and friends, has been on Prozac for postpartum depression from her first child. Um... Dad gets home from work. Dad works seven days a week. They're young. She's 19. They get home... he gets home from work. They go to HEB... um... buy some groceries that she has to prepare. She prepares the meal. They eat, and then he leaves to go... um... spend some time with his friends that evening, and she stays with the fussy children. Well, she doesn't know what happened. She just went in there to check on him, and he was dead, he was not breathing. Well, she told me he was blue. The neigh... When I talked to the neighbor, the landlord who gave the child CPR, he said the child was not blue. I said, "Are you certain?" He said, "I held the baby in my hands. He was not blue." So that leads me to believe she's trying to tell me that the child was dead for a while because he was lacking oxygen. But when I talked to the neighbor, he's telling me that that child was not dead for a long time, because he was not blue. So, I don't know why she would want me to think that. I don't know what... what's going on, but I just... Her behavior, her indifference, her not crying or showing any kind of grief, kind of almost acting as though she's relieved. Then I pull... I get criminal history and I talk to her doctors. That same month, ten days prior to his death, that baby was in the ER for a swollen elbow. A four month-old with a swollen elbow. Mom says that she's the sole caregiver, was home with the child alone, doesn't know... didn't witness any trauma. How does a

four month-old get a swollen elbow? They did X-rays, and there was no... no evidence of any... no bruising... But I still don't know how a four month-old gets this bruised... a bruised elbow. That just doesn't happen. It's... that's just too close... together. I've... I feel like... s... some...you know, it just takes a minute.

[I put my hand over my nose and mouth.]

Right.

I: I put my hand over my face.

Yeah, yeah, and..

I: So where does it stand now?

Well, the autopsy report said SIDS.

I: Right.

So basically, you know, that was the cause of death.

I: But SIDS isn't a... isn't actually a positive finding. I mean, they don't...

Right. That means they...

I: There's nothing they... That means they don't know.

Right. And I talked to the detective, and he didn't see any kind of criminal intent. But after I told him what I honestly felt... um... he felt... he felt funny as well. So I don't know if he's going to reopen the case. But I've already been e-mailed several times about why isn't my child death closed? And I just want to e-mail 'em back and say because I've... I'm worried about this situation, and there's another child in the home. That's why, you know.

I: In terms of your testing procedure, what test could you still do, on her or the family? [Earlier in the interview Melissa had described her investigative method as a kind of "testing" procedure. She formulated hypotheses, which she would then test with further investigation or with surprise home visits.]

Well, I want to talk to her regular doctor, and find out... I did talk to the doctor who... um... worked on the baby when it was in the ER that one day? And he could not believe that that baby was dead. He was in awe. And... but I want to talk to... See, she gave me the name of the doctor in this area, who said... she said put her on

Prozac. That is not correct. When I talked to that doctor and got her medical records from him, he... she talked to him about what she was feeling, and he said, "You need to go to your doctor in Austin." So there's a doctor she did not tell me about. So I would like to talk to him and find out exactly what are some side effects of that depression that she was going through, that postpartum. I'm just seeing overwhelmed... you know, not working for two years, sole caretaker, no support system, postpartum depression, and irritable children, financial constraints...

I: Her husband's out drinking.

Yeah, yeah. You know, and this mom being really indifferent and not shedding one tear. I just really have some issues with that.

Melissa's story search is similar to Sarah's. It takes up the question of motive in the same way and attaches in the same way to the idea of stress: A very young stay-at-home mother has a husband who works long hours. She feels overwhelmed and takes an anti-depressant, but the feelings of loneliness, frustration, and despair continue to grow. One day she grabs the baby too roughly and bruises his elbow. A short time later, when her husband is out with his friends, she decides she can't stand it any longer and suffocates the baby in his crib. The police have not prosecuted because the autopsy produced no physical evidence that the child's death was caused by foul play. Also, presumably, they were satisfied with the mother's account of how she discovered the child not breathing. The possibility that the mother murdered the child surely occurred to them, but without evidence, it could become nothing more. Melissa, though, has three reasons for believing the story to be true. First, the mother said the baby was blue when she went to check on him and a neighbor who came in when she called for help said he wasn't. Second, the baby had had a suspicious injury ten days before. Third, the mother didn't cry when Melissa interviewed her. This last reason seems most important to Melissa. It's the first one she cites, and she repeats it again at the end by way of summation: "... this mom being really indifferent and not shedding one tear. I just really have some issues with that."

Melissa gives insight into the nature of these issues at a different point in the

interview. When I asked her if she felt that most families could be kept together if they received the right kind of services, she answered:

I don't know. I don't want to say yes, because a lot of our f... you know, we'll work with them, and then a couple of years later we'll get something else. I don't have the solution. I wish I did. I wish I could say, "This is how we fix all this," but I don't have that problem. You know, it's just a matter of decisions. You know, I was a single parent. I had a child out of wedlock when I was 18. ["My original plan was to go to law school," Melissa said earlier.] I had to quit college and I was on welfare and I was on food stamps and my daughter went to Head Start, and I did all those things, too. I was there. And I was faced with, "Should I go get drunk tonight because my life is really stressful or do I need to stay home with my daughter and save my five dollars for diapers?" And, you know, I made the right decision, thank goodness. But I could have easily been a CPS client. So, you know, when I get young girls that come into my office and tell me I don't know what it's like... I know what it's like.

We see from this that the story Melissa reads in the child death case is compelling to her partly because it so closely parallels her own. She "knows what it's like" to be young and wanting to have a good time, but instead having to take care of a baby with too little money and help. She feels anger toward other young women who have babies, but who fail to act responsibly, an anger that may be sharpened by regret over lost opportunity. The mother in the death case is caught up in this anger. Her impassivity and seeming "almost relieved" was a sign to Melissa that she lacked a mother's heart, and was thereby capable of acting to end her state of bondage in the most direct and final way possible. One can imagine Melissa's own heart having been less motherly at some moments than at others, and getting drunk may not have been the only temptation she ever had. But even if Melissa felt no identification, conscious or unconscious, with the mother in this case, her search for the explanatory narrative seems tightly bound up with

complex personal “issues.”

The associations and evocations that appear to have affected Melissa’s construction of the fact narrative in this case are, to some degree, inevitable:

It... it’s... I... I think it's very difficult... to be an investigator and not become emotionally involved... at times. And to a large degree, I think that's why the turnover is so great in CPS, is because you *have* to become emotionally involved at some times with some cases. Um... not being able to manage that... uh... I think is what causes people to leave and in a large part is what causes some of the poor casework that we see.

This is Victor the ombudsman once again; the ombudsman’s’ office is the last level of appeal for designated perpetrators. He says he and his colleagues reverse 40% to 50% of the cases they review, often, he feels, because of emotional bias on the part of the investigators, supervisors, and even Program Directors in the region. That feelings of sympathy, animosity, frustration and despair should arise as one grapples with these disturbing cases, especially if one has contact with the people involved, is understandable to Victor. He is obliged to overturn the findings in a case, however, when those feelings make themselves apparent in the supporting logic. We have seen in Pennington and Hastie’s story model how the process of fitting evidence into a story framework proceeds via the making of inferences about the evidence – of probability, truthfulness, cause and effect, and so on – based partly on our understanding of how stories *go*, how the world works, and what motivates people. These background beliefs become part of what Toulmin (1958) calls the *warrant* of an argument or judgment. The warrant is a general principle or belief that permits a particular *claim* to be made, given particular *grounds*. An example of a typical case is shown in Figure 3.

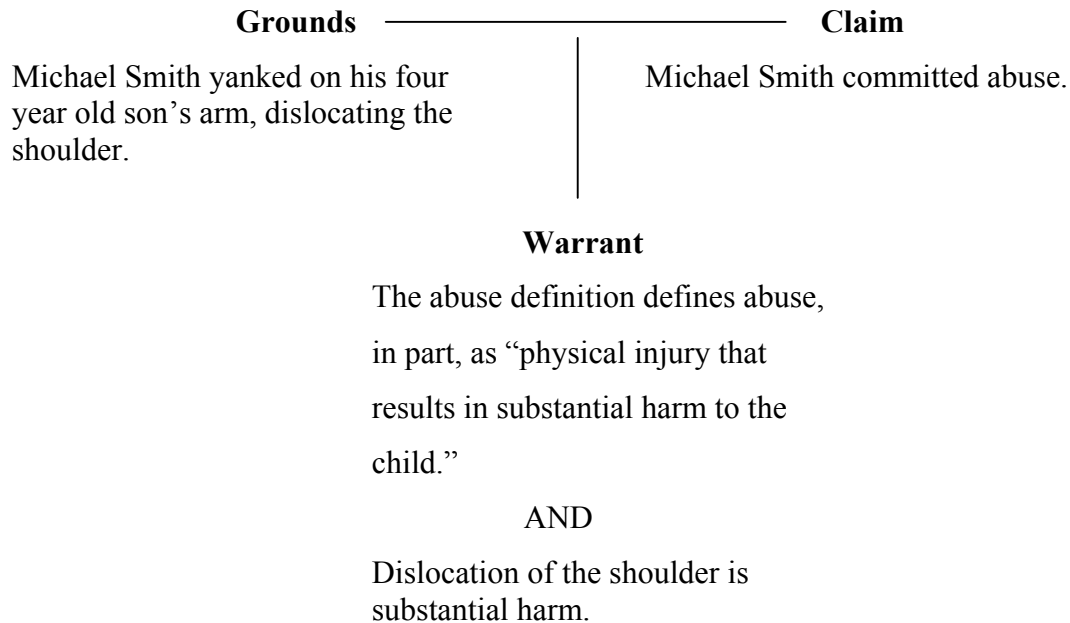


Figure 3
Argument Structure in a Typical Case

The contention that dislocation of the shoulder is substantial harm, which is an essential part of the warrant, is not a fact. Were it to be challenged, no case data could be produced to prove it. The contention could be *supported*, by precise description of the tissue damage a separated shoulder causes, by the time it takes to heal, by definitions of the words “substantial” and “harm” used by relevant authorities, by the way such injuries are classified for different purposes in medicine or law. It may also be supported, psychologically, if not rhetorically, by the arguer’s own experience of having had a dislocated shoulder, by sympathy for the victim, or by animosity toward the perpetrator. These personal warrants may be expressed or unexpressed, conscious or unconscious. If they are not conscious, they can yet add evidentiary weight to the conscious warrant elements or increase confidence in the accuracy and justice of the claim.

Nisbet & Ross contended (1980) that there is enough cognitive bias in the average judgment error to make an emotion-centered explanation unnecessary. But emotion may, at bottom, account for the weakness of many practical inferences that seem merely illogical. In Melissa's story the evidentiary import of the fact that the young mother didn't cry during the interview is constructed as in Figure 4.

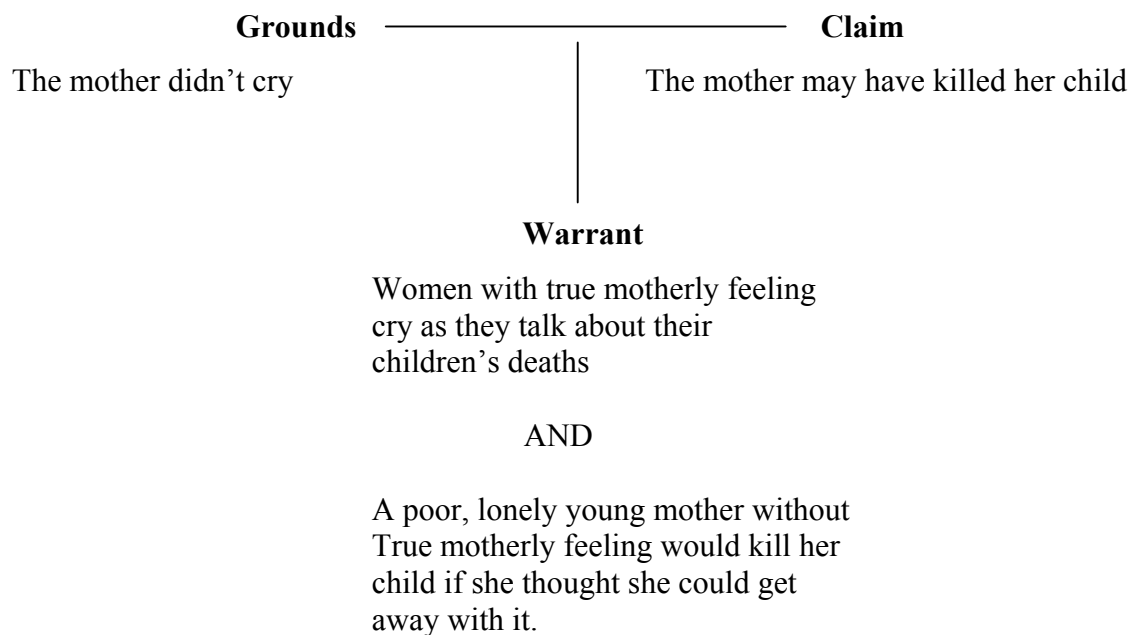


Figure 4
Argument Structure in Melissa's Narrative

Crombag (1993) and Twining (1999) have proposed, in a scheme similar to Toulmin's, that narratives as used in law, the narrative of an indictment, or a summation, say, must, in order to be persuasive, have each of its elements anchored in general rules, beliefs or values held generally in the culture. Where the anchor is judged, or, at a visceral level, felt to be merely idiosyncratic, the claim, and the narrative as whole, will fail. Were Melissa to find the second doctor she wanted to interview and get from him or her a strong opinion that the mother was indeed capable of murdering her child, she might consider that enough to reach a "reason-to-believe" finding. She would not, in her

documentation, reproduce the reasoning about the failure to cry that initially raised her suspicions. She would base her finding on the mother's opportunity, history, motive, and capability. And then Victor, should the case make its way to his desk, would overturn. He would not know about Melissa's real train of thought, about the personal experiences that infused the warrants, or anchors, in her argument with power and conviction. He would only know that they had no such power for him and did not support the claim of the mother's guilt.

As a matter of fact, I do not think Melissa would validate abuse against the mother even with favorable evidence from the second doctor. Such evidence could only strengthen the possibility that the mother had committed murder. It could not make the necessary leap from the mother's desire and ability to the action itself, which, after all, is very often contemplated, but very seldom taken. As Melissa's own actions were constrained, so, in the end, will her inference be. Permeable as the logical operations of story construction are to emotion, association, and a kind of personal imperialism, they are also subject the rigorous "testing" Melissa employs in all aspects of her investigations. I'll show the constraint process at work in another story later in this chapter. What her disingenuousness has allowed us to see here is an interim stage of the judgment process. Like Sarah's, Melissa's case story at this point is fiery, amorphous, and protean. It is still experimenting with forms and outcomes, assimilating and discarding elements.

Though the desire for completion and coherence guides the construction of every investigation story, it is not always as apparent as it is in Sarah's and Melissa's narratives. Some investigators, like Louise, whose arsenic poisoning story we heard at the beginning of this section, believes that her background in law enforcement has taught her an investigative method that differs from that of most of her co-workers, most of whom have social work educations. "Because of my previous experience," she says, "I think I'm more attentive to details... um... more solid in getting to the facts and bypassing the... uh... social work... stereotyping sort of thing."

Here, as an example of the kind of investigative approach Louise describes, is a story

told by Leo, an investigator with three years' experience. Note that Leo seems to avoid motivational "stereotyping" to focus instead on details of physical evidence.

... I was just documenting a very complicated case that we had – a two-year-old child with a pretty serious burn on her right buttock cheek that was about two inches long and about a half inch in diameter, or width I should say. And the explanation that we were given from the family was that the child burned herself on an iron, a clothes iron. That didn't seem to match what the burn looked like. We have history with this family. In fact the mother had previously been given a "reason-to-believe" disposition for physically abusing a niece. And yet the child was not really making any kind of an outcry to us, other than that she burned herself. And you know, the burn was about, I think, 17 inches up from the floor on her. The table where supposedly this all happened was, um... Excuse me; the table was 17 inches off the floor. The burn on her was 14 and a half inches, and so that math doesn't calculate. And...

I: Did you measure those yourself?

Yeah. And the detective with APD I was working with did as well. We do basic things like that. They actually took the iron as evidence, as well. And the department ended up getting this lady another iron, as a way to facilitate good rapport.

I: Your department, not theirs. (laughing)

Right, right.

I: They don't do that too...

No, they don't do that kind of stuff. No, they don't. And so... And the mother, she took a lie detector test, which was inconclusive.

I: Hmm

Mom has some mental health issues, but it's clear by the way she's interacted with her child, and vice versa, that there's love and care there. And there's not fear. And so..

I: Is that, is that kind of a routine thing, where you observe the child with this

AP to see how they relate?

Right. You know, are they comfortable getting in the mother's lap or the father's lap? Are they... Do they light up when a hug happens? Do they shy away from the parents when they're calling them? Or ... All those sorts of things are real... are indicators of the relationship. Sort of those unspoken things, which I'm sure you know, communication – a lot of it is unspoken. So, it was a very, it is a difficult case, and after staffing this case with several people, including our risk director, and our district attorney and supervisors, we really couldn't say conclusively that the mom burned this child intentionally. You know, accidents happen all kinds of ways, and it's hard really to know, without a witness, what happened. And the mom was insisting she was innocent. She did all the things that an innocent person would do. You know, flatly deny it, vehemently deny it. And um...

I: Agreed to the polygraph.

Agreed to the polygraph, even though it was inconclusive. Um... and then the child wasn't telling us anything.

I: How old was this child?

The child was two.

I: Two, right, yeah.

Um... and so we were really in a quandary as to what to do next. And so ultimately it was decided that the case would go to Family Based Safety Services, as a way to monitor the family. And maybe get the mom some parenting classes to make sure she's following through with the things that she's got to do. And really that's all we could do at this point in time.

I: Is that something she *has* to agree to? I mean, would you remove because if she refused?

No. We wouldn't in this particular instance. We wouldn't... There was not enough legal evidence to remove the child.

I: But you're not... In your heart of hearts, you're not sure.

Yeah, I'm really not sure. And that's... That really is where it gets difficult.

Because I've seen how close the mother is to the child, but it's also not out of the realm of possibility that in a moment of anger she did burn the child, while she... maybe while she was even ironing. It's strange because the burn looks like a curling iron burn, and that's the part that we could never figure out, because no one would ever tell us there was a curling iron. We couldn't find a curling iron. We didn't ... there wasn't a ...

I: Because it was straight.

Yeah, and there was sort of a little bend in it where it looked like the little.. the clip is, a little line. So it was very peculiar. And troubling. Troubling case.

Leo's story, though it sounds the same plaintive note of not being able to quite reach the truth as the others we have heard, has a different character. Whereas the previous three focused on motive as the crucial missing factor that forestalled the formation of a complete, satisfying story, Leo's focuses on the mismatch between bits of physical evidence. The table is 17 inches above the floor, but the burn is only 14 and a half inches up on the child. (Even given that he has just been documenting the case, that he remembers these figures so precisely, and those relating to the size of the wound, is striking.) The shape of the injury is like that of a curling iron, but there's not one in the house. These discrepancies, along with the child's not having made an outcry, are what trouble Leo about the case, not the lack of a reason for the mother to have hurt the child. In fact, her mental illness would seem to offer foothold for speculation about her motives, but Leo neglects it. His whole approach reflects a style of comprehension that is closer to the analytic end of the cognitive continuum than the intuitive.

Leo's lack of interest in the sort of narrative explanation that Sarah and Melissa are after may be would thought wise by those who argue that comprehension and deliberation through narrative almost inevitably leads to judgment error. Dawes (2001), from a purely logical standpoint, contends that a narrative, because it consists of a "*single* sequence of events often linked with a set of *hypothesized* causal influences" (p. 112, italics Dawes'), and therefore cannot establish general causality or even be valid as

evidence in a particular case. For Dawes, understanding causality depends upon the ability to make comparisons. Knowing the characteristics of abused children, for example, tells you nothing if you don't also know to what degree those same characteristics are present in children who have not been abused. Stories do not make comparisons, only associations. "Even when we have a perfectly valid statistical explanation for a phenomenon," he says (p. 137), we may ignore it because no 'good story' accompanies it to persuade us that we should believe it."

Spence, a psychoanalyst, contrasts historical truth, accurate knowledge of past events, with narrative truth, which he defines as "the criterion we use to decide when a certain experience has been captured to our satisfaction; it depends on continuity and closure and the extent to which the fit of the pieces takes on an aesthetic finality" (1982, p. 31). Narrative truth often displaces historical truth, and not only when lack of methodology and resources made historical truth inaccessible. "Hermeneutic pressure" (Spence, 1982, p. 108), a desire to make disparate life events fit together in a coherent narrative, is so powerful that it guides unconsciously our tests of historical truth and allows us to overlook an absence of evidence.

Dershowitz (1996) refers to a famous declaration of Chekhov's that if in the first chapter of a novel we are shown a gun hanging on the wall, it has to be fired in Chapter Two or Chapter Three. In skillfully written fiction and drama there are no loose ends. Every incident and bit of descriptive detail functions thematically. But life, Dershowitz argues, does not follow Chekhov's prescription. "Events are often simply meaningless, irrelevant to what comes next; events can be out of sequence, random, purely accidental, without purpose" (p. 100). Narrative, when it is brought into the adjudication process, can cause the confusion of fact and fiction, to the detriment of justice.

Dershowitz gives an example from the criminal trial of O. J. Simpson. The prosecution worked hard to plant in the minds of the jurors a story about a man who abused his wife on several occasions and finally, under what he perceived to be intense provocation, murdered her. By establishing the abuse as fact, the attorneys hoped to show the murder was a logical and necessary development, to lead jurors to make what

Pennington and Hastie would call an abductive attribution (Men who abuse their wives are apt to murder them. The defendant abused his wife. He must have murdered her.) The defense sought to prevent the inference by introducing as evidence statistics showing that fewer than one tenth of one percent of abusers go on to commit murder.

The implication of Dershowitz's argument is that a person trying to make sense of a mass of evidence may have a tendency to construe it as a story, but may also, with effort, refrain from doing so. With Bennett, he sees the story construction as a deliberative, rather than spontaneous process. Evaluators of evidence may establish and observe a probabilistic threshold; an inference that falls below a certain level of likelihood must be rejected. If that leaves two events or qualities hanging, suspended in psychological space unconnected without connection to one another, so be it. This is a definition of objectivity that goes beyond Bennett's, who described it as the conscientious comparison of competing stories against one another and against a generic frame of reference. Dershowitz would say objectivity also demands a conscientious abstention of story making where it is not warranted and a refusal to penalize a particular theory of evidence solely on the basis of its narrative inadequacy.

We see this abstention taking place in yet another ambiguous case narrative, told by Carmen, an experienced investigator who had just become a supervisor at the time I interviewed her.

The case involved a teenaged girl who had accused her stepfather of having sexually abused her. Her outcry seemed sincere and fully detailed. Subsequent investigation, however, could not corroborate her account. The stepfather was able to show, with documentation from his job, that he had not been at home when the child said the abuse happened. He, too, was believable in the way he denied the allegation and he cooperated fully with Carmen's investigation. It also came to light that the stepfather had thrown the alleged victim's boyfriend out of the house, which could be seen as giving her a motive to make up the sexual abuse story in order to take revenge against him. Though this was suggestive, it was not conclusive. Because Carmen could find no evidence to support the allegation, she could not reach a finding that there was "reason-to-believe." Neither

could she “rule out” the allegation, dismiss it as false, because of the inherent credibility it continued to have for Carmen. Her finding was “unable-to-determine.”

Here is Carmen’s narrative in full:

Yeah. Sometimes it’s in the gray. Definitely.

Iteration 1

A lot of times you will get a child, and I’m talking from my experience and going out on cases, you’ll get an outcry and then there’s a lot of inconsistency with the outcry. And there’s no way to match up what the child is saying to, maybe, the perp’s schedule.

Iteration 2

Let’s say, for an instance, a case I had as a child – she outcried for sexual abuse, but we could never seem to put her in the same location as the AP [alleged perpetrator], together, alone, at any time. And the AP was a manager. The AP brought time schedules of when he actually went home for lunch and clocked back in and the child was at school, was reported at school, so every time she was absent, the AP was at work. I mean, there was just... We could not bring it to meet. And it’s things...

Iteration 3

That makes it very difficult because here we are, having a child who’s verbal, not developmentally delayed and is giving us a full, detailed outcry.

I: And usually, when you have those conditions, it’s the truth.

It’s the truth, right.

I: But not always.

No, in fact when you get an outcry that good, you’re pretty excited because you’re just like, “We have the information. We got it. This is what we need.” And then you go... You go to the next step, which is, “Okay, we need to approach the perpetrator and the caregivers and you start trying to piece it together and it’s like four different puzzles trying to come together. They don’t fit, you can’t match them

up. You cannot match up the child's outcry with the caregivers.

I: Well, if you can remember... this is a case that you worked, right?

This is a case that I worked, yeah.

I: Well, when you first heard the story, were you pretty convinced that they were sincere and telling the truth?

Iteration 4

I was pretty convinced. The child was crying, full emotion, had the withdraw look, the body language of being tucked in, didn't want to look at me in the face, which is also an indicator that she's not telling the truth, but then, it can also be an indicator that she's so embarrassed that this has happened to her, that she's not going to look at me in the face. I mean, it can go both ways. People say, "Oh, she didn't look you in the eyes? They're lying." But what about if she's so... she might be embarrassed, self-esteem. There is a lot of gray and you have to kind of cipher it out and keep at it to see where you can get to maybe a clearer section. But with this child, we didn't have that. We had a very clear and detailed outline of an outcry. When I went to the caretaker... I mean the perpetrator, alleged perpetrator, it was impossible that this could have happened. I mean it looked impossible that this could have happened. There's never...

I: So what did you finally do?

Well, APD [Austin Police Department] was involved, in course. APD's involved with every physical abuse and every sexual abuse case we get, no matter what, they're assigned. So we work very closely and jointly with APD. APD couldn't bring closure to it either. They couldn't bring a connection which validated everything that I was saying, that I couldn't bring a connection to the outcry to the perpetrator. APD could not... They couldn't also. I mean there was just no connection. We left that case "unable-to-determine," because you don't want to rule it out. Because we do...

Iteration 5

Here that child's given an outcry. You don't want to "reason-to-believe" it because we just can't make it fit. We have denial from the perpetrator. We have another child

in the home that denies everything. We have a sibling who nothing's happened to; everything's fine. And then we have a boyfriend that pops up later on in the picture who the victim was very angry with the perpetrator because she had kicked the boyfriend out one time.

Iteration 6

So you start... it starts... you start questioning the outcry but it's still, again, a very clear, detailed outcry. So you can't disregard it. You can't just blow it off the wayside. So what we... I staffed it with the supervisor and it goes through other staffings with APD and we all came to the conclusion that this is a case we have to Unable To Determine it, because we don't... If something else happens later on, then we can go back to this and see... try to see maybe we missed something. Or maybe something... We have new information now that can make the old one click a little better than it did.

I: Well, at the time you closed the case, how were you thinking about it at that point?

Iteration 7

At that point, I... When I first got the outcry, I was convinced. I mean, it was a beautiful outcry. And in itself, that doesn't sound appropriate, because...

I: I know what you mean.

You know what I mean, okay. But it was a clear – I guess I should use clear -- It was a clear outcry. No questions about it.

I: With detail.

Yes, with detail and everything. So I was fully taken in. I believed the child. I believed the child a hundred percent and I was there to support her and protect her and make sure that this was not going to happen to her again. And then as I couldn't piece it together, I started having more doubts about the outcry. The outcry didn't change, though. She didn't change her outcry, and she was already above the age to do a video, so there was a written statement. The written statement that APD received was the same statement that I had verbally gotten from the child, so she

wasn't changing her story. We just couldn't... The perpetrator was gone the majority of the time because he had an ill father, so he was never in the home.

I: What was... Did you interview him?

I interviewed him.

I: What was his demeanor like?

Very, very appropriate. Looked me in the eye, had full box body to me at all times, cooperated with anything that we asked him to do, cooperated with APD. I mean, wasn't hiding anything. We asked for time sheets because I wanted to see if at any time was this man home when this child maybe skipped school, or was saying she was home when this man was home. And he brought in documentation, no problems at all. I mean we just couldn't get it [...]

I: Well...

I mean so, it made me have doubts about the outcry and when this boyfriend popped up couple of weeks later and she was very upset that the perpetrator had kicked the boyfriend out, had changed the locks, 'cause she had given the boyfriend a key to get in the house whenever the parents were gone...

I: I don't see the significance of that. May... what...

Well, that she was upset at this man for being... for kicking her boyfriend out that she was trying to get back at him, to get him out of the house. This was not the biological father.

I: All right.

So, you know, then we started looking at was this a revengeful act?

I: So it created a possible motive.

Right, for it being a false outcry. And which happens. I mean, that's not unheard of. We get those a lot. We get a lot of referrals that are custody battles and they want more fire for the fight, more fire for the court case. We get a lot of, you know, "She stole my boyfriend away, I'm going to call in on this one." We get a lot of those type of calls. But again, when look at that case, when we get it, the first thing we do is we... everything we read, we have to assume that this is all happening, so we go

out there with the right frame of mind to protect... at any costs that we have to protect the children.

I: Well, this is the kind of case I'm most interested in, because this is where your decision making abilities really come into play. When you have all the physical evidence, and confessions, that's easy, of course. And the obviously made up things, those are easy, as well. But those that you have to wrestle with..

Right. Back and forth, back and forth.

The discovery of the alleged victim's motive to be angry with her stepfather and to fabricate an allegation against him would, for other investigators, I think, have been sufficient reason to reach a finding of "ruled out." Carmen, however, does not find that it settled the matter or proved that the child had lied. She says only that it made her "question" and have "doubts" about the outcry that she had first found so believable. In fact, Carmen several times in the narrative describes the investigation outcome in terms of its *failure* to reach a satisfactory conclusion: "no way to match it up," "could not bring it to meet," "couldn't bring connection," "can't make it fit," "couldn't piece it together." The revelation of the child's apparent motive does not overcome what is to Carmen the essentially negative, unsuccessful character of the investigation. She ends with an admission that some child abuse allegations are malicious, motivated by a desire to gain traction in a custody fight, or pay someone back for stealing a boyfriend or girlfriend. "We get a lot of those type of calls," Carmen says, but she stops just short of saying that this was one of them. It could be; it seems to be. But a final, definite classification is withheld. Moreover, the revelation is curiously delayed in the narrative, appearing only after several references to the investigation's inability to validate the "beautiful" outcry. It comes more as an afterthought than a dénouement.

Carmen's narrative is divisible into seven "iterations," I shall call them, which gives its structure a stop-and-start quality. Each iteration contains a restatement of the basic dilemma — that the outcry gave every appearance of being true, but could not be proven. The narrative seems reluctant to move beyond that starting point and returns to it several

times, like a rock rolling back to the bottom of a hill after being pushed part of the way up. Each iteration adds a bit more of the plot. Only in the seventh, and longest, are we given the entire story, with the beauty of the outcry, the stepfather's unbreakable alibi, his own appearance of truthfulness, and the significance of his having kept the child's boyfriend away.

If we look for Labov's formal properties in the narrative (1967), we find that abstract is clearly present; in fact, it is the seven repetitions of it that mark the beginning of each iteration. We are given little, however, in the way of orientation. Carmen does not say when the investigation happened. She tells us nothing about the setting. She does give physical description of the characters, but as witnesses, not as persons. She describes how they looked giving testimony, but says nothing about their ages, races, or personality characteristics. This lack of visual and representational material gives the narrative a certain abstraction and starkness, a clinical, rather than anecdotal feel. The main complicating action is the failed effort to verify the child's allegation, and description of that effort is built up through the iterations.

We find evaluation throughout the narrative. Carmen characterizes the child's outcry as "good," "clear," and "beautiful," one that she was "excited" by. She also evaluates the stepfather's testimony as "very, very appropriate." It is just as persuasive and technically sound as the child's. There is comparatively less evaluation of the case as whole. Beyond portraying it as a failure to match the outcry to the other evidence in the case, she has little to say about it. The story seems to have no particular moral for Carmen, even as a failure, beyond the fact that some cases are like that.

I have remarked already on the narrative's apparent lack of resolution. The discovery of the child's motive to make a false allegation, despite its potential to supply closure, is not permitted to do so. This process narrative, through Carmen's apparent reluctance to regard the case as closed, refuses to furnish the truth reward that we generally expect of the genre, just as it holds back the amenities of visual imagery and emotional cueing. In fact, with its constant falling back to the abstract, the narrative seems unwilling to develop as a narrative at all, and does so only partially.

A significant element of the investigator identity is discovery of, and advocacy for, the truth. Investigators are expected to present narratives that reflect wholly and without distortion the events of the case *fabulas*. To the extent that inferential linkages are necessary, of motivation, for instance, they, too, are expected to be the “real” motivations of the persons involved, or would be proven such were it possible to verify them in some objective way.

Epistemologists distinguish between coherence and correspondence theories of the truth (Schmitt, 1995). Coherence theories locate truth in the mind of a believing subject and derive from coherence among a set of propositions, sense data, or pieces of evidence. The greater the coherence, the stronger the belief one has in the emergent truth. Correspondence theories see truth as a relationship between a set of propositions and a state of affairs in the world. The stronger the correspondence, the more justified one’s belief in the proposition set. Some version of the coherence theory would be adequate for investigation. In their day-to-day practice, investigators justify their judgments about cases by seeking and asserting coherence among the pieces of testimonial, physical, documentary, and demonstrative evidence they collect. Even so, investigators, almost of necessity, embrace a correspondence theory of truth, seeing it not as a feature of their own belief processes, but as a univocal relationship between their belief and “what happened.” Only that kind of truth, in their minds, justifies taking action that separates a child from its parents, perhaps permanently, that labels a person as an abuser and subjects him or her to prosecution, or, conversely, that leaves children in an environment where they have previously been harmed and may well be harmed again. (This belief, though not adopted pragmatically, may nonetheless foster greater decision-making accuracy. Stasser and Stewart (1992) found that groups who are asked to *solve a problem* perform better at a judgment task than groups, given the same task, asked to render a “most likely” judgment.) Hammond, too (1996), applies the concepts of coherence and correspondence to the cognitive continuum. Correspondence, or accuracy of judgment, is the general aim of intuition, whereas validity and reliability of process is the general aim of analysis. For Carmen and other investigators, no decision

making process can have value independent of the outcomes it engenders.

Carmen, in her narrative, repeatedly laments the lack of coherence in her evidence, the mismatch between the alleged victim's outcry and the tightness of the alleged perpetrator's alibi. For a thoroughgoing coherentist, however, the coherence of the evidence *against* the outcry, including the alibi and the revelation of the child's motive to lie, would be seen as warranting a final judgment that it was, in all likelihood, not true. Carmen does not make this judgment. The lack of coherence obscures what is to her a real event. Either the stepfather did sexually abuse the child and managed to cover it up through false documentation and skillful lying, or the child, with equal skill and preparation, made an elaborate false report. Neither the process narrative nor the fact narrative could determine which of these happened, and the truth could not be found. Because of conflicting evidence, the investigation failed.

To some degree, investigators are conscious of the paradox of trying to realize objective truth through the medium of subjective perception and judgment. They realize that personal and cultural beliefs related to class, gender, age, ethnicity, religion, and a host of other factors can affect the way they perceive the facts in a given case. They work to maintain what White and Quinn (1988) call *internal independence*, a separation of their decision making from their potentially biasing attitudes, by, first, trying to become increasingly aware of their specific characters, and, second, minimizing their power to exert influence by gathering more and more evidence, testing and rethinking evidence already collected, and conferring with other workers. Even if it were possible, though, like Galahad, to purify oneself enough to be able to perceive the truth, one is still up against the brute unyieldingness of historical reality. The evidence is never truly complete and clear. There exists in every case a larger or smaller core of unintelligibility. Investigators have to recognize both the absolute obligation to bring out the truth and the absolute limitation on their ability to do it. I believe the hesitations, delays, and omissions in Carmen's investigative narrative reflect her consciousness of that obligation and that limitation.

Pennington and Hastie's work shows that narrative construction proceeds by

inference. In fact, its utility as a means of organizing information derives from its ability to make large numbers of quick inferential links. We see several inferences in Carmen's story. Among them:

- In the past, children who described having been abused with visible emotion, who looked withdrawn, and who displayed fearful body language were nearly always proved to be telling the truth. The child in this case showed that demeanor. She was therefore very likely to be telling the truth.
- Men who abuse one child in the home often abuse the others. The second child in this home denied having been abused. Therefore the likelihood of his having abused the first child was reduced.
- An alleged perpetrator who cooperates fully with the investigation and has documents purporting to show he was elsewhere when the abuse is supposed to have occurred is unlikely to be guilty. The stepfather behaved in this way. Therefore he is unlikely to be guilty.

These inferences, though they lead to opposite conclusions, are sound in and of themselves. As evidence is collected in an investigation, however, many inferences offer themselves, as alternative versions of the fact narrative drift in and out potentiality. When Carmen first heard the child's outcry a candidate for the fact narrative took shape in her mind, a narrative in which the child was being truthful and the stepfather had snuck home to do what she claimed he did. This narrative lost its forcefulness and momentum when the stepfather answered the charges forthrightly and established a solid alibi. A second narrative takes the place of the first; it is one in which the child, angry at her boyfriend being locked out of the house, makes up a story about having been abused and tells it convincingly. Carmen permits neither of these scenarios, however, to become *the* fact narrative. That of the stepfather's guilt is rejected for lack of supporting evidence. That of the child's malicious reporting does have supporting evidence, but would require making this inference:

However believable a person may be, if other evidence contradicts her story and if she has an identifiable motive to lie, she must be lying. This child's story is

contradicted and she does have a motive to lie. Therefore she is lying.

Carmen will not make this inference. The child's outcry remains compelling, despite the evidence against it. The possibility remains that the stepfather is lying, not her, and that his documentation is less complete or less authentic than it appears to be. Disdaining the inference, however, means disdaining the story that it makes possible, and there is no third story to take its place.

What I am suggesting is that concern for the accuracy of the fact narrative, a necessary aspect of one's identity as an investigator, demands the exercise of an executive function within the narrative construction process that polices the constituent inferences. It consists of a series of logical, experiential, evidentiary, and common sense filters that prevent the establishment of faulty case narratives, however compelling they may otherwise be. Conscientious habitation of the investigator role therefore means resisting the momentum and the satisfactions of narrative at times, in favor of inferential accuracy, and at the price of continuing, even permanent uncertainty.

Carmen's process narrative, I believe, demonstrates this resistance to narrative. It seems to reenact the "back and forth, back and forth" deliberations of the case narrative construction, restating seven times the essential dilemma as though reluctant to go beyond it, reluctant, at first, even to broach the revelation of motive, with its false promise of resolution. Eventually, in the fifth iteration, the motive to lie appears, and its possible significance is given in the seventh. In the end, however, that significance, once again recognized and considered, is once again not accepted as being anything more than possible. Carmen goes on not knowing.

The process narrative, though we hear it in present time, is largely formed during the investigation, side by side with the fact narrative. It reflects the project of the investigator guiding the construction of the fact narrative, into which, paradoxically, it is constantly trying to submerge itself, in the vain hope that the facts will "speak for themselves," that the evidence, rather than the investigator, may bear and discharge the burden of uncertainty. The process narrative, however, cannot resign its primacy, since only through it does the fact narrative come into being. It conscientiously retains the

uncertainty it would so like to shed, to keep the fact narrative from charging into a too-easy truth. Carmen has, in essence, installed what Hogarth (2001) calls a circuit-breaker, a process that interrupts the handling of a judgment in the tacit learning system and moves it into conscious deliberation. With each iteration she halted the coherence-making momentum of explanatory narrative, and applied to it an evaluative, if vacillating and ineffectual consciousness.

For Ochs and Capps (2001), it is unnecessary to invoke Carmen's training or philosophy to account for her hesitation at the doorway of narrative understanding. They contend that all personal narratives display simultaneous "yearning for coherence and ... yearning for authenticity" and that the attainment of storied personal meaning is always balanced against a felt obligation to do "justice to life's complexities" (p. 24). In Spence's terms (1982), the desire to achieve historical truth along with narrative truth drives all storytelling whatsoever. But just as intuitive and systematic thinking form a continuum and are always present in judgment to some *degree*, so to are these simultaneous impulses toward coherence and authenticity. Individual stories can display a great deal more of one than the other. Individual storytellers can prize one above the other as goals, and I believe we have seen such difference among the participants in this study. My contention is that Carmen, precisely because of her training and her philosophy, made authenticity the main goal of her story. In doing so she made the story itself rather a sad one that wanders in circles without ever finding the historical truth for which it was made to sacrifice all the beauty and pleasure of coherence. That, however, is authenticity's price. It is costly in terms of preparation, labor, and discipline, and often takes some luck beyond that. In any given case one is apt to come up short.

Risk Assessment, System, and Moral Agency

The nature and development of linear models to help caseworkers assess risk was described in Chapter II. Texas has had a series of risk assessment tools (Baumann, 2002). The first was the Child at Risk Field (CARF), which was a somewhat

cumbersome consensual model based that assessed five “forces:” child, parent, family, maltreatment, and intervention. The CARF model was made more efficient with the Structured Model for Assessment of Risk in Texas (SMART), implemented in 1993. These were followed by actuarial models. Beginning in 1999 CPS in Texas used the Intranet Assessment Tool (IRA), the version of which was current when I conducted my interviews called for workers to “answer questions and document their level of concern for each of the following areas:

- Child Vulnerability. Child fragility (age, special needs), child behavior (difficult or provoking), and any protective capacities the family has that may mitigate risk;
- Caregiver Capability. Parent’s knowledge, skills, and capacity to parent;
- Quality of Care. The quality of the connection between parent and child and the quality of physical and emotional care the parent provides;
- Pattern of Maltreatment. Severity and pattern of injuries and history of prior abuse/neglect;
- Home Environment. Stressors on the family and danger or hazards in the home;
- Social Environment. Degree of isolation, quality of parent’s social relationships, domestic violence, and criminal history; and
- Response to CPS. Attitude (motivation, hostility, cooperation, minimization of risk, or unrealistic attitudes about change) and deception (denial of risk or withholding important information). (Texas Department of Protective and Regulatory Services, 2002).

Most of the participants in this study had mixed feelings about the IRA. A smaller number, mostly supervisors and administrators, were strongly positive. Two investigators were strongly negative. Investigators who thought the IRA was at least somewhat useful saw as its main benefit the assistance it provides to intuitive investigation and casework. They recognize that it is difficult, if not impossible, to remember to ask questions about each area of possible concern, and the IRA can serve as a kind of interview checklist. As Jennifer, a Program Director, puts it, “It really brings to the front what you need to be checking all the time.” And Wanda, who, like other

experienced investigators in this study and others (England, 1994; Gamble, 1994), generally dislikes the tool because she finds it superfluous and time-consuming, says she wishes she had it when she was new to the job. It's easy for beginners, she says, to forget what questions to ask.

Some find that IRA can make an investigator aware of a risk that he or she has failed to notice. Sarah, a supervisor says she was helping some of her investigators catch up on their paperwork and completed the IRA on several cases:

There were a couple," she says, "that looked like they were going to be 'rule out,' but once I started doing the IRA, started thinking about all those other things in there, I thought, you know, I'm not comfortable with that... now. And I think we need to open it up for services.

This, of course, would be music to the ears of the IRA's designers. They would also be gratified by the experience of Gretchen, an experienced investigator, who says the IRA has helped her identify risks she vaguely perceived in a child's environment, but could not quite put her finger on. She says, "When it came out it really helped clarify what some people, you know, what that gut instinct is telling you." She goes on to say that once she has reached a decision that removal or court-ordered services are necessary, her scoring of the IRA for that family can help persuade higher-ups to approve the intervention.

Those investigators in this study who have mostly or only negative opinions of the IRA do not offer the objections some researchers have, that such instruments are based on insufficient data, fallaciously judge future likelihood of abuse on past incidence (Wald & Woolverton, 1990), show poor inter-rater reliability (Baird, 1997), are not well-grounded in empirical research (DePanfilis and Scannapeico, 1994), have largely untested validity, and correlate poorly with clinical findings (Kolko, 1998). Nor do their reservations seem rooted in the threat of technological unemployment, theoretical identification, or computer phobia, three of seven factors that Meehl (1986) identified as

causing suspicion among clinicians of linear models generally. Four other of Meehl's resistance factors do seem to account, however, for the negativity some CPS investigators feel toward the IRA. The first is ignorance, a simple lack of knowledge of the research demonstrating the value of linear models. The second and third factors, a sense that linear models have a dehumanizing flavor and that they violate social work or personal ethics, overlap one another. Melissa, the investigator who was dissatisfied with the SIDS determination in her infant death case, says the IRA is "too standard." It assumes that all cases can be categorized according to a set of "rules," and Melissa resents this denial of each family's uniqueness. "On this job," she says, "no case is the same." Helen, unlike Melissa, has many years' experience, but her objection is similar. She dislikes the way the IRA looks only at the problems and shortcomings parents have. "I really don't like it," she says, "because I believe, personally – I've always believed this – you can find something positive about everybody... And I feel like the risk assessment aims more at negative." Helen says she finds herself typing the positives she sees in a parent into comment fields, to try and redress what she sees as the IRA's deficiencies. In so doing, Helen is in agreement with risk assessment tool developers in some states who have increasingly incorporated relevant factors that offset identified risks (Schene, 1996; Grayson and McNulty, 1999).

The last of Meehl's factors relevant to participants' dissatisfaction with the IRA is the one most cited by those who had any negative feelings toward it. It has to do with self-concept. Pauline, former investigator, supervisor, and trainer states the essence of this objection clearly:

There's a sense of... I don't really want to say arrogance, but it's... but it sort of is. It... there's this... there's this feeling of, "I know what I'm doing. I know a lot... I know better what's going on out here in the field than the researchers know what's going. So just let, let me operate as the island that I am and go do my business." And I think that they... that they don't stop and think, "Well, what does the research say? And maybe I don't know everything. Maybe it's okay to let my guard down

and learn something new.” And I think that our caseworkers don’t have the... the confidence to sit back and say, “I don’t know.”

Carmen, a supervisor, says that knowledge of what questions to ask to identify risk is “already inside of me.” New workers, however, since they do not have the questions already inside them, must rely on “a little list.” Carmen says that for them to become fully competent the workers have to be weaned away from their lists; if they rely on it exclusively they will miss “those hidden answers and that hidden evidence and that hidden information.”

Leo, a long-time investigator, agrees:

When I’m assessing a case I’ve already asked, thought through most of the questions, and if I’ve got yeses, I know what I’m doing. I don’t need to sit down in front of that tool and click yes and say, “Oh, I’ve got 12 yeses; I’d better take that to the supervisor.”

Leo believes competent investigators have a “certain ability to kind of... um... connect with people and... um... get a sense of what’s going on... um... without following a form that says, “Ask this question first; ask this question next.”

Leo believes CPS may find some benefit in making all caseworkers, many of whom had been doing inadequate work, fill out the form, as a way of showing those who evaluate the program that conscientious risk assessment is being done in every case, but feels that it provides no help to him personally. Wanda, who wishes she’d had the IRA as a new investigator, now finds it burdensome:

I ask those questions while I’m going along. I don’t need to stop and see it on a computer. I don’t need to stop and write it down to know what the risk is. I already know what it’s going to ask me. I mean, I know all of us have it... pretty much memorized, you know. It’s pretty monotonous...

March (1994, 1997) has set out a theory of rule-based decision making, which seems very apt for describing decision making in CPS. According to the theory, persons in organizations make decisions by recognizing a situation as being of a certain type and then applying to it both the rules relevant to the situation and their identities, as persons and as members of the organization. “Identity” here seems to be equivalent to Meehl’s “self-concept.” Identity is forged, according to Zhou (1997), an exponent of March’s theory, through a process of socialization, whereby a set of meanings become associated with a given role. New members of organizations feel a natural anxiety at not being able yet to perform the tasks for which they have been recruited. They want to achieve successful performance as soon as possible and leave behind the stressful state of mental map construction and move along the cognitive continuum toward the ability to categorize quickly and work efficiently, eagerly swapping adventure for routine. They therefore want all the training, mentoring, and hands-on experience they can get. Once these measures begin to provide a sense of being up to the job, once the organization’s new members find themselves able to make jokes using the jargon, perform tasks with ease and confidence they could at one time only accomplish with detailed instruction and assistance, anxiety subsides, and a gratifying sense of competence fills in behind. At that point they can identify fully with their role. The master carpenter does carpentry, and makes the judgments necessary to its tasks, simply by *being* a carpenter.

For many CPS investigators, the IRA seems to constitute a challenge to their hard-won feeling of competence and their identities as investigators. The instrument seems to say to them, “You are not capable of knowing risk when you see it. We don’t trust your experience or your perceptions, and you shouldn’t either.” Some investigators reject this perceived message, and the IRA along with it.

Another important source of dissatisfaction with linear models has been identified by Sheets (1996), who helped implement various technological innovations in training, risk assessment, and documentation for CPS in Texas. His experience taught him that investigators and supervisors have a strong need to grasp the wholeness of a case and

that risk assessment tools tend to prevent that as they reduce case information to fragments. Only when, in training, the importance of case narrative was emphasized did investigators feel able to understand a family's situation fully. "Somehow, the act of experiencing a family's situation through the device of the case narrative helps a supervisor to know a family in a way that the risk factors alone cannot" (Sheets, 1996, p. 11). Narrative comprehension, this would suggest, not only cannot be dispensed with, it remains the primary way investigators and supervisors arrive at a sense of understanding in a case, however much that understanding may be enhanced, transformed, verified, or even contradicted by analysis.

Sarbin (1986) has pointed out that reliance on narrative comprehension is made necessary partly by the inherent limitations of linear models. The most an instrument like the IRA can produce, after one tosses in the answers to its various questions and flips the switch, is an estimation of the likelihood of a future occurrence. It could say, for example, that in a particular family there was a greater than 60% chance of future abuse or neglect. How, Sarbin asks, can an investigator make use of such information? Even supposing the assessment were accurate, to oblige all families with similar scores to submit to the discipline of services and monitoring would be unjust for the sizeable minority whose attributes falsely categorized them as potentially abusive. The scrupulous human judge rejects the probability estimation as irrelevant to the immediate case and adopts instead an approach that treats the case as *unique*. And the natural way of comprehending the case, in its wholeness and uniqueness, Sarbin argues, is as a narrative. Narrative is an extraordinarily powerful organizing principle, allowing the lived experience of others and of oneself to assume a comprehensible order.

There is a paradox here, of course, in that narrative must have a certain culturally and cognitively determined structure, must array its elements in a certain order, must, in other words, be typical enough of narrative discourse generally in order to *be* a narrative and become eligible, in turn, for the capturing of its subject's uniqueness. This requirement that a narrative have both typicality and uniqueness is discussed by Bruner (1991) using the terms *canonicity* and *breach*. "To be worth telling," Bruner points out, "

a tale must be about how an implicit canonical script has been breached, violated, or deviated from” (1991, p. 11). The uniqueness of a particular case, a particular family or child, receives expression via such breach of the usual, which instruments like the IRA, which derive their predictive power from admitting of the usual only, never permit.

The general tendency for the CPS decision-making process, with its detailed, highly prescriptive policies and its layers of review, to move both cases and investigators away from intuitive forms of case comprehension toward more analytic ones makes it function somewhat like a linear model itself. Like a linear model, the agency seeks to de-emphasize case characteristics that do not fit it into established categories and to minimize the impact of individual judgment on final decisions. We can see how this works in practice as Jennifer, a regional administrator, and Carmen, a supervisor, describe how they manage the investigations being conducted by people under them.

Here is Jennifer:

We had... some... previous workers who were going to school here who we hired temporary part-time last summer. And one of them... would interview the family members, and then make a decision. And I guess that's how she had done it in the other region where she came from. And it's like, “Well, *why* do believe what they said? You know, people lie to us all the time. Every day.” And she was just like, “Well, because they said that, and I looked at him and he looked good.” It's like, “Well... [laughs] I need more. I need a minimum of two collaterals.” You know, “Call the school. See how he does in school. You know. Just cause you said he looks good and they said he had a good report card, good attendance, that doesn't mean that he did. And, you know, you can support... begin to support what they told you, or not. Um... but you have to look deeper than just what you're... face value and what you're told. And be willing to do that.” And she would get mad that... we would make her do that. She felt like she *knew* what was going on. But based on what? You know, that...that... that part just wasn't there.

Jennifer's insistence on "at least two collaterals" can only seem arbitrary, unnecessary, context-blind, and plain stupid to one who felt she already *knew* what was going on. Why, the temporary worker no doubt wondered, should I intrude upon two more persons whose information has no likelihood whatever of altering the complexion of the case, when there are so many useful interviews waiting to be done? To satisfy an abstract, even mechanical, requirement of thoroughness? Only a bureaucrat could see that as real justification.

Carmen says she imposes similar standards of thoroughness in order to meet demands for justification made by those above her in the decision-making hierarchy:

When I'm leading a case and I think that an extra collateral should be called, I will be real quick to reject it and send it back, where as a worker, I'm like, "One collateral's enough," you know, "That was enough information." But now that I know policy and procedure, I have to follow it a lot more closely than I did as a worker, not saying that I, you know, skimmed around and didn't do my job, but as... as supervisor you're responsible for *several* cases, not just your own, when you... like as if you were a worker. And... um... I... I catch myself reading these cases and saying, "You know, I need a little bit more. I need a *little* bit more." And so... um... I'm a little bit more picky as a supervisor than as a worker.

For example, let's say we have a... a... a case that's "ruled out", which means there's... the worker, the investigator found no abuse, no neglect. Um... although there... the chil... I'm reading the... I'm reading the investigation... in the child's interview, there is... um... maybe some little questions of she didn't have good eye contact, she was kinda slumpy, or she was a little bit ash... she was a little shy, she didn't want to answer questions about Mom but she answered questions about Dad, but yet she made no outcry. So of course, when... and there was no physical injury so we're going to rule it out.

... Where the... and the worker's out there, it's like, "Oh! No outcry. No physical injury." You know? "That's okay... we talked to Mom, denied it; talked to

Dad, denied it. School's never seen any injuries. Let's close the case." And when I'm reading it, I pick up on those little things that, you know, "Well, let's call a neighbor." And a neighbor might tell us she hears screaming, or she might see the little girl never is outside playing. I mean, a neighbor could tell us, maybe, things that a teacher *won't* tell us. Because the teacher's not there, she doesn't see when they come home, she doesn't know their daily routine at home. So... um... I would look at the case and say, "You know what? Let's just talk to the neighbor, just to validify that rule-out this much more. Because if it goes to casereading, there might be a little bit of question. And it's just... not only for the child's safety, but it's also for...to protect the worker, to say you did everything you possibly could do to come up with that decision as a rule-out.

... *I don't want to get in trouble. I don't want this to come back and bite me*, so I want to make sure all my t's are crossed and all my i's are dotted. And as a supervisor *now* I want to make sure that... it's like almost protecting the workers as well, kind of baby them and make sure that, hey, you know, I've *been* through this. I *know* when a case can come back and bite you, and I don't want my workers to go through that, even though it's inevitable and sometimes it's gonna happen and there's nothing you can do about it... um... I want to try to minimalize that as much as I possibly can.

Carmen candidly admits here that a desire to protect herself and her investigators from blame is part of what motivates her to demand a thorough investigation. One can easily imagine how, for supervisors who have been called on the carpet too many times, "protect the unprotected" could become a less important goal than "cover your ass." And it is that very separation of client outcome from investigation process, the mindless rule-making and rule-following, regardless of the impact on both investigators and those being investigated, that causes some participants in this study, and other CPS staff members participants talk about, to have the same misgivings about their bureaucracy as a whole as they do about the IRA.

The participant who seemed to be troubled most by what Donzelot (1980), Lasch (1977), and others have characterized as the forced subjugation of child rearing and family relations generally to state power and professional expertise is Helen. Helen is African-American and has spent more time doing CPS investigation, eight and a half years, than anyone else in the study. Early in our first interview she lamented the fact that some of her co-workers with less experience had not yet learned that in order to be a fair judge of a family's behavior they must "go down to their level and work with them from there":

Some things now, as me being in it for so long, some things that they look at as, "Oh, that's terrible," to me, it's more like that's just a cultural... thing, or that's, you know, I grew up like that, so if it was not... if it didn't kill me, then... you know. It's a lot a lot of people have to learn that it's... a lot of things that go on in this job is cultural. You have to know the different cultures and the things that go on with them. Plus you have to understand that, that's just the everyday life for some of these kids. And some of people haven't learned that.

Helen made clear in our second interview that for her the term "culture" included differences based on race. Several times up to that point she had emphasized the importance of investigators "leaving their values at the door" when they did their investigations. I asked her if she thought doing that was more difficult for some investigators than others. She replied:

Yeah, cause a lot of things with that is, um... a lot of it also runs in your culture, how you were... Like me being in the Black culture, I know that this is the way some of us just live. You know, this is just part of our culture. But coming from another... like a Caucasian coming and looking at the Black situation, it's more like "No, that's abuse and neglect; you can't do that." But that's just the way we live.

At another point she elaborates:

I think you have to be able to, like I said, put your values to the side, be able to... understand where people are *at*. Um... an example I use a lot of times for the people I investigate, cause they got this big thing with drugs going on, because you use drugs doesn't mean you're not a good mother, or you're not a good father. Because there's a lot of people out there that use drugs that are better parents than I am. And so I try to get them to understand is just because they're in a situation does not mean that they can't be helped... to become a better parent. So, I think [one thing is] you can't be... you can't expect to run it like you would run your own house. That's what I'm try... You have to be... kind of go 50-50 percent person, be able to see both sides, you know. Um... you just can't... just see... um... I mean, can you... You can't just say, "Okay, she's a crack-head mother. She ain't never going to be nothing. Remove her kids." You know. And that's not true, you know. So... you got to be able to see, like I always say, something good... something positive, that she's... it's going to be a strength somewhere. She might be a crack-head mother, but her kids are fed, they're clean, they're everything. So you have to be able to look on both sides.

Helen seems to find herself at odds with a system that classifies persons as abusive or neglectful based on criteria that may have little to do with their child rearing and much to do with their poverty, powerlessness, and minority status. As we saw earlier, her suspicion of such categorization, along with the insufficiency of its recognition of compensating strengths, makes her wary of the IRA. One might wonder why, given her objections to what she perceives as a pervasive bias in CPS, she continues to work for it. There are no doubt practical considerations, but the reason she offers for staying is the same as that of others who, in different and milder ways, are also have reservations about the agency's power and the way it sometimes exercises it. "I guess," she says, "it's my passion for kids is what keeps me going." Helen feels that her obligation to protect

children justifies the intrusion, judgment, and even suffering she must inflict on families when she investigates and sometimes separates them. Her first career goal had been to become a nurse and work with newborns, the children most in need of protection. As an investigator she seems not to question that protecting vulnerable children is the main thing she does, even though, at the same time, she would like to protect to their parents as well, from a system too quick to label people it does not understand as unfit. Unique among the participants in this study, Helen expresses feelings of kinship with the parents. She feels she is one of them, partly out race and class identification and partly because she is also a parent:

The families that we deal with are just like me and... I always... like I always tell 'em, "I could be in the same shoes as you in any day." Nothing makes me higher than you, so I've learned to come down and realized that we're still all the same, no matter what. And I think this made into a spot when I had my child. When I didn't have kids it was like, "Oh, how bad for them to do this to a kid. How terrible." But once I had my own and I realized how hard parenting was, and some of the situations that can happen to where it gets you to that point, then I started saying, "Well, you know, I can see how that can... how that can happen," or, "I can see how they may have done this."

Sarah, the supervisor with the broken leg case, has also had conflicted feelings about the judgmental, invasive character of CPS investigation:

I can remember when I was a brand new caseworker... um... that feeling of going out and feeling that, one, who am I to say... to tell somebody else how to take care of their kids? That I don't want to be intrusive. You know, grew up in a pretty... uh... right-wing conservative family, where... very Republican, where government wasn't... I mean, we weren't like the Republic of Texas, but I'm saying my dad was like, you know, "The family is a unit and they are to govern themselves." You know,

that self-...um...whatever you call it. Anyway, um... So that was hard getting out of [this house], and I'm... I'm over here in this going towards the left, and... and I'm coming in as supposedly, quote, an authority figure, and I had to keep reminding myself – and I think they do the same thing; it's sort of like, “Ohhh...” – um... is that, I'm here for the kids. And that's why... I'm telling you how to raise your kids. That's why I'm telling you what you're doing isn't right: because the kids don't have a voice. So getting them... to separate out and say, “Your job is to protect the kids. Parents are going to get mad at you. Grandparents are going to call and tell you things. People are going to be mad... and... “Who are you to come in and tell... you know...” That's my job. And to always remember that every time you knock on the door, don't be... don't let your fear of all that other stuff get in the way. I mean, that's just so important, and I think that's where – oops – that's where... I try to work with them, and... when they start saying, “You know, I was really...” Well, but why are we here? Well, we're here to make sure the kids are safe.

Sarah characterizes as politically conservative the belief that family life should not be subject to state control, and characterizes her own acceptance of the right of government to regulate, or at least set limits, to the way people raise their children, as a movement to the left. One is tempted, of course, to see it as an evolution of a different sort and to interpret her statement “kids don't have a voice” as a representation of her own childhood. Sarah has gotten her voice now, and takes pleasure in using it against angry parents and grandparents on behalf silenced children. She wants her investigators to likewise become bold, to overcome their fear of asserting themselves and of talking back. She seems to see herself and her investigators acting as much *against* authority as on its behalf. And the authority she does exercise, which she characterizes as “very sacred,” is legitimized wholly by the plight of abused and neglected children, for which life has prepared her to empathize, not by the law and the coercive might at its disposal.

The acquisition of confidence and assertiveness with work experience would be a predictable course of development in any job, especially in a first job out of college,

which CPS investigation often is. An increasing sense of the adequacy of one's mental map of the investigative landscape and increasing faith in one's ability to negotiate the hazards marked on it build confidence in and of themselves. Pauline, the policy maker who has been an investigator, supervisor, and trainer believes she became more assertive simply by maturing. Yet she, too, feels that, during her time in the field, almost despite her growing consciousness of strength, her ability to assert herself had to derive from her mission to protect children:

I didn't feel like it was about me. It felt like it was about the kids. And it's easier for me – I mean, just my personality makeup – it's easier for me to advocate for others than it is to advocate for myself. I've always been like that.

Wanda, who is still in her early twenties and who has been an investigator for a year and a half, describes a similar complex of relationships among experience, power, assertiveness, and advocacy. She was summoned to testify in court after having been on the job only six months. The case involved a custody dispute. A father was trying to get the mother's share of it terminated on the grounds that she did not take proper care of the child. Wanda had investigated a neglect allegation lodged by the father against the mother as one of her first cases. She had reached a finding of "ruled out," which made it necessary for the father's attorney at the trial to discredit her. He got quite rough in his examination:

I've never cleaned houses, is what he said. I've never been a house cleaner, so I wouldn't know how long it would take her to clean her house. 'Cause supposedly this... this woman had... um... human feces and urine, and it's hardwood floor. And was saying, you know, I don't see how you could get that smell out of hardwood floor. And I went to her house three different times unannounced. APS went to the house, 'cause she had her older, incontinent father living with her. They went to the house unannounced, found that... But he decides that there's no way I can determine

how quickly you can get a smell out of hardwood floor, because I don't clean houses for a living. And I was like, "Of all the things to get me on..." And of course, my experience and my age, that was a big [...] That was a big deal for him, and that bothered me. Very much so.

Not being taken seriously because of her youth and inexperience was galling to Wanda, and presumably this was a general issue for her as a young woman, not just as a young woman doing investigations for CPS. Just a year later, however, Wanda has begun to feel that it's an issue over which she can exercise some control:

I've gotten more confident in the fact that, yeah, I will stand up to, you know, the bigwigs or they however-you-want-to-say-it, and tell them, you know, "Well, this was my case. I'm the one who's seen the family. I'm the one who's assessed it. You know, I've done this for two months on this one case, and this is what needs to happen." I've gotten confidence in [that] and I will. I'll stand up to these people now. And regardless of, you know, if they're going to like me from now on. I don't care about that... I don't care about keeping friends.

Despite how gratifying this newfound assertiveness is to Wanda, and how personally beneficial she feels it to be, she concludes as Helen, Sarah, and Pauline did, by saying that it is justified by its service to the children. "You know, this is about the kids," she says. "I've always been confident about my decisions, but I'm more confident in standing up to whoever wants to get in my way... of helping the family." The brief pause before "of helping the family" may be where Wanda first meant her sentence to end, but then realized it wouldn't do to be seen rejoicing too much in power that was merely personal.

Yvonne is another young investigator with a year and a half on the job. Like Wanda, she says she has grown in confidence and assertiveness since she was new, and she has developed a high degree of artfulness in how she uses and displays it:

I've had several cases where past workers have documented that these are extremely hostile parents, that... things like that. And I'll go out there and... be Miss Cheery Sunny Day girl and they... they're fine with me. You know, and so... I don't know if that makes a difference or if something... I just, you know... I've had 'em yelling at me on the phone and be, [sing-song] "Okay, well thank you very much. I really apprec..." You know, just this Sunshine Girl, that you know, is almost sickening, but... you know... But I've just found that it kind of [fits] people off, I think, a little bit. You know, when they open the door, and they're ready, you know, as soon as they hear the word CPS, they're ready to tear into me, but I'm just like, [sing-song] "Well, I just need to talk to you about this and see what's going on," and make it like it's no big deal almost, and, you know, we're going to have a nice little conversation, and, you know, and... I... I think I have the best luck out of those kind of cases, cause then their guard kind of goes down a little bit. But if I play into that defensiveness of... [harshly] "Well, we're going to talk about this, and you're going to talk to me," and... well, they're going to keep that guard up. And... be real, you know, guarded on how they answer questions.

I: Is that the way you've been from the start? Was that sort of your natural style. Or is that one you've sort of developed?

Yeah, well, I think I developed it more as a *conscious* development. Um... You know, th...I, I think I've realized it recently that... um... a couple of recent cases where I've gone to the home and could feel that, like... about to tear into me, cause I'm from CPS, but as soon as I smile and, you know, just say, [sing-song] "Well, let's just get through this and find out... You know, I'm just going to find out what's going on. That's my job," and...um... I just... I can almost physically *see* their face just, you know, "Ohhh, okay."

That's the... kind of my style to get myself in the door, and to keep them from slamming the door in my face, you know. And then once I get in there, I'm like, I think I get a little tougher on 'em. I'm like, "Okay, this has happened, what's going

on?” You know. I kind of don’t say, “Well, has this happened?” I’m more like, “This *happened*.” And... you know, of course I get, the “Oh well, it doesn’t... no, it didn’t,” and all this, but...um... And even in that case, I’m like, “Well, the problem *is* [laughs] I’m still being told this is happening, so... this is going to be your warning” you know, in a lot of cases, of the... especially the ones like the slap, and the things that we really... It’s not really... work... something we’re going to pursue as being abusive. But I kind of take it as approach that, “This is your warning, and we better not get another report, cause we may take... further action.”

Yvonne has learned to use her youth and gender to conceal the state power she represents. As if in retribution for having accepted the façade she first offered, she pretends to assume as proven the allegation she is there to investigate and somewhat heavy-handedly tells parents that the state is watching and they must toe the line. And why? “I always wanted to work with children.” “The big one [of decisions that CPS investigators must make] is whether or not the children are safe.” “That’s our job is the safety of children. You know. Are the children being abused?” It is interesting to note that Yvonne used the word “children” only these four times in our two interviews, and always referred to specific children on her caseload as “kids”. This gives her pronouncements about her motivation an oddly artificial and performative quality, like a linguistic Potemkin village of appropriate sentiment.

For all these women the issues of *agency* and *opposition* are crucial ones. They do not like to think of themselves as enforcers of system norms, some of which they do not themselves accept. Nor do they like to think of themselves as taking satisfaction from their ability to dominate situations that used to cause them fear and confusion, to assert their will, to see through, dominate, and correct. They prefer instead to think of themselves as motivated solely by their love of children and their duty to protect them from harm. I do not mean to suggest that there is any hypocrisy in this. Images of the beaten and starved children they’ve seen surely do give investigators all the motivation they need to climb over the locked gate, sidle past the snarling dogs, knock loudly on the

door, and face down the big, drunken, angry man that answers. My point is simply that organizational identity is not wholly a creation of the organization itself. The mental maps people make of their jobs can only extend or modify the maps they are already making of the social world. The system that new members try to define themselves into has to define *itself* into the members' consciousness, and can only do so through features that are already there, like those carved by previous experience of political and paternal power, or previous experiences of putting oneself forward.

Bruner's concept of canonicity and breach may be seen as a feature of identity as well as of narrative. The CPS system, with its risk assessment tool, its written and unwritten rules, its jargon, its practices, and ways of acculturating new employees, posits a canonicity that is intended to develop organizational identities, the application of which to diverse investigation situations will result in correct decision making. The participants in this study frequently identify themselves *as against* what they perceive to be pernicious, or merely blind tendencies, practices, and principles of the organization. They have incorporated the values of the system into their identities, where they mingle and compete with other values. In application, the system's power to intervene is mediated through those identities and those other values.

CHAPTER V

THE MIRROR OF PREPONDERANCE

By policy, the standard of proof CPS investigators are required to use is *preponderance of the evidence*. Black's Law Dictionary (Garner, 1999, p. 1201) defines preponderance as:

The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

CPS in Texas began using preponderance as its standard in 1999 (Texas Department of Protective and Regulatory Services, 2002). Before that a "reason-to-believe" (RTB) finding could be reached on the basis of "some credible evidence." Victor, the ombudsman, says he welcomed the change, as the old standard seemed uselessly vague. Pauline, however, was one of the many CPS front-line workers who thought the change would make RTBs harder to justify, and children at risk of abuse would thereby become less safe:

I started out with, "Holy shit, we... it's hard enough to protect children. We've been able to hang our hat on "Some Credible Evidence" being a child's statement, for all of these years. And we're not doing a great job of protecting kids with *that* as a burden of proof. So now you're going to *increase* our burden of proof just so we can be more consistent with APS [Adult Protective Services]? Well, fuck APS. [laughs] Let us keep our... Let us keep our "some credible evidence." Um... but you know, Robert, what they found is that all over the state we were doing it differently anyway. So it seemed like we did need some... The way people were reaching the

conclusion of “reason-to-believe.” We all had our own little definition of “some credible evidence” is what I mean. So I think that some uniformity and some consistency to our definitions was a good thing, and to our burden. I was okay with that.

Pauline’s fear that RTBs would become less frequent have not been realized in other states where a similar change has occurred (Levine, 1998), and in Texas the substantiation rates did not go down as much as many people expected (Texas Department of Protective and Regulatory Services, 2002). Unfortunately, her hope that the standard of preponderance would bring uniformity to case decision making has not been realized either. As we’ll see, preponderance, as a standard for reaching conclusions about evidence in real cases, has within it so many different elements, including quality of investigation, analysis of evidence, belief formation, documentation, and rhetoric, that it cannot help taking on different, even conflicting aspects for different people. In this section I will show that the varying conceptions of preponderance held in CPS, like the agency’s decision making generally, cover the full range of Hammond’s cognitive continuum. For some, determining preponderance means arriving at correct belief. For others it means analyzing evidence and developing the right sort of argument to persuade others. One’s conception of what preponderance means reflects one’s role in the organization and one’s decision-making orientation.

The complex, manifold nature of preponderance is often obscured by the way it is explained. Trainers and others who must try to make others understand the Black’s definition above often make use of percentages. If 51% of the evidence in a case supports confirmation, they say, then you have preponderance. Confirmation under the “beyond a reasonable doubt” standard would require that 90% or 95% of the evidence be in support of it. A “clear and convincing” standard would require something in between, say 75%. These percentages are only analogies, though they are not usually labeled as such, and their usefulness *as* analogies may be more apparent than real. Many people hear them and imagine that they can calibrate themselves and measure the evidence

accordingly, but what human being is capable of dividing up what he or she knows about a given case into 100 equal parts, and then place each piece reliably on one side of the scale or the other? The percentage explanation promises a great deal more precision than it can deliver and shows no appreciation whatever for the way people really make up their minds about things.

I asked each of the 20 participants in this study to tell me how they would explain preponderance to a new investigator just out of basic training. Two of the newest employees, Elsa and Melissa, admitted that this part of their training had not stuck with them and they could not give me an answer. In neither case did this vagueness on the concept of preponderance translate into vagueness on how to reach conclusions in their cases. Both displayed a high degree of confidence in their ability to draw good conclusions from the evidence. Preponderance for them is an abstraction that characterizes in some largely irrelevant way what it is they simply do.

This practice-oriented way of thinking about the standard of proof is illustrated in a story told by Dorothy, an investigator with three years' experience. Here is her response to my question as to how she would explain preponderance to a person fresh from training:

Oh, well, the easiest one is would probably be physical abuse, where you have the actual marks and bruises and things like that, so therefore.... and the kid is saying that mom and dad or whoever... uh... spanked me. And... um.... mom or dad admits to spanking the kid, then that's.... automatically a "reason-to-believe," because you do have that evidence. And as far as... um... neglectful supervision, ...um... I can think of a case whereas the grandmother... was supposed to be watching the two year old, but the two-year-old... the two-year-old... uh... was supposed to be in the back yard playing, and... uh... grandma.... Now, she says she was in the kitchen watching out the window, but if she had been in the kitchen watching out... So you... what I'm say... let me try to explain. I... I... Whenever there's a case like that I go into the house to look out that window, to see whether or not she could see the kid. So, she

was supposed to be watching this kid. Now, she said she was looking out that window. Had she been looking out that window, she would have known exactly when that child got out the gate and left. The two-year-old got out the gate and left, walked about a half mile to a bus stop, and somehow sat on that bus stop stoop until a bus came by and the bus driver... The child had been missing for about thirty minutes. And the grandmother said she looked and looked for the kid... uh... you know, walked to... around the neighborhood and... and things like that, she would have known that that bus driver was at the bus stop with that child. So, in a case like that, you go into the house, look out the window, um... and see how far away the gate is from the kitchen window and whether or not grandmother... uh... could have noticed when the child left. Well, she could have noticed, but, you know, right there she told a lie, because she was not watching that kid. Because if she had been watching... But anyway, I ended up doing “reason-to-believe,” because you look at the distance between the house and the bus stop and whether or not grandma could have turned to the right and noticed the bus was there. You know, she could have walked to the bus stop to see if the bus driver had... because he sat there for a minute. Ended up calling the police...

Dorothy’s understanding of how much evidence is needed to reach a conclusion seems to be almost purely narrative in character. Even after three years the features of this area of her mental map retain the shape of the stories that formed them. She has a story or set of stories that do not just illustrate, but constitute, the standards of proof for each major type of allegation. There appears to be no generalization that covers or connects the standards for physical abuse to the standard for neglect. By way of summing up, Dorothy says, “To me, that would be preponderance – just gathering your information. And I would tell that to that new person. ‘You know, you go and... look at the scene yourself.’”

At the other end of the spectrum were three administrators. Frieda, a regional Risk Director, whose interview I’ll discuss in detail in Chapter VII, Ida, a lead Program

Administrator, and Victor, the ombudsman, each gave a version of either the official definition or the percentage explanation. “It’s tipping the scale,” says Frieda, “like you’ve got a scale out there and it’s more likely to have happened than not...” Ida says, “Basically preponderance means that we’re looking at the evidence and determining what pieces of it seem credible... and then looking at... is it more than 50%? ... Does it seem probable? Not that I have no doubts about it. But does the evidence seem probable that this event occurred?” And Victor: “It’s basically that the... greater weight of the evidence, or more than 50%, if you want to divide it that way, leans one way or the other.”

Victor’s job, which is similar to that of an appeals court judge, feels no need to go further and translate the definition into the language of practice. Determining preponderance is what his practice is, almost exclusively, so for him, more than any other person I spoke to, the concept speaks for itself and does, in pure form, set a standard for his decision making. Ida and Frieda, however, like all the other 19 participants, do feel the need to go further. Ida says she’s glad investigators have a third choice for determining a case other than RTB or “ruled out.” The “unable-to-determine” (UTD) option allows investigators to avoid focusing too much on whether the one percent evidence near the middle falls on the left side of the scale or the right. “What I want them to concentrate on is the risk,” she says. She notes that some investigators and supervisors still decide whether to open a case for services based on their belief that a specific allegation of abuse or neglect is true.

And actually my...my philosophy is almost the opposite. The incident of abuse or neglect is important in that we can document in our system somehow if we need to that it has occurred and if there is a designated perpetrator, but it’s *critical* to do the risk assessment because *that’s* the piece on which we take any action. Incidents of abuse or neglect happening... doesn’t mean anything in regards to... ah...whether or not we open a case. It’s the *risk factors*... that we’re using. And so it’s just a matter of trying to get the staff to understand why that’s so important.

By “risk factors,” Ida means those indicators of child vulnerability, caretaker incompetence or indifference, and environmental dangerousness, the assessment of which is the purpose of the IRA.

For Frieda, too, the concept of preponderance, and with it the entire question of whether or not a given incident happened, is secondary to that of risk. Part of Frieda’s job is to review completed cases involving children younger than six or who have had been the subject of more than one allegation within a year. After giving me the definition of preponderance I asked her if she used that standard when evaluating those cases:

Yeah, I guess.

I: You guess?

Yeah.

I: What were you trying to pack into that “I guess?”

Well, it’s like when I’m reading these, I’m not really thinking about preponderance. I’m thinking more about, “Is this child safe? How is this child safe? Who’s watching over this child?” Um... not necessarily, “Does this meet preponderance?”

For Frieda and Ida, unlike Victor, the most important goal of CPS investigation is to illuminate the future, not the past. What happened in the past provides valuable evidence in making estimations of the likelihood of future abuse or neglect, but to fetishize the incident, or the search for knowledge *about* the incident, to get wrapped up in glamour of doing what law enforcement is supposed to do, is to forget one’s fundamental obligation as a social worker – protection. Protection, by necessary implication, looks forward: You can only protect children from what you think might happen in the future, not from what’s happened already.

Some investigators have the perspective Frieda and Ida would want them to have. Elsa, for example, says she believes her social work education and her social work

perspective are her greatest assets in doing investigation. She even sees a lower investigative skill level in those of her co-workers who do not have social work educations. Other investigators, like Leo, though they would surely agree that protection was the main business of the agency, see their own role in that enterprise as uncovering the evidence to inform credible and defensible estimations about how necessary protection is and what form it should take. This activity obliges them to spend their days looking at past events, using methods that do have more in common with law enforcement than social work. Leo says:

Those social work skills that I learned in school really aren't used as an investigator. This is not a... This, investigations, is not a social work position. That's really maybe for the ongoing cases, but our job is to... my job is to go in and find out what is going on.

Helen agrees:

A lot of people take this [investigation] as a social-worky job, and it's not really a social work job, 'cause you're not going to be able to fix every family... A lot of things I learned in my social work back[field], I don't... I can't use 'em in some of the situations I'm in, 'cause some of the families are not going to let you be Miss Social Work.

Doing social work, in Helen's mind, means not only focusing on the future, but having tangible effect on it, improving the lives of the families she works with. But since many of the parents resist being changed and in some cases would rather lose their parental rights than be changed, she is forced to do what she can to create short-term benefit, close the case, and hope for the best.

The identification Helen feels with the accused perpetrators in abuse cases, which we remarked upon in the previous chapter, exerts a strong effect on her conception of preponderance:

I never...I don't know too many definitions. But I just try to explain that, you know, that it has to be something that you can prove that happened, or that you can say for sure that it happened, you know. For instance... um... somebody said, "Well, the referral said that they had marks six months ago." "Well, can you definitely say they had six marks? Did you see 'em? Is there a picture that has exact date six months ago? How can...?" And I always ask 'em, "Well, how can you prove they had?"

Helen goes on to stress that, because of the potential impact on a person's life of being labeled an abuser of children, she feels she must be certain the label is correct before applying it:

I just believe... I'm one that I want to be able to see it. You know, 'cause what I feel like is that, there are people out there that do things to kids, and there's people that just get caught up in saying that they did, you know, with situations, that they did it, and I... you know, we mess with people's livelihoods, you know. Especially when it comes to teachers, it comes to... all... everybody, you know...If you have a bad rap from CPS, then you won't be working in too many places. So I just.... I always believe... I look at the kid and I also look at the... person I'm dealing with and realize, you know, I have another human being's... not only do I have a kid's hand in my life, I have a perpetrator's hand in my life. So I have to be able to prove that they actually did this, because if they didn't, then I'm messing with their livelihood, you know.

Helen says the evidence must "prove... for sure" that an allegation happened in order for her to make an RTB finding. A belief that an alleged perpetrator was slightly more

likely than not to have committed abuse or neglect would seem, by this characterization, to be insufficient justification for a finding that might cost him or her a job. If this were the way Helen actually decided cases, she would, in effect, be increasing the burden of proof for validation, making preponderance more like “beyond a reasonable doubt,” thereby affording more protection to alleged perpetrators than to alleged victims. This would so noticeably flout what Helen acknowledges is her fundamental obligation, to protect child victims, that I suspect she does not apply the preponderance standard in the way she says she does. I think her compassion sends bias in all directions at once, and she ends up showing the same sort of back-door even-handedness that a mother with lots of children, all favorites, would show.

Another misleading aspect of Helen’s take on preponderance is the implication that once she has made her determination in a case, that’s the end of it. She speaks as though supervision, risk review, the designated perpetrator’s right of appeal, and the ombudsman’s office did not exist. She knows they do exist, of course, and she knows that no one can lose a job as a result of a decision she makes by herself. But for Helen, being a great deal more intuitive than analytic, her own belief really is the court of last resort in determining the truth of an allegation. Her supervisor could make her change a finding, or a Program Administrator could overturn her at an ARIF hearing, but unless it could be pointed out to her that she had overlooked important evidence, her own understanding of the case would not be changed as a result. Helen strives toward a state of certitude in each of her cases; when she feels she has attained it, the case, for all practical purposes, is closed.

Other investigators express themselves similarly. Jennifer, a Program Director, says, “The way I think about it, and it seems to work for me, is... um... “Am I sure? Am I sure that this happened?” And Teresa, a relatively new investigator, says:

Preponderance of evidence is when one takes what ABCDE collaterals tell you and ABCDE evidence tells you, and you base it on all of that coming together to say pretty sure... that you think that's what's happening. And, um... that's how I do it.

And I do pay attention to my gut now. I... you know, when I was in my twenties, I didn't. I was always so... doubtful. "Am I making the right decision?" And, now, if I just pay attention to what I *feel* like I need to do... and I'm not saying I'm always right because nobody's always right and I certainly am not. But if I take my gut and couple that with what I have... in my witnesses and what I have that I can *see*, literally see with my eyes... A lot of times I'll bounce it off other people? You know, I discuss it with other people... we're encouraged to do that. My supervisor is always available. I'll call her on the phone and say, "You know, am I looking at this right?" And then, you know, she'll say, "Well yeah, that's exactly right." Or, "No. No, no, no, no. You're way off base." And that helps me a lot, too. But I... preponderance is when you take everything that you have, regardless of where you're getting it, and you come up with, "I'm pretty sure that I'm doing the right thing." Or, "I'm pretty sure that this is correct."

Like Helen, Teresa describes preponderance in terms of subjective belief, an inner state of near-certainty arrived at after assiduous evidence collection, discussion with colleagues, and private deliberation. She emphasizes that preponderance is something she comes to *feel* after she performs all the requisite investigative tasks.

Earlier in this chapter we heard Louise's story about the smooth, professional-looking man who killed his daughter in front of his wife's family. Louise refers to this case when she describes the state of belief she feels she must have in order to reach a final decision:

When I do close a case, and when I sign my name off on it, I'm, you know, just that much sure. I don't want to have to second-guess my tho... And I think with that case I shared with you about that; that really was like the icing on the cake, you know, just to make sure. And I'll dig and dig and dig until I am convinced.

Louise says, in fact, that she can't think of any case she ever had that she wasn't sure about at the time she closed it, and she has worked a great many.

Other investigators focus less upon the belief formation aspect of preponderance than on the rhetorical aspects, the task of persuading others that a given judgment is correct. Though these investigators may feel as sure of their conclusions as Helen, Teresa, and Jennifer do, they believe that what constitutes preponderance is not up to them, but to the decision makers above them in the hierarchy. Satisfying them is what creates preponderance. Wanda says, "I won't use the actual term that we use, but 'cover my butt.' That's the big thing that we're always saying. What questions should you have asked? What did you miss?" As she evaluates her case, she says, instead of asking herself, as Jennifer does, "Am I sure?" she asks instead, ""What do I need to have that's going to make my... my ruling stand? How do I convince them of what I believe is the biggest thing."

Gretchen, another experienced investigator, phrases it somewhat differently, but also sees preponderance as less a matter of believing than showing:

What I think of preponderance is that... would any... what would another... reasonable adult think? You know? If I were to put... get... you know, give this situation to ten people, my idea of preponderance would be that six of them would a... would agree: "Yeah, that does..."

Pauline, too, sees the proof as being a public, rather than a private entity. Preponderance is a function of how one's conclusion fares in the world or, more particularly, in the mind of an impartial reader:

I think that, um...preponderance is simply that a reasonable person would look at all the documentation evidence that you have and come to the same conclusion, which is... it's... that conclusion being it's more likely than not that that this happened. Not that it's earth shattering, or you know, the ground will move when you get there,

but that just a reasonable person, a person without a bias, would sit down and read your case and say, “Something happened.”

For investigators like Wanda, Gretchen, and Pauline, preponderance is not a matter of inward-looking deliberation, even if aided by consultation with others. It is the outcome of a social process, like the result of an election or the verdict in a trial. The investigator may put strong evidence and strong argument into the process, but what comes out at the end depends just as much or more on political conditions, the personal biases of others in the chain, and simple luck.

We see, then, that the concept of preponderance takes on a number of different interpretations as it is applied to real cases. It does seem, in the minds of investigator, to be an answer to the question, “How much evidence do I need?” That question, though, is always subordinate to the question, “Enough evidence to do what?” The answer to that is nowhere in the definition of preponderance, whatever methods are used to explain it, but is in the notions investigators and their superiors already have of what constitutes a good investigation, what its aims should be, and to whom or what it is fundamentally obligated. In practice, preponderance is either irrelevant or is adopted as the new name for a preexisting investigative goal – attaining certainty, persuading others, collecting evidence, protecting children.

CHAPTER VI
THE GENRE OF CUSTODY

I asked 14 of the 20 participants in this study to react to two case scenarios. The scenarios were written by Jackson and Nuttall (1996) for a study on various personal, professional, and case factors that influence judgments made by clinical social workers, pediatricians, psychiatrists, and psychologists about sexual abuse allegations. The researchers asked their participants to rate each of 16 scenarios as to how likely it was that abuse had occurred, given the facts described. A six-point scale was used, as is shown in Table 8.

TABLE 8
Jackson and Nuttall's Six-point Questionnaire Scale

1 Very confident it did not occur	2 Fairly confident it did not occur	3 Slightly confident it did not occur	4 Slightly confident it did occur	5 Fairly confident it did occur	6 Very confident it did occur
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Each scenario was constructed to display a different combination of 15 two-level case factors, as is shown in Table 9.

TABLE 9
Factors in Jackson and Nuttall's Case Scenarios

Factor	Level 1	Level 2
<u>Alleged Victim</u>		
A. Gender	Male	Female
B. Age	3 to 8 years	13 to 16 years
C. Race	Minority	White
D. Behavioral changes	Yes	No
E. Affect about event	No affect	Affect
<u>Alleged perpetrator</u>		
F. Socioeconomic status	Professional	Nonprofessional
G. Relationship to alleged victim	Familial	Nonfamilial
H. Ages	16 to 25 years	26+ years
I. Race	Minority	White
J. History of violence	Yes	No
K. History of substance abuse	Yes	No
<u>Alleged Victim's Caretaker(s)</u>		
L. History of childhood sexual abuse	Yes	No
M. History of psychiatric illness	Yes	No
<u>Family</u>		
N. Prior contact with protective service agencies	Yes	No
O. Child custody-visitation issues	Yes	No

The mean score for all respondents on all cases was 4.03, with a fairly high standard deviation of .61. The respondents were generally more inclined to believe abuse had occurred, but there was significant disagreement among them on each scenario. Jackson and Nuttall found that some of the variance was accounted for by age, gender, work experience, personal history of physical or sexual abuse, and whether one had raised children, among other factors. Case factors that tended to make an allegation more believable than not were the alleged perpetrator being white, being a family member,

being nonprofessional, or having a history of substance abuse. The likelihood of an allegation being judged credible was also increased if the alleged victim was a member of a minority, was a child rather than an adolescent, showed negative affect or change in behavior after the alleged incident, or had previous CPS history.

The two scenarios I chose to use in this study were the ones closest to the 3.5 mean on the credibility scale. The Linda F. scenario was slightly above null at 3.77, and the Harry O. scenario was slightly below it at 3.38.

Linda F., a 3-year-old Caucasian girl, was brought to the emergency room of a large city hospital by her father who requested a sexual abuse evaluation. He said he was concerned because of a bright red rash that covered Linda's vaginal and anal areas. An additional source of worry for Mr. F. was that Linda had been more cranky than usual, waking up in the middle of the night crying. According to Mr. F., when he asked Linda about the rash, she became visibly upset and said 'Bobby pinches me.' Mr. F. told the interviewer he was afraid that Linda was being sexually abused by Bob, Linda's baby-sitters' 27-year-old son.

Mr. and Mrs. F. were separated shortly after Linda's birth. They were divorced a year ago at which time Mrs. F. was given full custody of her daughter. Two months ago, Mr. F. brought suit for full custody, claiming that he could be a better parent to Linda now that he was remarried. He declared he could provide a more stable environment than his ex-wife who is a single parent and has a history of psychiatric illness.

Currently, Mr. F. has visitation rights every weekend. Mrs. F. works 3 days a week, leaving Linda with an elderly, retired black couple, Mr. and Mrs. W., who baby-sit in their own home for a number of neighborhood children. Bob, the W.'s 27-year-old son who is an engineer, has been living with the W.s since he was discharged from an alcohol rehab program about 6 months ago. According to Mrs. F., he has had no responsibility for Linda or the other children.

Linda is a verbal child who was cooperative during her interview. Her preference

was to play with the dollhouse and have teatime "like I do with my mommy." When asked about Bob, she said that they play together and that sometimes he pinches her. When asked where Bob pinches her, she became anxious, shrugging and touching herself all over. Asked if she liked Bob, Linda nodded and said "yes." Asked if Bob ever hurts her on her bum Linda said "no," continuing to play with her toys.

Mr. and Mrs. W. and Bob said they were outraged at Mr. F.'s accusations. Mrs. F. expressed complete trust in the W.s and Bob. They all contended that the charges were motivated by Mr. F.'s wish to gain custody of Linda.

Harry O., a 13-year-old Caucasian male, was brought to the emergency room of a large general hospital by his mother, Mrs. H., and his black stepfather, Dr. H. According to Dr. and Mrs. H., Harry had told them that Tom, his stepfather's son by a previous marriage, had sexually molested him. Dr. and Mrs. H. said they were shocked by Harry's accusations as they "seemed to come out of the blue."

According to Harry, his stepbrother Tom, a 25-year-old black psychologist who had recently finished his graduate studies, had taken him to the movies to see a horror film. When the lights went out, Harry reported, Tom unzipped Harry's fly and fondled his genitals. Agitated and angry, Harry recalled that the attempts he made to push Tom's hand away were to no avail. He said he was too embarrassed to call out for help.

Dr. and Mrs. H. are an interracial couple who have been married for less than a year. Dr. H.'s first wife died early in their marriage. Mrs. H., when she was divorced from her first husband, Mr. O., 3 years ago, was given full custody of their only son, Harry. Dr. H., a black physicist, is on the faculty of a prestigious university and has two boys by his first wife, who also was black.

According to Mrs. H., since her marriage to Dr. H., Mr. O. has filed numerous care and protection complaints against Dr. H. He has also brought suit against Mrs. H. to gain full custody of Harry.

When confronted with Harry's allegations, Tom H. denied them, saying they

were fabrications of an unhappy kid in an effort to discredit Dr. H.'s family. An honor student throughout his life, Tom has the reputation of being a fine psychologist and a "great guy." He has no history of violence or of substance abuse.

The Linda scenario has Level 1 characteristics in categories B, I, K, and O, and Level 2 of all others. The Harry scenario displays Level 1 characteristics in categories A, E, F, H, I, and O. As I asked the 14 participants to respond to these scenarios, I did so in as neutral a way as possible, saying merely, "Tell me what you were thinking as you read through that," or "What is your reaction?"

I asked the participants to read and react to the Linda scenario first. Their initial responses fell into four categories.

- Melissa, the new investigator with the SIDS case, had an immediate and strong belief that Linda had been abused. "Um... well, she's definitely showing... um... unusual and bizarre behavior. I mean, she... something has happened to her. I believe that someone has, um... I th... believe that there's some type of abuse going on there."
- Helen and Yvonne, two experienced investigators, focused first on the child's rash and the likelihood of its having been caused by something other than abuse. "I would want the doctor," said Yvonne, "to tell me what he thought first... um... about the rash. Um... just from my experience with little girls two to three, it's not uncommon for them to get rashes in that area." She went on to say that she knew of cases in which bubble bath had been found to be the cause of vaginal irritation. And Helen said, "My initial reaction, looking at it... was probably that it was some type of... some type of health thing, that maybe she was just not cleaning herself the right way."
- Three investigators (Arnold, Leo, and Louise), all experienced, made no initial evaluative observations of any kind, but instead began immediately to describe what steps they would take to investigate the case.

- Eight participants, including three investigators (Elsa, Teresa, and Wanda), two supervisors (Carmen and Sarah), a Program Director (Jennifer), a policy maker (Pauline), and a CPS attorney (Nancy) seized first upon the fact that a custody fight was going on between the child's parents. Nancy's way of noticing this was typical:

Well, see, of course I can't look at this without...Of course, my first thought...is that... um... the dad's trying to use this as a ... in a custody... in a custody issue. Um... in that he's just trying to come up with something, 'cause he doesn't like the mom's, you know, situation, leaving the child with a.... you know, with somebody, and he wants to... he wants the kid.

If we were to compare the full contents of the participants' reactions to one another, differences would be less pronounced. Participants who remarked first on the custody battle aspect of the case, or the probable innocuousness of the rash, went on to say how they would investigate the case. The three who started off by laying out a plan of investigation later observed, as Leo did, that the father "certainly has his own motivation here." And they were as much aware as the eight participants who remarked on the custody battle first that allegations brought by one parent in a custody dispute against the other are seldom validated.

Of the four Level 1 factors that Jackson and Nuttall loaded into the Linda scenario – the child being younger than 9, the alleged perpetrator being a of a minority, the alleged perpetrator having a history of substance abuse, and the existence of a custody dispute – the latter was by far the most salient for these participants. One reason is that such cases are common for CPS. Yvonne, in fact, says, "If we had no custody cases I wouldn't have a job." Gretchen estimates that fully half the cases worked in her unit originate from custody battles. And Melissa, at the time I interviewed her, said every case she worked over the preceding summer had had that character.

A second reason for the salience of the custody factor is that cases having it tend to be highly frustrating for investigators. The allegations are often exaggerated and have to do with events that happened long ago, if they are not completely fabricated. The children have frequently been coached on what to tell the investigators. And the complaining parent, through his or her attorney, often tries to pressure the investigator not only to validate, but to conclude the investigation in time for the next court date. As Yvonne said, “So many of ‘em are just baloney that... they, they get frustrating and... cause we’re in this job to help people, and it gets frustrating that we’re wasting our time on this.” Elsa, an investigator with a year’s experience, asked whether she had worked any cases where custody was an issue, replied:

It’s a nightmare. It has become... a... They’re use... They are using CPS... as a court system. Because most of the time, or...or what I’ve come across, in the cases that I’ve been dealing with, is there’s... You know, they’ve already had, you know, the decree’s been done. The visitation’s set up. There’s noth... The kids don’t say anything. The kids are in the middle. They love both their parents. Most of the time [...] It’s always about, you know, they came home with a bruise. Or they came home and said, “Daddy’s new girlfriend,” or “Mommy’s new boyfriend,” or new husband or new stepfather... And these kids are absolutely torn apart. It... To me, that is the most... That is a *very, very* extreme form of emotional abuse to me. ‘Cause you’re pitting these children against two people that they love. And oh, we’ve got some good ones. And the time that’s expended on those, just to come to the conclusion that it’s nothing more than custody battles... I could have worked a lot of other cases.

Sarah describes a case the workers in her unit, including Elsa, have been dealing with for many months:

We have a case right now that’s just an ugly, ugly, ugly custody battle. And the kids are six and eleven. And what this mother is putting these kids through...She shuns

the kids if they say they like staying with their dad, and she won't talk to them for days on end. And you have just a... just a constant sort of thing, but yet she's trying to say that dad's... you know, of course, he's the bad guy, so she's always talking bad about... dad, and... and the... It's just very... She has the kids. We ended up, just cause I wanted to put an end to it once and for all. The kids *supposedly* said that stepbrother hits 'em, then when they're there visiting. So I said, "You know what? Let's do a videotape." That way it's an unbiased person doing the interview. She *can't* say that we led the kids, all that. Well, she tells the kids on the way over there – 'course we find this out after the kids are at dad's house, we go interview them over there – she tells the kids, "Just remember, this is on videotape, and I'll get to watch it? So if you don't tell them what I told you to tell them, I'll know." So the kids are terrified, so they're in there saying all this stuff about when they're at dad's house all the things that happens to them, supposedly. So when the worker went out to the hou... dad's house to talk to them, and talked to them away from the dad, they just broke down and bawled about it... I mean, they're so afraid of her, that she's going to... dislike them. It's just awful.

Nancy, the CPS attorney reports a similar case:

Because I've been involved, personally, as an attorney, in cases where there was really bad stuff going on and where people you know, I had one case where a father was taking this little girl to a sexual abuse exam every single time she came back from her mother because he was accusing the mother's boyfriend of doing something, and this girl had something like thirteen sexual abuse exams in six months or something. So we ended up basically finding that the father was being abusive to the child.

Because "custody cases," or cases in which the initiating allegation was made as a move in a custody dispute, are so common, so disagreeable to work, and tend to be so

much alike in their origins, developments, and outcomes, they constitute for CPS staff a more distinctive *genre* than any other potential grouping of cases based on shared victim, perpetrator, allegation, or reporter characteristics. Aristotle in the *Poetics* said any particular “mode of imitation” could be assigned a type according to its medium, its objects of representation, and its style. Custody cases have no distinctive medium or style, but do have distinctive objects in Aristotle’s sense – actions that are performed by either good people or bad people, “the diversities of human character being nearly always derivative from this primary distinction” (Aristotle, *Poetics*, II, trans. 1941). As simplistic as this may seem, it is indeed the multifarious badness of the complaining parents in custody cases – their hatred, jealousy, and lust for retribution, their brutal indifference to truth and to the effects of their actions on their own children – that defines the genre. That one factor supplies instantly the motives, actions, and endings of the custody case story.

The danger, of course, in custody cases being so thoroughly typical is that distinguishing a particular case *from* the type becomes difficult. As Bruner (1991) has pointed out, genres are not only conventional templates for the depiction of life events, they are Kantian “forms of intuition” that condition experience and constitute a basis for knowledge. Genre is not deduced from plot, in other words. It precedes and gives shape to plot. Before a new custody case can acquire any specific content whatsoever, its membership in the genre determines, or has strong potential to determine what can, or must, happen in the end. Several participants were keenly aware of this danger. Gretchen says:

It’s amazing the amount of malicious... reports that we get. And then, and... it just...and it’s really... it affects... workers because... you’ll look at the reporter page and see it’s the other parent and right away you’re like... “All right, oop, rule out case. Custody battle.” ‘Cause we do get enough of those that ... where that is the situation that you get very, very jaded... about anything... that’s supported by another parent. And you don’t do a thorough investigation.

Nancy, the CPS attorney, agrees:

Your tendency is to almost, you know, discount it immediately when you have a parent who's calling about another one in the middle of a custody dispute. And I would say probably, truthfully, more times than not, there isn't anything to it. But on the other hand, a lot of times there is something to it. And it can be a horrible situation for the parent who's trying to protect their child because they're ignored because it is a custody dispute.

Barbara, the State Risk Director, began to find, somewhat paradoxically, that it was the more experienced investigators who were most likely to fall into the trap of deciding a case in advance simply because the intake made it seem to be a routine custody case:

I've found in supervising... uh... I told you that at one time I had... uh... 90% of my caseworkers staff were very, very tenured. And something I found with working with them I thought was really interesting was that... they would swing the other way a lot of times. They'd get those, and I would... I would review the intake and assign it, stage progress it to investigation and assign it, and many times if it was not a real clear... if it was still kind of borderline, the allegations, they would come back in, and they would argue with me that they really didn't need to investigate that. Almost always, if there were overtones of a custody dispute, they would be right back in my office to say, "You know what this is..." Um... And so I found, often times that... that they would... I guess what I'm saying is, it was because that they're tenured and where they'd been and what they'd seen, they would try to use that to say, "This is going to be another one of those. We don't need to look at this." Irregard... Sort of disregarding maybe other critical issues that... that were there. And wanting me to... wanting to persuade me that this was one less case that, that, that I would have to assign to them, um... because it fit in some category.

Wanda, herself an experienced investigator, had one of the rare custody cases that broke out of its conventions:

I had one that was a bad sexual abuse case, and it *read* custody. It read big-time custody battle, but turned, you know, that it was... There was some sexual abuse, and some pretty sick stuff going on with this kid. So I know that one was a really strong RTB for me. We actually removed the kid. We... we got in on custody and took mom's custody away from her, you know, 'cause it was her turn to get visitation.

I: Was... was dad.... it was mom that...

It was mom and boyfriend doing the sexual abuse, so we took her custody.

I: Oh, I see, so dad was the one who...

Dad was the one who called it in, and he was... the same day he called it in was the same day he was supposed to give the child back to mom.

I: Oh, that is kind of a suspicious thing...

So we were like, you know... It totally read... totally read custody battle.

Wanda's observes that the case initially *read* as custody case in the same way that someone might remark that a novel, in its opening, chapter, read as science fiction, but then, as it went on, became social satire. She goes on:

And then she turns out that that day she's about to go back to mom, and she starts freaking out and starts saying this stuff, you know. Just so happens she didn't want to talk about it before then, and then when she finds out she has to go home... The details and the information she gave -- no way. No way a child would know that.

I: How old was that kid?

Five? And the information she gave was just ... was pretty good. I know criminal was very impressed. Yeah, criminal was very impressed by the information she gave. There was no way she was making it up. So...

I: But that's kind of un...

That's... that's very, very rare.

I: Very, very rare.

Very.

I: But I guess, though, once something like that happens, then that sort of makes you aware that that's always a possibility, I suppose.

Oh, yeah, definitely, definitely.

Pauline, the policy maker who has been an investigator and supervisor, remembers a similar instance:

When um... I was a caseworker in Dallas we had a horrible, horrible child death. Um... it was a two-year-old little tod... toddler, who had... He ended up dying because his mama's boyfriend or whatever grabbed him by the ankles and threw him over a four-poster bed, and one of the posts hit him in the abdomen, and he... he died a very, very long, long painful death. And we'd had fifteen reports on this family. And mom and dad were going through a custody fight. And that was in every... that statement was in the... analysis of ev... of fifteen investigations.

I: Which made them all think it's bullshit.

Yes. Yes. So...

I: So you made a point of telling that story in training just because so many people...

Don't chalk it up as bullshit just because there's a custody dispute going on. You know, the custody dispute *may* have something... It... It's a piece of information, but...I don't... you can't hang on to it s... in an effort to prove... that it's a bogus report. Or... I mean, you can't do much with it, is what I'm saying, Robert. The fact that there's a custody dispute going on is just one of those: "Okay, just put it over there, and just keep going through the case" kind of thing. What... What I found in this... this horrible child death case was that... um... was that that was the end of the

investigation. When they learned there was a custody dispute going on, that's when our guard went down and we said, "Oh, it's just these allegations going back and forth." And we ended up with a dead kid.

In Chapter IV I described how Helen, an investigator with eight years' experience, adopted a more systematic approach to investigations after the death of a child who had been the subject of an earlier allegation that she had not been able to validate. Though that case did not have a custody aspect, Helen has nonetheless taken to heart the general lesson it provided about the necessity of looking beneath the surface:

A lot of us – and I do it sometimes, but I try not to do it – well, you get to be like, "Oh, this is just a custody battle. Why do we have to even...?" But I try to take it for what... it's worth... what... Cause it could be something legitimate, so I've gotten beyond the point where I say, "Okay, it's just another custody... battle." What, you know, they want to use us to gain custody, but a lot of 'em are... some of 'em are not like that. Some of them are legitimate.

As with Carmen and her apparently specious sexual abuse allegation, we see in these comments a disciplining of the narrative mode of understanding, a resistance to seeing the story in a mass of evidence too soon. Helen, Pauline, Wanda, and Barbara cannot but be aware of the likelihood that a given custody case will unfold the same way that cases of that kind usually do. Yet they are able to set that awareness aside, to de-genrify the case for themselves and investigate, in a kind of sincere pretense, as though this case had none but its own story to tell.

The Harry O. scenario also has a custody dispute factor, but somewhat unexpectedly, none of the 14 participants I asked to comment on it mentioned that issue first as they gave their reactions. That may be partly because I always presented the Linda scenario first and asked specifically about custody cases as part of the discussion of it; the

participants may have wanted to avoid raising the subject again. Also, though, the custody aspect in the Harry scenario is made less important than it was in the Linda case for several reasons. First, it is the alleged victim who makes the report, not a divorced parent. Second, Harry is 13, not three; even if he is fabricating this allegation, it is more likely to be for motives of his own than his father's. Third, issues of race and class are more prominent than they were in the Linda scenario.

The first thing three of the participants said about the Harry scenario is how much trouble they were having understanding it. "Very confusing," said Carmen. "A little confusing," said Louise. "I'm getting confused;" said Pauline, "I'm going to need a genogram to figure out who everyone is." This is interesting because to me the Harry scenario does not present greater reading difficulty than the first one. It's shorter by some 90 words. It has five characters in it, whereas the Linda scenario has six. Perhaps the absence of a single salient typifying aspect, like custody, prevents the scenario from seeming coherent. It not being readily apparent to these three participants what *kind* of story this is, they have difficulty mapping it in their minds. In the Linda scenario the custody dispute, even if it was rejected as a determining factor later, served initially as a point around which the case facts could be ordered and made comprehensible.

After expressing her confusion, Louise, who is African-American, said, "I just noticed the way they keep bringing up race here. Um... And I really don't see the significance in that... Abuse and neglect is not prejudiced. It's unbiased, you know." She seems to resent the fact that in both of these two presumably fictional scenarios the race of the alleged perpetrators is offered as though it were relevant evidence in determining whether the allegation is true or not. Elsa, who is white, also remarked on the prominence of racial identification in the Harry scenario. Both appear to be reacting to race as an aspect of the scenario's *sujet*, rather than of its *fabula*, and are momentarily forestalled, Louise for a second time, from seeing the case *as* a case.

For most of the participants, even those, like Louise, who were distracted at first, Harry's age, and the fact that he had made an outcry, was the most prominent feature of the case. In addition to Louise, Arnold, Pauline, Jennifer, Carmen, Leo, Melissa, Elsa,

Yvonne, and Teresa all said that Harry's story would be the starting point of their investigation. Melissa and Teresa expressed immediate skepticism of it. Both found it unlikely that a 13-year-old boy would be "too embarrassed" to protest or get up and walk away when the stepbrother started to fondle him. Though the others were more cautious in evaluating Harry's claim, they all thought a skillful and thorough interview with him would either produce additional details and background information that would set up the investigation or would reveal that the boy was lying.

By Texas law, younger children who are alleged to have been the victim of physical abuse or sexual abuse must be videotaped or audiotaped when they are interviewed. Children older than 12 may instead have a written statement taken from them by a police officer. As Carmen describes it, the interviewing officer

would look at... um... the criminal, more detailed in a sense of... um... the incident. You know: "Where did he touch you? How did he touch you? With what did he touch you? Did he say anything?" Yes, we want that information. [It's] also that we want. "Well, how long have you known this guy? Have you... When did you go to the movie? What movie did you see?" Things like that. Also, what the kid was wearing. Maybe he was wearing, "Oh, this is what I was wearing." "Oh, those are pull up shorts. Where's the zipper?" Things like that. I mean you've got to look at everything. And... and as stupid and minute as it looks in the referral, those can *easily* help you to determine if this is a "rule out" case, and this is a kid who maybe doesn't *like* the AP for some reason. Or maybe the AP said, "No I'm not going to take you to a movie. I have work to do. " And the kid got pissed off. "Well, I'll show you. He did this, this, this and this." It's hard, it's very hard. But, again, you try to get as much detail so you can make the best determination on the case and also the medical documentation, and history checks...

Should Harry stick by his story and give additional information, the investigator would then be in a good position to interview the alleged perpetrator and test his version

of events:

"Did you ever take this kid to the movie? You did?" And then have the... the worker look it up and see if there was a mo... a movie was playing, it was that movie. It was night time. Does somebody remember seeing the child? I mean, you have to... Little... the small things like that could break the case. "Oh, no that movie hasn't played here. That movie's over." Well, are you sure? Was there another cinema? Um... you know... "I never took this child to the movies." I mean little things like that that you could... that a... um... novice worker could miss, your senior worker probably catch. Something as little as, "Hey, what movie did you see? Tell me about the movie." Cause the child could talk about a strict... a different movie, and then the AP say, "Oh yeah, we saw a comedy. It was hilarious. The lights were bright..." You know, and the kid's talking about, "It was Godzilla, and it was dark, and I was scared, and... and I got so scared that I was all over... you... all over the AP, cause I didn't know... I was scared, I was trying to get *under* him." I mean, those are things that you have to look at, because those can help you determine your decision in a case.

Once those interviews were done, says Jennifer, the Program Director, there would still be lots of investigation left to do:

I would look at the history of these two, see if they've been conflict... conflictual in the past. Look at the relationship between the parents? And see if there's any reason for one to try to make the other one look bad? Um... You know, you'd really have to talk to friends, relatives, and neighbors... and...and get a picture of what this family's like. Um... cause we don't know if there's a criminal...in the family. If there's been visits to the house by the police for domestic violence. If... if... let's see... if this Harry has a criminal history, he's got any previous or CV... CPS history. Um... There's a lot of things you could look to provide you clues.

For Jennifer and Carmen the scenario has found a genre after all, that of the big case. Big cases take lots of work, lots of supervision, and are almost certain to involve regional and state level higher-ups, law enforcement, prosecutors, and defense attorneys, especially if the outcome tends toward “reason-to-believe.” Big cases are the ones most likely to get on the news and to have negative career impact.

This classification of the narrative is enhanced by another factor of the scenario, the family’s socioeconomic status. Sarah put it most forcefully:

I think that when we get cases like this where the family involved is... more educated than they... the average client that we have, I think that what comes up for us is that it’s going to be more difficult, because they have more resources available to them, and they have more at stake to lose... You know, standing in the community, maybe a job, a good job, those kinds of things. So I think that when we get these kinds of cases, which we do get them, um... that’s our first thing is that we think, “Okay...” Not that we *aren’t* thorough, but I think that we’re even more meticulous, because these are the kinds of folks, if we end up validating, they are going to come back... sometimes and, like I said, get a lawyer, do whatever, to try to dis...discount what we’ve done.

Sarah contrasts the way these educated families react to CPS involvement in their lives to the way working class families do:

The average client that we get has more access to... and their lives are more public, because of... um... they have to get public assistance... Ch... chances are there’s more violence... not more, but more that’s reported. So their... personal lives are more public, so they don’t have um... maybe as much... say... (What’s the word I’m looking for?) They don’t feel as embarrassed? Or shamed... by having something external come into their lives and say, “You need to do this...,” you know. Their

lives being an open book is... they're kind of used to that. Because the fact that often times they're seeking some kind of services, be it food stamps, DHS [Department of Human Services]... you know, WIC, MHMR [Mental Health Mental Retardation] services, whatever. They've been a part of that external assistance....

I: Being scrutinized and having people come into their houses and ask 'em a bunch of questions is... not a new thing.

No. I'm always amazed at the fact that when we knock on the door they never ask for an ID. And they're al... almost always willing to let us in. Because that's... they're kind of used to that. Me, who's, you know, never even had the police at my house... I'm [...] "Who are you? No, you're not coming in." Because I know. I... I don't have to let you in. Whereas they kind of tend to think that... they have to let us in.

Nancy, the attorney, also made early mention of the class issue:

Well, I think - and this is interesting- having the fact that their wealthy, and prestigious and educated, makes it much more difficult. Which it shouldn't really but, um, you know, it makes you feel like you have to be much more cautious and careful.

Wanda, an investigator of three years' experience, reacted to the scenario's inclusion of the family's socioeconomic status much the same way Louise did to its inclusion of race. Her first words about the scenario were:

I don't want to know what they do. I don't want to know that he's this prominent psychiatrist, you know, 'cause it's like, "Okay, let me throw out my credentials at you, and that makes me not capable of doing this." That's annoying.

Earlier in this chapter we heard Wanda's story about having to endure a humiliating cross-examination in a custody trial. The attorney challenged the findings she'd made in

her investigation on the grounds that she was young and had had little life experience. He attempted to discredit her by showing that she lacked standing as a judge of houses, as an investigator, and as a credible person. That any assertion should be valued or devalued on the basis of “credentials” remains a sore subject for Wanda. Race, too, she sees somewhat in the same light. Wanda is white, and she says alleged perpetrators sometimes try to discredit her because of that:

I had a family... he... he... the, um... It was an interracial couple, white wife, black husband. And then the kids were mixed. Their grandchildren were mixed with Hispanic and white. So he [the alleged perpetrator, the grandfather] decides that the only reason I'm doing all this, you know, beside the fact that he left this huge print on his child's... in his grandson's face, from hitting him upside with a shoe... Um... I'm not concerned with that. I'm not concerned with the child's safety. The only reason I got involved is 'cause it's an interracial family, and I'm racist. So, you know, it's just an easy card to play.

“... I'm the wrong person to play that with,” Wanda says. She recounts a phone call she had with the grandfather during the investigation:

I told that him I was in an interracial relationship, and I have family members who are interracial, so that made him even more mad, that, “Okay, well wait, I can't play this card. This isn't working.” So that made him even more frustrated with me. And he ended up just hanging up the phone.

The genre the Harry scenario has the potential to become a member of, for Wanda, is the here-they-go-trying-to-put-me-down-again kind of case. Like the big case genre, it isn't one that tends toward a certain outcome, as the custody cases do. Rather, it postulates a familiar kind of obstacle, one that will call upon her to adopt a certain emotional stance. Like all genres, it is, as Bruner says, a way of perceiving and

organizing a set of narrative elements that renders them comprehensible and psychologically manageable.

Pennington and Hastie (1988, 1993a, 1993b) have shown that the fitting of elements into a story pattern is how jurors comprehend evidence in a trial. The responses of the participants to the Jackson and Nuttall scenarios show that the story framework upon which the evidence is fitted can acquire a particular structure at a very early point, as soon as it is decided what kind of story this will turn out to be. The assignment of a story to a genre reduces the anxiety of not knowing, provides an initial point of orientation, and sets a provisional course of action. Membership in a genre, as I remarked earlier about investigation stories generally, gives character and potential understandability to the gaps within them. In both March's (1994, 1997) rule-based and Klein's (1998) recognition-primed decision theories, *recognizing* a decision situation as being of a certain type is a necessary preliminary to the application of an appropriate protocol. That is precisely what these participants seem to be doing as they quickly classify cases by their most cognitively or emotionally salient features.

It should be emphasized, however, that classification by genre is by no means a final act. A story's genre can be changed or ignored, and we have seen conscientious investigators do just that, having learned to distrust their intellectual comfort and the ways in which they satisfy their desire to know.

CHAPTER VII
“I’VE GOT TO SURVIVE IT SOME WAY”:
FRIEDA ON THE CUSP

Of the decision-making styles of all the persons I interviewed for this study, Frieda’s seemed to me to have the widest range along the cognitive continuum. It covered both sides of the midpoint and could at times seem strongly intuitive, at others strongly analytical. This may be partly, though certainly not entirely, explained by her job situation. She has been in CPS for many years and is now one of two regional Risk Directors. The main function of these Program Director level positions is to review cases involving children under the age of five or who have been the subject of multiple allegations within the past year. The assumption is that even though thorough investigations have already been conducted, a significant risk of abuse or neglect could have been overlooked. An expert, looking over the entire history of the child’s CPS involvement with a dispassionate eye, might spot what others had not. The task structure of this work is clearly analytical, but Frieda had only been doing it a short time. Newness to an activity may of itself entail an intuitive mode of processing, since one has not as yet had time to acquire the detailed knowledge of structure upon which analysis (in the sense of breaking down into constituent parts) depends. Frieda’s unusual versatility may be partly attributable to that.

When I interviewed her, Frieda gave an immediate impression of being highly detailed-oriented and systematic in her approach to her job. She recited for me, without pause, the names of the ten counties whose cases she reviews. When she first began to describe her child death review responsibilities, she did so in terms of the form that she had to complete for each case. Unable to find one to show me, she listed from memory, again without pause, its various components: “... child vulnerability, home environment, caretaker capability, quality of care, social environment...” She said when she was investigator she went through each case “methodically,” and said it was dismaying to her that heavy caseloads kept most investigators from delving into previous CPS

involvement with a particular child as thoroughly as they ought to.

Frieda is also dismayed by what she sees as categorical inconsistencies in the application of the abuse and neglect definitions to different cases. She described two drowning cases with similar circumstances that reached different outcomes. In the first, a mother was bathing two of her children, one four and the other about a year old.

And... things were out of the ordinary there. They were building a house. The father comes in. They were in a rush. The contractor's there. They have to decide on the window height, because he needs to go purchase the windows, blah, blah. so he leaves, she comes out., she takes a look at that. She makes whatever comments and the little boy comes to the door screaming that the baby's dead...

Four years after this tragedy the couple applied for a daycare center license, but were denied because of the validated neglect against them, of which they had not been properly notified. They requested an administrative review. Frieda found that the death had been ruled accidental by the Medical Examiner four years before, but she consulted with a CPS attorney and they decided not to change the finding of "reason-to-believe," despite their recognition that there had been no intent to injure the child and that the family had been "devastated by the accident." "Clearly," says Frieda, "they left the child in the precarious position."

By the same standard, the "reason-to-believe" finding in another case, which seemed to Frieda to turn on the same issue, should have been upheld as well. In it, a child wandered out of the house, fell into the swimming pool, and drowned. The child's father knew the latch on the back door was broken and the door could easily be pushed open. He got busy in the kitchen, though, and didn't notice the child go out. Frieda says, "I had my page of thinking," comparing this case to the other, but she could not see a fundamental difference. (Using pencil and paper to think through a dilemma is yet another sign of Frieda's systematic approach.) The attorney, however, found a legal distinction in that the mother in the first case had placed the child in the bathtub, but the

father in the second had not placed his child in the pool. Though he knew about the faulty latch, the awareness he should have had regarding the dangerousness of the situation was not equal to what the mother in the first case should have had. Frieda finds this distinction abstract and unconvincing. “It still gets into the supervision issue,” she says, and she struggles on occasion when “trying to figure out how this one is different from this one.” This is not the struggle we saw Louise, Sarah, and Melissa engaged in, as they endeavored to fit the facts of their cases into a coherent story framework. Frieda has instead analyzed her two cases into their constituent parts, discarding much of the particularizing narrative detail, and found that they have in common the essential situation of a parent recklessly ignoring a risk that he or she knew existed, resulting in a child’s death. That the category expert Frieda respects as such, the attorney, says the two cases in fact fall into separate categories by virtue of elements Frieda sees as inessential, makes her doubt her own categorizing ability.

Frieda sees the inability of investigators to so distill their cases as a significant barrier to accurate decision making, but also as a natural result of personal engagement with the people in the case. She describes one in which a family visited a lake and, as they were leaving, sent a two-year-old back to the water’s edge to fetch a toy they’d left behind – “a little shovel,” Frieda remembers. The child got into the lake and drowned. The local unit had not confirmed neglect against the mother, but Frieda, as with the other two drowning cases she described, felt it had to be categorized as “reason-to-believe.”

I think child deaths are hard for staff to work because, you know, we might just go out and slam a “reason-to-believe” on a family with good cause or lack of supervision, and, you know, there’s been no child death or whatever. But then, when a child death occurs, then, I mean it grapples at everybody’s... uh... heart, because you’re having to be... deal with people in a crisis situation. You’re heightened in the way your response to them, as far as, you’re hyper-vigilant with the family. You’re, you know, trying to control all the emotional things that are going on to try to get the information that you need, and sometimes those investigations, because you feel so

badly for the family in their trauma and their tragedy that sometimes, I think you... you don't want to say anything else that's going to upset them.

The investigators' immersion in the ghastly story of the case, with all its attendant emotions, forestalls proper categorization. She does not blame the investigators for this failing, but sees it as justification for her own level and style of review.

With so much evidence of Frieda's systematic orientation, I was quite surprised when, about halfway through the interview, she left off describing her social work education to tell the following story:

... I was a supervisor for about six or seven years, and we read... I want to say thousands of cases. But you read, like for example, as a supervisor once I had a case, and as you work with your workers, you know who does what, what they skim over, what they do a good job at, what they don't like to do, what they skip, kind of thing. And I had taken a box of cases home to read or whatever, and I lay down on the bed. I thought, "Oh, this'll be great. I'll just lay here and read this." And I... I had just laid down, I was reading this case, and I don't know what about that case it was, but... Well, I do know kind of what it was, but I was reading along or whatever, you know, blah, blah, blah., blah, and I *sat up*. You know, it was kind of dramatic, because... I...you sit up and you read that... "Did I read that or what?" And I thought, "He didn't see this kid. That's... There's no way... he didn't see this kid." You know, it was like, he said all this blah, blah, blah... I *know* he didn't see this kid from what this says. I just *know*...

I: And how did you know? You said just a minute ago you do know what it was. What was it?

I think it was the way it was written, the ambiguity it was written with, the... all of the other... looking back on it, probably... He had more factual detail in it, and almost like the reading of it, it almost caused you to question whether he really saw this kid or if he was just a good storyteller.

I: I see.

So, I picked up the phone, and I called the family, and I said, “I’m... apologize. This is late, but I’m reading this case and I have to know some information.” I said, “Did my caseworker, da da da, did he interview this child?” And they said no. You know? And I thought, “Whoa!” You know? And I said, “Well, did they interview the other one?” and he said yes. I said, “Well, I’d like to come out tomorrow or whenever, and talk to you all.” And so when I went out to the house and talked to them and what have you, I got the other child on the phone, who was out of town somewhere and talked to him to verify if he had seen this worker, and sure enough, he hadn’t, you know? So I mean maybe that came from... I mean I certainly didn’t set out to read his case, thinking he hadn’t seen that kid, but when I read that it was kind of like a stark kind of reaction. I mean, I sat up...

I: Like the hair standing up...

Yeah, it was like “What...” you know. And sure en... and sure enough... And then... Well, I don’t know if that plays into the intuitive, or if you’ve just read so much of their work you know what weaknesses you’ve been trying to work with, or what strengths you’re trying to build on. But... you know, of course there was personnel action in regard to that, so you had several issues...

This is as striking an intuition story as was offered by any participant in this study. Those who prided themselves on their intuitions would have been delighted to have this one’s out-of-nowhereness, its specificity, its sudden, visceral coming, and its unambiguous verification as regular features of their own. Frieda explains it, of course, in a mundane way as based in a thorough familiarity with the dishonest investigator’s writing. Even so, she is unable to say very precisely what the cue had been. She says, “I think it was the way it was written, the ambiguity it was written with...” though somehow at the same time it had “more factual detail” in it than seemed right. Frieda is trying to be analytical about her intuition, but the intuition resists.

Frieda follows with a second example of her intuitive prowess. She made a presentation to a junior high school about CPS, and, when it was over the school's law enforcement officer showed her a letter one of the children in the class she'd presented to had written describing sexual abuse perpetrated against her. Frieda says she knew immediately which child it had been: "She sat there the whole time with her hair, you know, she had her hair down, or she was just very distracted..." For Frieda this somewhat more ordinary instance of intuition is most meaningful as a sign that experience does train one's perceptions, that over time one becomes "attuned."

The clearest example of the way Frieda combines intuition and analysis in her work is the way she reads the cases she reviews. CPS policy, as I described in Chapter I, tries to set limits to the decisional power of any one person, especially the investigator. The more important the decision, the more decision makers are required to participate and the higher up the hierarchy it must go. There is a paradox in this, however, that supervisors and administrators commonly remark upon. Their ability to make good decisions depends on the quality of the information they get from the investigators. In the great majority of cases, even supervisors never see or hear the victims, perpetrators, or witnesses in a case. Everything they know about it comes to them through the investigators. They are, as several participants put it, the "eyes and ears" of the agency. Supervisors have the advantage of being able to question the investigators directly. Pauline, a former supervisor, describes a kind of Socratic process of detailed prompting through which she develops a full case story. "What did you see?" she would ask. "What do you think about what you saw?" Sarah, a current supervisor, reports doing the same thing: "I mean I have certain questions that I ask as we go... when they call me or come in and staff." The purpose is not only to assist and correct the caseworkers, but to mentor them and help them reach their own conclusions (Salus, 1997). Further up the ladder, though, that option disappears. They decide from the written record only. Victor, the ombudsman, says he has the option of talking to the investigators who have produced the documentation he reviews, but seldom does so. "If you haven't done it, then you haven't done it. You don't get 'do-overs' in this... this business. Once a case is closed, it's

closed.” He seems to mean by this that he is reluctant to allow CPS an opportunity to answer evidence and challenges to evidence that the appellant does not have. It does not seem unfair, however, to speculate that Victor is also reluctant to allow additions to the body of evidence at this stage, which would likely hamper, rather than make easier, the task of conceptualizing the case, finding the essence of the case that permits it to be judged as fitting or not fitting the relevant statutory definition of abuse or neglect.

Reading a case at the review level, then, would seem naturally to call for an abstracting, distilling reading. When I asked Frieda, though, whether she thought having only the case record to go by as she made her judgments was an advantage or a disadvantage, she protested my assumption that the documentation cut her off from important features of the case:

Well, I think when you read those cases, I think you pick up on what the caseworker is seeing, if there’s any documenta... if it’s at... halfway decent, you know. You can pick up on what they’re seeing and what they’re thinking. Um... The pictures, of course, always help, you know, as you’re weaving it...

As Frieda goes on she refers to a case she’d told me about earlier in the interview, one of her child death reviews, in which a child’s head had been crushed after he fell off a piece of farm machinery on which he’d been allowed to ride:

Yeah, I think you get the flavor and you get the... you... some of them, you know, are better than others, but you can... Like the one where the child was killed on the four-wheeler. You know, I mean, it was kind of factual or whatever, but you pretty well placed yourself out there on that ranch. You could almost see them coming down the road, you know, how far away it was from the house, um, what the father had said when he went in, um, and it’s kind of like, um... I think, if they... because the way that they write or whatever, they’re trying to capture what they saw, you know, the subjective kind of things might be...

There is an apparent paradox here. We have seen, in the drowning cases, how, by way of analyzing them and distilling them to a judicable essence, Frieda pares away the same particularities she is claiming here to realize so fully. I can only suppose that Frieda's *first* reading of the case is a naïve one. She sees the sights, hears the sounds, and engages the characters of the case as though her sole responsibility was to be an active and appreciative reader. Only by taking such a stance, suspending, for the moment, awareness of her decision-making role, can she comprehend the range and depth of what happened, and that vivid, *felt* comprehension of what happened is the only responsible point from which the abstracting work of the analysis can proceed. The naïve reading, in other words, is a necessary preliminary to analysis. Only through it can Frieda bring all the elements of the case to light, including the feelings, motives, and experiences of the persons involved, from which she can choose, later, those that are essential, that form the stark, spare lines of her judgment.

Persons whose decision-making styles are firmly analytic speak often of the judgment errors so prevalent in the tenements at the other end of the continuum. And the intuitionists complain, in a much less organized way, of the aridity, narrowness, literalness, and blindness to consequence of judgments made in the tidy little ranch houses at the other end, of what we may, for want of a better term, call judgment *stereotypes*. Their nature is captured in stories such as "Billy Budd," where the dutiful Captain Vere finds no way out of executing the endearing title character, despite his and the other officers' knowledge of the story that makes such an outcome absurdly unjust. Protest against judgment stereotypes is heard in the homily from Second Corinthians, "For the letter killeth, but the spirit giveth life," and in the rebuke an understanding father delivers to a morally outraged son in N. Richard Nash's play, *The Rainmaker*: "Noah, you're so full of what's right you can't see what's good."

The movement of Frieda's reading from intuitive to analytic recapitulates the experience of the investigator as he or she worked the case. Suspension of judgment is necessary during the evidence collection phase, in order to avoid confirmation bias and,

even if unconsciously, investigating in one direction only instead of working outward from the center evenly. And judgment, when the time for that comes, must ruthlessly exclude associations that would make too much of some pieces of evidence and too little of others. The stages of Frieda's reading recapitulate, too, the movement of her career, from being an investigator and conservatorship worker to, now, being a full-time case analyst.

Frieda has happy memories of being a young social worker. She liked being "out there where the action was," and working with the police, who were "always a lot of fun." "And we did have fun," she says. She also, however has frustrating memories of being unable, despite great effort, to make a difference in her clients' lives:

... My first go-around with the agency I was pretty much rose-colored. I had... There was a psychologist friend that said, "Oh, there comes the rose-colored social worker." A rose-eyed glass, or whatever. Um... back then I thought everybody loved their children and wanted to take care of them, do what was right, you know, but, um... Back then, I thought that... um... children could change, that I could almost will them to change, um, because I was so interested in them and I wanted to help them, and we were going to get whatever, and they would be okay. And I... I committed to a little boy on my caseload... um... who was autistic. And for him to get this special school training that he needed, I had to haul him over there every afternoon to catch his bus home. I forget how he got there, but the school system couldn't get him from point A to B. And so every day at two o'clock I had to be like the parent going and picking him up and getting him over to that next leg of his trip. But it was that important to me that I wanted that child to have that chance, because I guess I thought it was going to make the difference. Which, in the end, it did not make the difference, but when I was doing it, you know, I felt like, you know, that it was really critical. And I think it, you know... I guess I was always so... bound and determined to have things work out right, you know?

One can imagine the pain of having one's hopes "to have things work out" be continually dashed. That unrelenting disappointment, along with crushing caseloads and low salaries, is what drives many young caseworkers out of the profession. In 2001, the turnover rate among CPS caseworkers in Texas was 27.9% (Texas Department of Protective and Regulatory Services, 2001). Some of those who move up the ladder in CPS do so partly in order to escape the emotional wear and tear of fieldwork. Pauline, now a policy maker, formerly a trainer and supervisor, describes an event that told her it was time to leave the field:

...I was in East Dallas, and it was late on a Friday afternoon. It was hot, hot, hot, hot. And I... and I went to do an investigation, and I'm sitting there listening to this mom, and it was just awful. And I knew... Robert, I knew, it was like, "This is bad for this kid. I'm going to have to do a removal." And... and I did. And I worked 'til real late that night. And I remember just being physically exhausted? And emotionally exhausted because it was a situation where I think that this mom... emotionally was attached to this kid? But couldn't do it. And so taking kids away from their parents is...is hard work. And then, when I started it I was tired anyway, so I knew. Anyway, I got home, and my son was probably only two or three at the time. And... uh... he was still up. He was waiting to see me, and I... I walked in, you know, and I was [just all,] so I put down my bag, and I'm kissing on him and I open up my briefcase, and all these roaches come crawling out of it. They crawled in when I was in her home. And they crawled on my little boy. And you know, it was... it was a v... it was a visual of, "I need to stop this shit... because I'm bringing it home. I'm bringing it home and I need to get out of the... out of the... like the war zone." Yeah.

I: When you say bringing it home, it sounds like you mean not just the roaches, but all of it.

All of it. I think... That's what it symbolized for me, Robert, when I watched it happening, happen, was that, it's not just that I'm bringing roaches home to *my* baby,

but that all of this... all of this... all this *shit* that I... I'm exposed to, I'm bringing that home, too. And I didn't want to do it any more.

In subtle ways, Frieda shows that contact with abused and neglected children and their families still exacts an emotional cost, even at the distance of case review. When I asked her whether she thought reading about so many child deaths would get her down over time, she replied:

Um... well... It probably... um... it might, I guess, it... 'cause you're having more of a big dose of it. What I've been kind of interested in trying to do – and I don't know how to put it together – would be to have a map of our region and somehow plat the.. the child deaths by areas by... by locale, kinds of deaths that they were, like, you know, these farm implement things, you know? Or like, like the drownings, or like the neglectful sup[ervision], then trying to figure out if you had more deaths coming out of one PD area than another.

Frieda seems to dodge the question by almost immediately changing the subject to her plans to make a map of the child deaths, in hopes of showing clusters by region and by type. But I think the change of subject was not random, and she answered my question more fully and directly than I first supposed. Frieda is saying yes, it will get me down, it does get me down, but I have the ability to look at these cases schematically, with their suffering and their potential to cause more suffering stripped away. She can mentally reduce these episodes to pins on a map, with no other than statistical significance. What Frieda cannot do is take permanent refuge in the abstract, however. Her natural curiosity about what happened, her sense of justice, and, above all, her commitment to the clients, prevents her from disdaining the intuitive approach altogether, even with its attendant costs. She has to go back in every time she pulls up a new case.

Frieda goes on:

I kind of feel like I... um... on these child deaths... I guess the thing that I've noticed about reading these cases is that they are... um... after you've spent all this time in them, it's like you feel like you really know these families, you know? And you... it's been surprising to me that you can recall... But, you... I mean, I've suffered through these cases because they've been so long and tedious and you spend days on some of them, you know, and it's like, "Gross!" I... you know, it's like... you want out of this quagmire that... um... Then, by the time I finish one of them – of course, like I said, I haven't got the hang of it yet... I'm still, like Ida told me – she's our other lead PD down here ... She said, "You know, you're putting a lot more detail in them than what they were before," you know. And I said, "Well maybe it's 'cause I... don't know where to cut it off." But I've got to survive it some way.

Those final words, "I've got to survive it some way," seem to indicate that Frieda sees her attention to detail and her copious writing (her "pages of thinking"), the tools and methods of her analysis, as coping mechanisms. They allow her to immerse herself in so many instances of what Janice Angstrom in *Rabbit, Run* thinks of as "the worst thing that has ever happened" (Updike, 1960, p, 227) without being emotionally overwhelmed by them. Analysis relieves the stress of imaginative association with the people and events of the case.

One might assume that someone occupying a middle position on the cognitive continuum would do so through the exercise of a Stoic moderation, that such a person's psychological maturity and self-possession allow her to select cognitive tools for different tasks with the sureness and aplomb of a professional golfer picking the right club for a tricky approach to the green. In Frieda's case, however, the middle position is not so much an easy versatility as a battleground where one style gives way to another out of compulsion, doubt, and anxiety. A ragged, fitful, and unconscious dialectic, rather than a conscious orchestration, Frieda's mixture of intuition and analysis is hardly

something one could recommend or teach to others. It is, however, like the range of styles across CPS decision making generally, a necessary ingredient of whatever justice it produces.

CHAPTER VIII

CONCLUSION

In this study I have examined the use of analytic and intuitive judgment by 20 persons engaged in making decisions in child abuse and neglect investigations. My findings support those of other studies in which personal histories and values were seen to play a significant role in CPS decision making, especially at the investigator level (Craft and Bettin, 1991; Craft, Epley, and Clarkson, 1980; Drury-Hudson, 1999; McGovern, 1991; Munro, 1996, 1999; O'Donohue and Fanetti, 1996; Rossi, Schuerman, and Budde, 1999; Shapira and Benbenishty, 1993). Analysis of the participants' case narratives revealed that experiences and personal ethics affect the way they represent cases to themselves, which in turn affects the judgments they make about them. I do not, however, draw the same conclusion from this finding that some others have drawn, that intuitive judgment is too unreliable a tool for the important work of decision making in CPS and should, whenever possible, be contained, if not replaced, with decision making by groups or actuarial models like the IRA. I conclude this because it has also been my finding that the experiences and ethics of CPS employees are indispensable elements of their identities *as* investigators, *as* administrators, *as* ombudsmen and attorneys. Personal values are not only what bring them to these demanding jobs in the first place and allow them to endure their daily emotional depredations, they are sources of innovation, insight, and justice as much as they are sources of error. They serve as correctives to the values and absence of value of a system that routinely moves too quickly, pays more attention to process than outcome, and to the general than the particular. Instead of trying to minimize the effects of personal value on decision making across the board, trainers, supervisors, and policy makers should instead try to minimize its undesirable effects, while preserving, or even enhancing, its benefits. The training of new investigators should, first, acknowledge the large role that intuitive thinking plays in CPS decision making and, second, develop ways to help decision makers discipline

intuition, to use Pauline's phrase once more, and to create conditions that foster the optimal functioning of it.

As McGowan (Gambrill and McGowan, 1994) has said, no matter how useful actuarial risk assessment instruments become, or how much we come to rely on them, intuition can never be calibrated out. It is exercised in the administration of the instruments themselves, in entering a score, for instance, to indicate whether a caretaker lacks empathy for a child. Barring the development of some sort of automatic people-and-environment scanning device to do such scoring, data will go into the linear model through the intuition of human beings. There will always be exceptional cases, as well, with factors the current linear model has not been built to recognize, and worker judgment will always be necessary. Furthermore, as England has pointed out (1994), no risk assessment, however arrived at, by itself indicates what should happen next. Decisions must still be made about removal, placement, services, and prosecution.

Intuition plays an even deeper role in casework than that, however. Iser, in his theory of reading comprehension (1971, 1974), sees a literary text as being constituted by a large number of individual *views*, the full series of which displays the literary object one representative aspect at a time. The connections between these views are filled in not by the text itself, but by the reader, through the "free play of meaning-projection" (Iser, 1971, p. 12). This is not usually a conscious process; we can infer its existence by the different interpretations different readers impose on a text, as well as different meanings we glean from the same text in different readings. Moreover, the meaning making that supplies the linkages among a text's views is an inescapably personal one, which draws not only upon the reader's cultural knowledge, but upon his or her individual experiences and emotions as well. Reading, by this account, is a constant interplay between expectation and recollection, self and not-self, self-assertion and passivity. By extension, we may say that this is very similar to the process of meaning making in an investigation. The evidence in an abuse case is obviously not authored in the same sense that the views of a literary text are. Yet, as I have argued in Chapter IV, it is an unavoidable assumption on the part of investigators that credible case evidence reflects

the univocal, knowable, external truth of what really happened. The evidence therefore may be considered as intended, organized, and made available to comprehension by that truth. So the case may be read in the same way that a literary text is read, and the gaps between its bits of testimonial, documentary, physical, and demonstrative evidence are filled in the way that Iser describes. In fact, we may say that the initially disparate and incoherent pieces of evidence become a “case” only as they are connected to one another in the activity of narrative meaning making. Intuition, and the narrative mode of thought, are constitutive of every case conceived *as* a case, and cannot be removed without forfeiting any understanding of it whatever.

Iser also makes the point (1978) that the difference between critics and ordinary readers is that critics have to defend the way they fill the gaps in a particular text and show why their manner of doing so is appropriate for it. This implies that the process of meaningful gap-filling during reading, which usually occurs unconsciously, can not only be brought into conscious, but can, at least to some degree, be controlled, as when one interprets a text according to the principles of a broader theory of meaning (a Freudian reading of *Jo's Boys*, for example). It also implies that one critic may defend his or her meaning making successfully, and persuade others of its value, while another may not. Individual acts interpretation, in other words, can vary in quality. Thagard's explanation criteria (1989) – coverage, coherence, uniqueness, and goodness-of-fit – would no doubt be useful in determining such quality, as would Hirsh's (1967) notion of correspondence, which proceeds from the assumption that the form and meaning of a text reflect one another. “Internal evidence by itself might possibly indicate that one hypothesis makes functional [i. e., is able to use as evidence] more elements of the mute text than a rival hypothesis” (Hirsch, 1967, p. 190).

Investigators are like Iser's critics in that they, too, must be able to explain and defend the connections they make among the bits of evidence in their investigations. They must make conscious the normally unconscious process of narrative inference that Pennington and Hastie (1993b) discovered mock jurors using in their efforts to construct an explanatory narrative of the evidence presented in a trial. In addition, investigators

must police their inferences and reject those that are fallacious, as some of Pennington and Hastie's participants, and, presumably, people in general, do not. They must go a step beyond that, however, and reject, at least tentatively, inferences that achieve *only* coherence and do not advance the case toward correspondence with the truth of what happened, or, with respect to risk assessment, the truth of what kind of family this really is. Correspondence is achieved when an intuitive, inferential, or narrative connection can hold up under further investigation, when it can be tested, when it passes the scrutiny of decision makers further up the hierarchy. We have seen how Carmen, in telling her story about the teenage girl who accused her stepfather of sexual abuse, hesitated to make the inferences that would have made the story, and the case itself, successful. The necessary inferences would have passed all coherence tests, but Carmen flunked them anyway because, as the alleged victim never recanted her "beautiful" outcry, and her accusation, though discredited, was never proven false, they did not have for her the imprimatur of real truth. Similarly, Gretchen could not fully believe her intuition that the parents sitting in the dark were up to no good until she had kept the case open long enough to prove it, and Frieda had to validate her intuition that the documentation she read was fabricated by going out to interview the family it was supposedly about. The narrative coherence intuition can generate is desirable in and of itself, but its highest function is to point the way toward a correspondence between the narrative and reality, which correspondence seems to feel honestly earned only as it's been gone out and gotten, hammered out on the anvil of checking, rechecking, measuring, arguing, watching, and asking.

The gaps in a literary text that Iser describes are roughly similar to a gap in consciousness identified by Searle (2001). For Searle, only irrational actions follow directly upon impulses. "The operation of rationality presupposes that there is a gap between the set of intentional states on the basis of which I make my decision, and the actual making of the decision" (Searle, 2001, p. 13). To the extent that this gap is filled automatically – by habit, by indifference, by convention, by the overwhelming strength of the intentional state – the resulting decision is deprived not only of rationality, but of freedom. It follows, then, that rationality, both in action and interpretation, consists in

allowing, recognizing, and making good use of the gap that could or should follow upon the perceived offering of an action or belief. When we are constructing stories to account for a given set of people, circumstances, and events, or among the memories we have or our own lives, we are free to choose which elements to connect to one another, as well as what the nature and degree of each connection should be. Of the great many connection arrays that are possible, some are salient almost immediately. They create a story that is like others one has heard, that satisfies an emotional need, or that answers very well the question that has brought one to seek a narrative explanation in the first place.

Acceptance of any of these stories, however, and the individual connections that make them possible, does not happen immediately upon noticing their appeal, when the process of narrative meaning making, in its large and small movements, is made rational.

To view intuitive processes as forms of rationality would strike many as paradoxical, if not reductive and misleading. Bruner, however, though he contrasts the narrative and paradigmatic and says they are “irreducible” to one another (1986, p. 11), he sees both as modes of *thought*. Both are aimed at discovering relationships among variables, general on the one hand, specific on the other, including cause and effect. Both are in the business of explaining things. It is not necessary to see them as secretly being one another to accept that the intuitive and the systematic draw from the same cognitive toolbox, to use the analogy of Gigerenzer et al. (1999) and have the aim of making the lived world comprehensible.

Fisher (1987) makes an explicit connection between narrative and rationality, as well as between rationality and ethics. He contends that narrative rationality is a kind of logic, by which communication is evaluated. Its major principles are probability and fidelity. Probability comprises coherence of structure, coherence of material, which is measured by comparison with other stories, and coherence of character, which a story has when its characters consistently represent of a stable set of values. Fidelity, the truth of a story, has to do with what Fisher calls the *logic of good reasons*. This logic consists of elements that provide cause for an audience to accept the advice offered in any communication that can be called rhetorical, which he takes all narrative to be. These

elements include a showing that the facts put forward are really facts, and that no facts have been left out of consideration, that the arguments offered are not only relevant, but address the real issue at hand. Though Fisher claims that his version of narrative rationality is descriptive, rather than normative, it does permit distinction between good stories and bad stories, between those that are truthful and those that are not.

Similarly, Robinson and Hawpe (1986) see narrative thinking as a way of deliberating causes, different from scientific thinking mainly in its focus upon particular, rather than general causes, and its tolerance of multiple, simultaneously possible explanations, not in having radically different aims or methods. As in science, some explanations are better than others in that they stand up to testing. Stories, say Robinson and Hawpe, are in a constant process of revision, acquiring ever-greater adequacy through a process of inquiring, identifying, and selecting information. The temporary end of the process is a new story, “context-bound, concrete, and testable through ordinary interpersonal checking” (Robinson and Hawpe, 1986, p. 114).

If narrative, and intuition generally, did not operate as a form of rationality naturally, it would certainly acquire that character as it became shaped and acquired domain specificity through application within an institution. Furthering the rationalization of cultural and psychological processes is a primary function of bureaucracy, according to Weber, along with the cultivation of the “personality type of the professional expert” (Gerth and Mills, 1946, p. 240). Bureaucracy would therefore deem it essential to foster the rationalization of the meaning and decision making of its own members. It does so through a process of what Berger and Luckmann (1967) call secondary socialization, which is the internalization of an institution’s values, aims, and procedures. The inculcation of a specialized vocabulary and the habituation to a set of routinized tasks lead to the assumption of roles within the institution. A role, for Berger and Luckmann, is not merely a matter of performance, but requires initiation into “the various cognitive and even affective layers of the body of knowledge that is directly *and* indirectly appropriate” to it (1967, p. 77). Secondary socialization, where it is effective, structures both conduct and interpretation.

Several researchers who have found the quality of intuitive judgment and lacking have made recommendations as to how the interpretations can be structured to bring about a higher level of reliability and accuracy. Hogarth (2001), who defines intuition as unconscious learning within a particular knowledge domain, contends that such learning will be optimized when decision makers learn to:

- Impose circuit breakers, or psychological mechanisms that interrupt automatic reaction and meaning making;
- Prevent emotion from being determinative in judgment, but use it instead as data;
- Use narrative thinking to rearrange elements of a problem and explore connections;
- Accept the fact that choices frequently put different desired outcomes in conflict with one another and therefore involve tradeoffs; and
- Internalize the scientific method: observe, form hypotheses, test, revise hypotheses, retest, generalize.

Gambrill (1997) has made similar recommendations with regard to training in CPS. She, too, believes that promulgation of a more rigorously empirical approach to casework, which she terms evidence-based practice, would allow agencies to field caseworkers who are properly skeptical and who would be on guard against sources of error in the evidence, in the environment, and in themselves. In addition, Gambrill would have staff trained on the different sources of fallibility, in order to combat overconfidence. And, like Drury-Hudson (1999), she believes that greater knowledge of social work theory and of current research would help depersonalize and debias investigative judgments in the field.

Munro (1999) has suggested that, given the failures to which intuitive judgment is prone, CPS decision making should supplement it whenever possible with analytic tools, and learn to treat intuitions as hypotheses that need testing. She has also argued, however, that the main thing that administrators could do to improve decision making would be simply to allow more time for it (1996). There should be more time to investigate, more time to staff cases with supervisors and others, and more time simply

to think about the evidence. The pressure to close cases quickly predisposes caseworkers to avoidable error.

Most of the participants in this study would agree. Barbara, the State Risk Director, says:

The errors that I see them making, sometimes I have to say, you know maybe if they had... instead of 25 investigations, new investigations every month, and they had something that was more workable, they wouldn't be making some of these mistakes.

Carmen, who supervises, tells of a conversation she had with her boss, a Program Director:

And one of the... the comments she had in there is I need to learn how to balance time and the closure of cases. And she says it's very difficult and this is just not for you. It's something I tell everybo... every one of my supervisors because it's... it is that difficult. Um... and I had her, I said, "Well, explain to me exactly time and closing cases. It's my job to get these cases closed, but at the same time it's... it's my job to make sure that the cases are completed to their utmost, that.... there's all the investigations completed -- home visits, collateral calls -- yet you're on my back to close these cases. So I'm on *their* back to every up and do... So yeah, I might blink an eye at one less home visit. I might blink another eye at one less collateral because you're on my butt to close these cases." So she says y... there's a balance you have to find for yourself where -- and this is where your judgment comes in and your decision-making comes in, where it's really, really, really scary.

Carmen's implication is that in the day-to-day operation of an investigative unit her judgments have less to do with what the evidence shows in a given case and whether the children involved are at risk of harm, than with the maintenance of good numbers on the delinquency list while at the same time avoiding closing any of the wrong cases too early. She is certainly aware, as Hogarth would have her be, of the conflicting goods in the decisions she must make, and the tradeoffs each option entails. And, as we saw in her

narrative in Chapter IV, she has a highly developed system of circuit breakers that prevent automatic judgments. It pains her, though, that, because of caseload pressure, management goals should claim a larger share of these skills and sensitivities than her investigators or her families do.

The dilemma is phrased most pointedly, perhaps, by Melissa, a relatively new investigator:

Every day I get a case, and there's just not a ... this is not a 40 hour a week job. And I don't, I don't think it's fair, to be required to make a fair assessment, a crucial assessment within 30 days. It's not fair to the families and it's not fair to the children. I think that, you know, I mean, this is... I really feel like it... I have a really important job, and um, 10 years down the road, you know, I, I don't w... I would hate to see one of my kids in HEB [a local grocery store chain] and him say, "You know, you really messed up my life, because that never happened to me." You know, and... I, I just feel like, you know, I'm walking a plank, and I've got to make a decision really quick, 'cause I'm close to the end, and, you know, then I'm gonna... I can't take vacation. You know? So then, you know, you start making decisions based on what you got, and not based on what's going on.

Short deadlines are, in general, one of the elements of a decision task that make it more suitable for an intuitive approach. Melissa, as intuition-oriented as she is, would not be likely to claim that if she had more time she could be more systematic. Her idea seems to be, rather, that with more time to work a case she could visit the family more often and learn more about them. Her intuitive understanding of the case would deepen and acquire detail, so that eventually what she "had" would come to correspond with the truth of what was "going on." What would in effect be happening, though, with the greater number of visits, over a longer period of time and under varying circumstances, is that Melissa would be increasing her sample size and testing hypotheses, thereby making her judgments more valid. Her intuitiveness, in other words, would, whether she

willed it or not, become systematic.

Nurius, Kemp, and Gibson (1990) have argued that sound reasoning can only take place in an environment that supports it through supervision, consultation, staff training, appropriate work organization, and agency culture. The rule of thumb proposed by Deming (Barnes and Van Wormer, n. d.), that 85% of an organization's problems are the result of systems and management failures, and only 15% are attributable to the failures of individual employees, could well be applicable here.

There is an inescapable paradox here, however, as pointed out by Berger and Luckmann (1967): "Individuals perform discrete institutionalized actions within the context of their *biography*" (p. 65, italics mine). Though secondary socialization causes people to act in certain ways, it never reduces their sense of doing so out of coherent and stable selves. Institutions modify, but cannot fully appropriate an identity that must be experienced as continuous both with what one was before coming to the institution and with what one is outside it, in one's other identifications. Moreover, the pre-institutional or extra-institutional aspects of identity can set limits and conditions to the institutional aspects in order to increase compatibility and reduce conflict. In terms of March's rule-based decision theory (1994, 1997), the identity one applies to a situation is composed of meaning associations related to an organizational role, though not only those. Meaning associations from the whole of one's life become incorporated into the institutional identity, as the investigator identities of different participants in this study have become inextricably bound up with their being African-American, being a single mother, or being a young woman.

Another factor that limits the ability of an institution to reproduce its aims fully and without complication in its members is the fact that the various practices it cultivates and employs foster identity elements of their own. As Wenger has put it (1998), "The landscape of practice is not congruent with the reified structures of institutional affiliations, divisions, and boundaries." Identification as an investigator, a manager, an attorney, an expert judge of cases, is not the same as identification as a CPS employee.

Conflict can occur between the practice and employee identifications just as it can between those identifications and other others based on culture, class, race, or gender. It is quite false, then, to say, as Hummel does (1987), that as one becomes socialized into a bureaucracy, organizational identity completely replaces autonomous personality and individual conscience is extracted and distributed across the organizational hierarchy. As we have seen, personality and conscience are fully active in the way CPS staff members make decisions about cases. They are persons with not just one, but many identifications, both personal and professional. They manifest them into one another and manifest into each of them a personal notion of the good. As the philosophers Taylor (1989) and MacIntyre (1981) have argued, selfhood and morality are tightly woven together. For MacIntyre, the unity of a person's life is that of a narrative quest. In all our practices and all our identifications, we look for a "conception of *the* good which will enable us to order other goods" (p. 204). The virtues are dispositions – toward truthfulness, moderation, courage, and compassion – that benefit the practices in which we are engaged, that help us overcome the "harms, dangers, temptations, and distractions which we encounter," and permit us to continue to gain knowledge of ourselves and of the good.

The stories we have heard from these 20 persons engaged in the practice of investigating and deliberating allegations of child abuse are from the narrative of their lives. Ostensibly work stories and case narratives, they are as representative of their personal and communal quest for the good as any story they could tell about themselves. And the virtues they express, both despite of and because of their grounding in the personal and ethical, carry out the mission of child protective services in a way that technique by itself could never do. Technique has no true *usefulness* that does not derive from a sense of the good held by the person or persons that apply it.

I am aware that the use I am making here of terms like truth, person, and identity will strike some readers as quaint. Czarniawska (1997), for example, rejects the notion of a narrative rationality, advanced by Fisher (1987), Robinson and Hawpe (1986), and others, with its varying criteria for designating what is good and bad in a story and its

assumption of an arbitrating external reality. She embraces instead what she characterizes as a pragmatic view of narrative that focuses on the way narrative functions socially. A given story achieves or fails to achieve the immediate social purpose it had in being told. Neither the story nor the storyteller has any sort of ontological status outside this social context. Identities and stories have life only in the process of their creation or re-creation in particular situations of interchange. Beneath the situation there is nothing. This constructionist position goes beyond Kant in claiming that the reality behind appearances, the world story's *fabula*, as it were, is not only unknowable, but nonexistent. Similar is Davies and Harré (1991) concept of positioning, which they offer in contradistinction to what they take to be the overly reified notion of role. The theory defines such identity categories as race and gender as positions one takes in conversations, not as continuous, stable, and determinative conditions. Narratives, by this view, presumably, would be seen as a medium for positioning, certainly not as manifestations of truth, identity, or anything external to them. My only answer to this critique is to point out that I have been looking throughout this dissertation at the subjective reality of the participants. From that perspective, truth, in the sense of correspondence between language and an outer reality, and identity, in the sense of a discrete, coherent, if conditioned self, may indeed be illusions. Acceptance of them, however, even ironic and provisional acceptance (Rorty, 1989), seems to be indispensable for the kind of ethic -- in perception, thought, and conduct -- that is necessary for justice. A sense of the truth, and one's integrity as a self, being at stake both motivate and make worthwhile the sacrifice of peace and comfort that justice requires.

Justice, in the simple sense of according all persons their due is, as Hampshire has argued (2000), not a product of harmony and reconciliation between opposing interests or principles. It emerges, rather, from the conflict between them, as long as there is fairness in hearing of both sides and the final compromise is one "where the tension between contrary forces and impulses, pulling against each other, is perceptible and vivid, and both forces and impulses have been kept at full strength" (Hampshire, 2000,

p. 32). This state of unresolved tension is never comfortable to the person or the institution that maintains it. At the tumultuous, ever-tenuous center one feels less in the presence of justice, and less the author of it, than one does at more extreme positions on either side, applying system to every decision task, no matter what its characteristics, or basking in a belief that one's intuition unfailingly affords direct and complete knowledge of the world. That center, however, is where CPS and institutions like it carry out their missions.

“My Head on the Chopping Block”: An Epilogue

After reading the first complete draft of this dissertation, the Chair of my committee, Dr. Carolyn Clark, said she wondered if some participants might feel their identities were insufficiently concealed. I have, after all, identified them by their real job titles their general locations. Others in the agency who read the dissertation might be able to guess who they were. Dr. Clark is also a strong believer in the collaborative nature of qualitative research and considered it not only fair, but “essential” that the participants have a chance to comment on my use of their contributions.

Between January 2002, when I finished my interviews, and February 2003 when I submitted the draft, four of the 20 participants – Arnold, Frieda, Yvonne, and Louise – had left state employment. I was able to send a message to Frieda through one of the other participants who had been friends with her – if she got the message, she chose not to answer – but I had no way of contacting the other three. So to the 16 participants to whom I still had access, I sent an email:

My dissertation is just about done, at last, but before it's set in stone I wanted to give you and the other participants a chance to see what use I made of your interviews. The attached section contains all the material related to you, (You're "_____"), and the conclusions chapter, too, but if you'd like to see the whole thing, you certainly can.

I'd like to know if you are okay with the degree to which I've concealed your identity and if you think I've represented you fairly. I'd also be interested in your reactions to the thing as a whole. I know this is rather a lengthy bit, but just scan through the parts that aren't too dull, and get back to me, if you can, by, say March 15.

I got few responses to the email. The section I sent was over a 100 pages, and I expect most felt they had no time to read it. Jennifer, in fact, wrote back to say that explicitly and asked for the page numbers of sections dealing with her. Once I provided them, her only comments were that I'd gotten her job title wrong and that she didn't like seeing all her "ums" and "ahs" reproduced. That was also Nancy's complaint. I assured them both that complete transcription was a usual feature of this kind of research and that, if it was any consolation, no one else came off any better. When I submit portions of the dissertation for publication I'll probably delete those "ums" and "ahs." Since I never make use of them in my analysis, they only serve to distract the reader and embarrass the participant.

Victor, the ombudsman, wrote the following:

I have two comments. There is a distinction between the assessment of risk and the determination of whether or not abuse or neglect has occurred in a given situation. I was involved in the development of risk assessment tools beginning when I worked in Hawaii in 1983 and fully appreciate the role intuition must play in investigation and risk assessment, even in leading a worker to decisions about reunification or termination. However, the designation of someone as a perpetrator is at least a quasilegal process, and as such requires documentation to support that determination at the required level of proof. Risk assessment can be much more intuitive, but to act on the assessment beyond the investigation it too must be documented in a manner sufficient to convince others.

I began in CPS in 1971 in Oregon, and have worked in Hawaii and Texas from investigations all the way through specializing in resolving difficult permanency cases. An error, or more accurately an oversight or bias, in the investigation can undermine CPS's ability to gain permanency for a child many years later. The short answer is CPS cannot effectively protect children or workers based on "because I feel it in my gut."

Second, every CPS worker that I know who has served very long has a horror story or two about things they should have noticed and acted on, but didn't. I suppose its a sort of quality control. In the situation Sarah reports with the 18 month old with a spiral fracture of the femur; spiral fractures are generally caused by twisting. Spiral fractures are rarely accidental in **non-ambulatory children**. An 18 month old is probably ambulatory and the possibility the child trapped his or her foot while still in motion is a possible cause of the injury.

Victor appears to think I'm "soft" on intuition. He's quite right, of course, when he says a finding based solely on someone's gut feeling will not be persuasive to others, will not be sustained, and will therefore do nothing to protect a child at risk. I hope I haven't written anything that suggests I believe otherwise. I am struck, though, by his comment about the "horror stories," where investigators felt they missed cues, and a child was seriously injured or killed as a result. His suggestion that such events serve as "quality control," presumably by making investigators become more systematic in their methods, is a bit chilling. At least one participant in this study though, Helen, describes her "horror story" having a definite "quality control" effect on her investigations. Victor seems to be implying, however, that were investigators exercising proper "quality control" all along, the "horror stories" wouldn't happen. But even the strongest proponents of systematic decision making in CPS casework would not claim that linear models and other analytic tools can ever be foolproof. The realistic goal of such instruments is to reduce error to a minimum, not to wipe it out completely. There will always be cases of children suffering terrible harm in situations that displayed no

identified risk factors beforehand. So “horror stories” will always be with us. But in his comments Victor is once again displaying a faith in system expressive of his role as an expert analyst. As I have argued earlier in this chapter, it is conflict, not conciliation or compromise, between those at opposite ends of the cognitive continuum that produces justice. So we should see Victor’s resolute championing of system as compensating for the equally resolute faith in “gut feeling” at the other end of the continuum.

The only other substantive response I got was from Carmen. I have thought of Carmen as my “number one informant” on this project. She was among the first persons I interviewed, and it was in analyzing her narrative about the young woman who persuasively, but probably falsely, accused her stepfather of sexual abuse that I first discovered my major themes. Also I had a great liking for her as a person. Her enthusiasm, intelligence, skill, and commitment to children were all far above the ordinary, and I thought I had done well by her in the dissertation. I was stunned, then, when she sent me the following:

I had a difficult time getting through the paper. After reading the sections that I was a part of, Carmen's scenarios are conveyed as "failures" every time. Carmen comes across as a supervisor who is unsure and makes poor decisions, and therefore her investigations are closed because of her poor abilities and lack of confidence. I also felt towards the end that Carmen's outlook of closing a case was more for covering her ass then protecting the children. I sincerely hope that people who read this do not put me together with Carmen. I have worked very hard and feel that I have accomplished a great deal. I would hate to think that my colleagues see this dissertation and feel like I have a lack of respect for their positions and their credentials. I'm sure that you felt my energy during this process and know truly how much I love my job and do it for the children. This energy and love for my job was not conveyed anywhere in Carmen's sections. I feel like I was portrayed in a poor light and maybe those who read this dissertation will wonder why the agency still employs me. I did not read the whole paper and maybe my outlook is incorrect and

maybe Carmen is appropriately pictured in other sections, but I was a little disturbed with the sections that I did read. I hope that you can understand where I am coming from and please do not allow my name to be associated with Carmen. I understand that your paper is research and subjective. I do wish you well with the final draft.

In something of a panic, I replied:

It makes me think I must have done a really bad job of writing for you to get the impression you've gotten. To portray you as someone who makes poor decisions was the last thing I ever intended. I think you do what you do wonderfully well, and I hoped that had come across. Your narrative about the sexual abuse case is really the dissertation's centerpiece and, to me, demonstrates, more than any other of the other data, my main point that conscientious [people] in CPS, like you, have their basic understanding of case facts guided by a high standard of personal ethics and a devotion to the truth. I'm guessing that the bits you didn't like were earlier on when I was talking about the intuitiveness of people in the field versus the systematic thinking of administrators.

Let me assure you that, first, nowhere in the dissertation or anywhere else will your real name be associated with Carmen's. Second I am ready to remove or change any part of the thing that you think puts you in a bad light. I really mean that.

What I would like to do is call you or see you in person again so that you can show me the parts you don't like. I promise not to get defensive.

What do you think about that?

Carmen answered:

I am sorry if I made you feel if you did a bad job or if I came across defensive. I did not read the whole paper and am certain that you did well. I was just concerned with my narrative. I did realize that my section was a major focus and I guess that's why I

was so scared when reading it. I would like to talk to you and get a better understanding for the points in the paper which might help me to understand my own sections. I am not angry with the paper, I was just taken back and a little scared that Carmen was unsure of her beliefs and decisions therefore making her case dispositions invalid. You have put a lot of work into your dissertation and I do not feel that it needs to be changed. You have researched points and analyzed methods that I am not aware of making it difficult for me to connect with. I would like to talk and wouldn't mind a phone call or a meeting.

You know, in this position I worry and stress a great deal and always wonder if I am making the right decisions. It feels like every day I put my head on the chopping block for everybody to take a swing. This leads to always worrying about what other people think of me and how I do my job. I guess that's why I was worried with my sections. Look forward to talking with you.

I visited Carmen about ten days later in her office. She was very cordial. After a bit of mutual catching up she repeated that she wasn't asking for any changes to the dissertation, but was worried that she came across as indecisive and carping. It would damage her professionally, she feared, if anyone connected her to the "Carmen" of the study. I then tried to show how the parts of the dissertation pertaining to her functioned in the whole. I described the conflict between those at opposite ends of Hammond's cognitive continuum and how I had quoted her to characterize the thinking of those who were more intuitive. Contrary to my expectations, though, this wasn't the part about which Carmen was most concerned. It was the analysis of her narrative about the sexual abuse allegation that she felt put her in a bad light. I explained Pennington and Hastie's story model of decision making and its description of the process as a nearly automatic one. Once a story incorporating the evidence is felt to have sufficient coverage, coherence, uniqueness, and goodness-of-fit, according to the theory, one accepts it as true. What Carmen displayed in the way she told the story was a willingness not to accept a story as true, despite having those characteristics, when it conflicted with an

internalized standard of truth. That standard required higher degrees of coverage, coherence, uniqueness, and goodness-of-fit than the evidence could offer, and, as it was not met, Carmen found herself unable to accept the available story as adequate. She rejected the emotional and intellectual comfort that acceptance of it would have brought in favor of a discomfort and lack of resolution that served her obligation to truth. My use of the word “failure” that Carmen lamented in her first email was my characterization not of the investigation, but of what seemed to be Carmen’s belief about it. And what she was afraid might look like wishy-washiness to others was, to me, the hallmark of her scrupulousness and integrity as a decision maker.

Once I’d explained the overall structure of the dissertation and how her own pieces fit into it, Carmen said she felt better. She said she accepted that I had not meant to criticize her or her decision making. She wished me luck, and asked me to send her a copy of the final document.

I felt a strong sense of gratitude and relief as I left Carmen’s building. Over the preceding week, I’d had some anxious moments wondering what I would do if she hadn’t accepted my reassurances and demanded instead that all reference to her interviews be removed. As central as her data was to the dissertation, taking it all out would have been surgery the project might not have been able to survive. Relieved as I was, however, I also felt a kind of hollowness. It seemed to me that, though Carmen’s worst fears had subsided, she probably still wished she’d never agreed to be interviewed. The possibility that someone could read her sections the same way she had, form a bad opinion of her, guess who she was, and deny her promotion, were perhaps reduced, but still existed. But even if that never happened, she still felt exposed and betrayed, not necessarily because anything I wrote about her was unfair, but simply because she had given to someone else, without quite realizing that she was doing so, the right to represent her, to expose her, and to make of her an object of scrutiny. The fact that her real name isn’t used was almost beside the point. She *is* Carmen, and in the dissertation things are said about *her*, which may cause other things to be thought about *her*, whether they figure out her identity or not, over which she has no control. During the interviews

she probably felt quite differently. Though she was responding to my questions, her interests, experiences, and opinions were what guided and filled up the conversation. In the dissertation the opposite is the case. However prominent a place I give her words, and however well I interpret them, it's altogether my little universe, and I am, quite literally, free to *make* of her whatever I please. Nothing I could have said to her in that last conversation would have fully removed that feeling she had of being done up and put on display. Her willingness to accept my reassurances, I think, expressed a great deal more kindness than peace of mind. I have taken another look at everything having to do with Carmen in the dissertation and did find one paragraph where I was careless in attributing to her an attitude she had not expressed. I've amended that and left the rest unchanged.

My hope, when I completed the dissertation, was that if any of the participants who read it were displeased with what I wrote about them, they could nonetheless accept that studies of human judgment are necessarily studies of human fallibility, and that whatever decision-making weaknesses I pointed out did not in any way reflect upon their industry, their dedication to abused and neglected children, or their overall worth as CPS employees. I wanted for all the participants, and the administrators who gave me permission to recruit them, to believe my research had done justice to the gifts of time, thoughtfulness, and candor they made to it. Given Carmen's reaction, though, and given how flattering I thought I'd been to her, it seems likely that others may have felt as she did, but were too disgusted, too busy, or too indifferent to write back. If that were so, it raised the question of what had I accomplished that could make up for the distress and bother I'd caused people.

I don't think my findings – about conflict across the continuum, the ethical and rational aspects of intuition – would be seen as dramatic or innovative enough, in and of themselves, to mollify any participants who believed their courtesy had poorly rewarded. The awful word “interesting” was the only one used by both of those who commented upon the findings at all. Very few people, in CPS or anywhere else, feel the need for a new theory to explain what they do every day. And as much spread out over the

cognitive continuum as the 20 participants were, it was my impression that they were overwhelmingly more “sensing” than “intuitive,” in the Myers-Briggs sense, focused, as they tended to be, on concrete facts and procedures, and not on over-arching abstractions about them. So only a concrete change in agency practice that resulted from the findings would have the power to redeem what might otherwise seem a bad bargain.

I believe my findings do support the recommendations I have made that intuition be recognized as not only a necessary, but beneficial component of CPS decision making and that its managers and trainers should aim at helping decision makers discipline their intuition and at creating a decision-making environment that optimizes it, rather than ignoring or actively trying to eliminate it. Creating such an environment would, it seems to me now, be doing nothing more, and nothing less, than enabling Carmen and others like her in the organization to realize their full potential as decision makers and to feel more secure in the exercise of their judgment. That would mean, as argued above, finding ways to give her and her workers more time to investigate and deliberate. It would also mean giving her training in some of the research I reviewed above and in Chapter II. Knowing the sources of error and bias, as well as techniques for countering them, can make intuitive decision making much more accurate and balanced. It would mean allowing for more “reminding,” to use Carmen’s word, back and forth across the continuum. Since one’s choice of decision-making method has much to do with the structure of the task at hand, dealing routinely with only one kind of task could lead to loss of flexibility and a kind of judgmental dogmatism. Carmen and her investigators should on occasion be involved in the kinds of desk reviews that the ombudsman’s office and the risk directors do. Ombudsmen and risk directors should go out into the field and work cases a week or two a year. Finally, it would mean acknowledging and exploring the ethical character of case construction and of judgment disagreements. Failing to recognize that conflict in CPS decision making often arises from differing notions of the good allows opponents to attribute their differences to lack of understanding, compassion, or industriousness on the part of their opponents.

Though the creation of a more intuition-conscious culture in the agency might not

make Carmen's daily decisions easier to make, and though the consequences of error would still be terrible, she could come to feel less vulnerable and anxious. To permit myself one last bit of interpretation of her words, I believe my treatment of her in this dissertation only exacerbated, and did not create, her sense of having her head on the chopping block. That comes, at least in part, from the knowledge that she must use her intuitive judgment every day and be responsible for the consequences, without that judgment having been trained, guided, authorized, or even officially recognized to exist. Policy and decision-making tools, if not policy makers and tool designers themselves, make room for judgment only by implication and by the leaving of gaps. Carmen's working life would be much improved, and my debt to her reduced, if this research could cause the role her judgment plays to become acknowledged more explicitly, and her capacity as a decision maker to be more nourished, supported, and honored than it is now.

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APPENDIX A

**Subjective Aspects of Judgment and
Decision-Making In Child Protective Services
Consent Form**

I understand that I am being asked to participate in a research study on judgment and decision-making in Child Protective Services (CPS) casework. The study is being conducted by Robert Daniel and will be the subject of his Ph.D. dissertation at Texas A&M University. I understand that I am to be one of 15 to 25 CPS caseworkers, supervisors, and administrators who will be interviewed one or more times, for a total of no more than two hours each, between May 1, 2001 and December 31, 2001. I understand these interviews will be tape recorded, transcribed verbatim, and analyzed. Since verbatim transcripts are critical to the methodology, I understand that a refusal to be tape-recorded will be taken as a refusal to participate in the study.

I understand that I may choose where my interview(s) will take place.

I understand that Mr. Daniel has received permission from Regional Director Susan Thomson for my interviews to be conducted during working hours.

I understand that I will be asked questions about CPS cases I have worked on and decisions I have made or helped to make regarding them, but I will not give names or other information that could identify clients.

I understand that I may refuse to participate in this study without any job consequences whatever. If I agree to be interviewed, I may refuse to answer any question or discuss any particular subject that makes me feel uncomfortable. I may later withdraw consent that I have previously given, also without job consequences. I understand that if I do that, Mr. Daniel will erase the tape recording of our interview, delete the transcript from his computer files, and destroy any hard copies he has printed. I understand, too, that if I say something in the interview I later wish I had not said, I can have Mr. Daniel erase it, in my presence, from the tape. If he has already made a transcript, the portion of it I want to withdraw will be deleted from it, and all hard copies containing that segment will be destroyed.

I understand that my participation in this study will be held confidential. No one but Mr. Daniel and the five members of his Advisory Committee will have access to the tape recordings and the transcripts made from them. In Mr. Daniel's working documents, in his dissertation, and in any subsequent publication of the study, my real name will not be used. The names of any persons I discuss during the interview, both clients and CPS staff, will also be changed. My job title will be given, however, and anything I say

during the interview(s) may be reproduced word for word.

I understand that Mr. Daniel will keep the tapes of my interview(s) indefinitely, stored securely in his home. I may, however, ask him to destroy the tape at any time.

I understand that I am to receive no payment of any kind for my participation in this study, or gain any job benefit.

I understand that my participation in the study will not affect my CPS employment in any way.

I understand that if I have questions about this study I may contact the Chairperson of Mr. Daniel's Advisory Committee, Dr. Adrienne Bonham, whose address, phone number, and E-Mail appear below.

I understand that this research study has been reviewed and approved by the Institutional Review Board – Human Subjects in Research, Texas A&M University. For research-related problems or questions regarding subjects' rights, I can contact the Institutional Review Board through Dr. Richard E. Miller, IRB Coordinator, Office of Vice President for Research and Associate Provost for Graduate Studies at (979) 845-8585.

I have read and understand the explanation provided to me. I have had all my questions answered to my satisfaction, and I voluntarily agree to participate in the study.

I have been given a copy of this consent form.

Signature of participant

Date

Signature of principal investigator

Date

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