Forensic Social Workers as Expert Witnesses: Do the Courts as a Host Environment Warp Social Work Values and Ethics?

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Dana E. Prescott, JD, MSW, PhD
Saco, Maine
dana.prescott@simmons.edu
207-282-5966
Forensic social work is the application of social work to questions and issues relating to law and legal systems.

This specialty of our profession goes far beyond clinics and psychiatric hospitals for criminal defendants being evaluated and treated on issues of competency and responsibility.

A broader definition includes social work practice which in any way is related to legal issues and litigation, both criminal and civil.

Child custody issues, involving separation, divorce, neglect, termination of parental rights, the implications of child and spouse abuse, juvenile and adult justice services, corrections, and mandated treatment all fall under this definition.
The Rationale for the Question in the Title

- Forensic SWs often act as experts in court as a means to assess and categorize vulnerable populations for fact finders.

- The core values of SW and the NASW Code of Ethics and CSWE Standards require SW integrity and competency across the domains of education, practice, and research.

- Future research is needed so as to more precisely inform the education and training of Forensic SWs and thereby prevent the misuse or transformation of social work expertise/knowledge by courts as convenience.
“No, you weren’t there. But in your expert opinion as a certified brainiac, do you think he did it?”
SO WHAT ARE VALUES?

• Values “simply” concern the various beliefs and attitudes that determine how a person or group actually behaves.

• Values identify what should be judged as good or ideal.

• How do you test your values at home?

• How do you test your values at work?

• How do you keep your values in a host environment which is adversarial and time and result-oriented?
SO WHAT ARE ETHICS?

• Ethics concern how a moral person should behave.

• Ethics is an a process and an action concept.

• Ethical principles are ground rules of decision-making; not just factors to consider or ignore.

• Ethics are principles of conduct that govern a group or an individual such that, like the NASW Code for Ethics, a professional can be professionally sanctioned.
1. Social Justice
2. Service to Others and the Community
3. Dignity and Worth of the Person
4. Importance of Human Relationships
5. Integrity - behave in a trustworthy manner
6. Competence - research and EBPs which are generalizable, valid, and reliable to the case

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“[W]e defined forensic social work broadly as a subspecialty of social work that applies an integrative approach (i.e., generalist, specialized, and collaborative) to social work practice with diverse populations impacted by legal issues both civil and-or criminal. Forensic social work combines social work and specialized legal and policy skills to target social functioning and socio-legal conditions. The use of the term forensic underscores the infusion of social justice and human rights principles. It also underscores the collaborative nature of effective forensic social work, which includes collaboration with clients, professionals, and other stakeholders within and across formal and informal systems” (Maschi & Killian, 2011, p.12).

Professional practice by any psychologist working within any sub-discipline of psychology when applying the scientific, technical and specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters (Specialty Guidelines for Forensic Psychology, APA, 2011).
THE HOST’S TRACTOR BEAM

More simply, warping may occur when the application of research, theory, practice, and specialized methodology by any professional discipline, for the express purpose of providing expert assistance to the legal system, is a convenience to the host and not science.
ANTHI-WARPING BEST PRACTICES

• Expert opinions should be data based, including thorough consideration given to all sources of information.

• Relevant and generalizable research studies should be considered and explained within the report.

• Findings should be examined for consistency within and between data sources.

• When possible, opinion should incorporate sources with established reliability and validity consistent with the evaluation, investigation, or recommendations.

• Alternative opinions conflicting with the opinions reached should be considered and rejected when they are less consistent with all the information available to the expert.

• So basically, be careful, systematic, and data-driven (Tennies, 2014).
FORENSIC SURVIVAL STRATEGIES

- Know the ‘rules’ of your environment
- Know that you must play by someone else’s rules
- Understand the role of the judge or jury
- Detach from Outcome
- Stay Current on literature/research
- Know why you know what you know about the facts
- Stick to your opinion
- Engage in Hypothesis testing

- Thick Skin—“It’s not about you” (most of the time)
- Remember Kindergarten= show your work
- Learn to love “I don’t know”
- Admit you could be wrong
- Be as ‘bullet-proof’ as possible=preparation
- Remember: values and ethics do not shift/evaporate with the needs of the host
- Find mentors/collaborate with peers (Tennies, 2014)

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SO WHY DOES THIS MATTER: MY DISSERTATION RESEARCH....*

- What do the connection(s) between an MSW, licensure, practicing social work, and the integration of evidence-informed research into court environments?

- What does the act of authority and power as a forensic expert mean to the participants?

- How do LICSWs retain professional values and ethics in host environments?

PRELIMINARY CONCEPTUAL FRAMEWORK

The Academy: An MSW Education

Foundation & Elective Courses

Field Placement

Becoming An Expert

Competence & Integrity

Evidence-Informed Rigor

Policy & Advocacy

SW Values & Ethics

Licensure & Practice

Being an Expert

Evidence-Informed SW Knowledge

Institutional Judgments

Outputs

Host Environment: Adjudicative Systems

The Expert!

Inputs

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So What Does a Forensic Social Worker Need to Know?

The Modern SW Generalist as Expert?

Future Sciences & Systems?

Demography

Anthropology

Education Systems

Individual & Group Therapy

Medical/Nursing

Occupational & Physical Therapy

Psychiatry (Pathology & Medication)

Psychology (Psychometrics)

Technology

Sociology

Neurobiology

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A SAMPLE OF THE “EXPERT” EXPERIENCE....

• “We were told frequently social workers do social work, case management. There was always the students that whispered I’m going into private practice. They were like the traitors.”

• “I would ask, “What should I do?” They said, “Just use your skills that you’ve learned.” I thought, these skills aren’t really preparing me to work with these crazy people.”

• “I came outta graduate school just trusting the system. It’s the school of hard knocks, I guess.”

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• “I can’t imagine doing this job isolated. I think I’d be sitting in a corner with my blankets, sucking my thumb.”

• “I think I had a very idealized view of a Solomon-like person sitting on a bench and that everybody would be there to support the best interests of the child.”

• “Lawyers are great because lawyers aren’t ideologues. They’re practical. They’re always open to what I have to say, if it benefits their clients.”

• “Social work education is good for lawyers.”
• “Unfortunately, social workers are not thought of very highly and when there is an attempt to openly disagree the medical community, specifically doctors, discounts social work.”

• “Social work is hard. It’s emotionally traumatic. It’s low-paid. I’m tired of it. [Child protection] was brutal. And I’m just tired.”

• “I think poverty is the great equalizer, and that’s what brings CPS to your door, whether you’re white or black or whatever.”
FUTURE RESEARCH FOR NOFSW?

- How do we teach and train Forensic SWs, consistent with SW values and ethics, so as to enhance the intellectual and methodological rigor required to act as an expert?

- To what extent do social work “experts” believe that their opinions have significantly influenced (power) the decision (judgment) rendered by a court?

- Do Forensic SWs measurably improve the efficacy of outcomes in the courts and, if so, how and why?


• Tennies, D. (2014). Forensic mental health experts, PowerPoint Presentation, Boston University Graduate School of Social Work, Boston, MA.
Thanks and Questions?

Social work is such meaningful, worthwhile work that I've decided to sell my Porsche and give up my lucrative law practice to join you!

NO 1 IN A SERIES OF UNLIKELY EVENTS
Social Workers as “Experts” in the Family Court System: Is Evidence-Based Practice a Missing Link or Host-Created Knowledge?

Dana E. Prescott

Prescott, Jamieson, Nelson, & Murphy, LLC, Saco, Maine, USA

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Social Workers as “Experts” in the Family Court System: Is Evidence-Based Practice a Missing Link or Host-Created Knowledge?

Dana E. Prescott
Prescott, Jamieson, Nelson, & Murphy, LLC, Saco, Maine, USA

The graduate school curriculum for social workers requires that students learn to critically distinguish between opinion-based knowledge and evidence-based practices, or empirically-supported interventions. Once graduated, licensed social workers are often called upon to offer diagnostic and predictive opinions as experts in a variety of macro-environments. When the family courts are that “host” environment, social workers proffer expert opinions that may categorize and label parents or children for purposes of a judge’s allocation of physical or legal custody. In this article, it is suggested that the social work profession, within all three domains of education, practice, and research, should more precisely link the design and fidelity of an evidence-based practice (EBP) with its potential misapplication or warping when proffered as science in “host” environments like family courts. As Foucault and other scholars warn, the failure to verify that an intervention is applied correctly may actually enhance the risk of social injustice by interpreting and translating EBP knowledge in the non-empirical form of authority-by-license. This article, therefore, proposes that the social work profession, from the classroom to the field, has an obligation to thoroughly understand and engage interdisciplinary practices that assure respect for the strengths and limits of social work knowledge.

Keywords: Social work, child custody, evidence-based practices, family courts, social constructionism

Among the more profound and complex social welfare problems confronting the social work and legal professions the past 40 years are the iterations of dislocation and reformation that have influenced the economic and emotional stability of family systems in the United States. Unsurprisingly, for anyone familiar with the bloody history and pathology of human conflict at the individual and institutional level (Goldstone & Goldstone, 2002; Keegan, 1993), these iterations fueled even more frequent and intense forms of child custody litigation between parents who sought court orders allocating the physical and legal custody of their children (Garber, 2004; Schepard, 2004; Weinstein, 1997). The U.S. judicial system, as a co-equal branch of government, was institutionally ill-prepared or ill-designed to resolve parental conflict by imposing, after the artifice of a trial, a judge’s ruling about the present quality of either parent to parent in the future (Berger, 2009; Firestone & Weinstein, 2004; Prescott, 2009). Of particular importance, the entry of such a judgment was premised upon the ever evolving, vaguely defined, and legislatively indeterminate legal standard “the best interests of the child,” which itself represents an accumulation and amalgamation of social science and public policy developments over the last century (Elrod & Dale, 2008; Emery & Emery, 2008; Goldstein, Freud, & Solnit, 1979; Mason, 1999; Tippins & Wittmann, 2005).
While the courts became more embedded in trying to mitigate and resolve child custody litigation, the social work profession continued to develop graduate school programs that taught social policy, human behavior theory, quantitative and qualitative research, practice interventions, and other courses designed to link the biopsychosocial tenets of social work with its historical traditions, values, and ethics (Compton & Galaway, 1999; Council on Social Work Education, n.d., 2008; Grinnell & Unrau, 2008). Of no less importance, state governments, at the behest of the social work profession, enacted tiers of licensing that publicly defined the knowledge and authority of social workers (Compton & Galaway, 1999; Gray, 1990; Roberts, 2008). Eventually, the availability of educated and licensed social workers, together with the public and private desperation of undertrained and overwhelmed family court systems (lawyers, judges, and administrative staff), found a common ground that served the interests of both disciplines: a scientific justification for dividing good and bad parents by court order.

Over the ensuing decades, licensed social workers, along with other mental health professions, were nominated and denominated “experts” who could assist judicial decision-making by providing predictive and diagnostic opinions of human thoughts and behaviors (Coleman, 1984; Lewis, 2009; Williams & Arrigo, 2002; Wrightsman, 1987). In the modern language of the social sciences, and now fervently debated in the social work literature (Regehr, Stern, & Shlonsky, 2007; Webb, 2001) the term “evidence-based practice” subsumes various forms of scientific or empirical justification for this form of opinion. A historical exploration of these developments, akin to Kuhn’s (1962) analysis of the physical sciences, is beyond the scope of this article (though of worthwhile future study). What matters here is that the authority and privilege to proffer an expert opinion by “searching, appraising, and synthesizing evidence to answer a question” (Hoefer & Jordan, 2008, p. 549) implicates, at a profoundly elemental level for social work, the core value of social justice.

A framework for exploring and understanding these links was recently suggested by Grady (2010). Adapting a five-step process, Grady argued that schools of social work cannot rely exclusively on teaching evidence-based practices but should disseminate and translate knowledge for clinicians and other professionals in the community:

1. Convert the need for information into an answerable question;
2. Track down with maximum efficiency the best evidence with which to answer that question;
3. Critically appraise that evidence for its validity and usefulness;
4. Integrate the critical appraisal with practice clinical expertise, client values, preferences, and clinical circumstances, and apply the results to practice; and
5. Evaluate the outcome. (p. 401)

In the present article, Grady’s analysis is extended to a different set of questions. How should the social work profession, consistent with its core values, disseminate and translate evidence-based practices for, or on behalf of, other disciplines and third parties at the micro- and macro-levels? From this question derives a fundamental corollary much more difficult to conceptualize. Are evidence-based practices (EBPs), as developed by social work, “different” from one host environment to another? It may noted that both questions accept as a given that social workers will continue to act as experts within host environments, such as family courts. At the risk of oversimplification, the symmetrical needs of both disciplines to render and impose judgments defining and dividing parents are too deeply embedded to unravel today. As Grady (2010) implies, however, the objective should be to disseminate expert knowledge in a manner that does not warp or contort the purposes and meanings of EBPs.

Following a brief discussion of the social problem and the structure and functions of family courts and child custody litigation, the previous questions are explored in conjunction with the warnings of the French historian Michael Foucault and social constructionists. Contrary to the
preference of some writers, the science of social work is not tarnished by faith in the core values of social work. What that scholarship offers to all three domains of the profession is the means to pause, reflect, and weigh the consequences of linking or rooting EBPs in host environments that may be uninterested in more than the generic deployment of expertise as a salutary and efficient means to an end. Social work educators, practitioners, and researchers should more formally and cohesively explore interdisciplinary knowledge and practices so as to better apprehend the strengths and limitations of EBPs, as well as potential permutations and variations, before social workers enter the portal of adversarial host environments like the courts.

THE SOCIAL WELFARE PROBLEM AND THE FAMILY COURTS

Contemporary debates regarding the strengths and limitations of EBPs for social workers frequently divide along a practitioner/researcher fissure. This fissure, however, has several bridges that have served the profession since its founding. First, social work knowledge of the human condition and the duties and values of social workers are transparently connected within each of the epistemologies that social work has developed and implemented in clinical relationships (Brandell, 1997; Turner, 1996). Second, the obligation to understand the effect of power and oppression by institutions links with the responsibility of social work advocacy to engage policy solutions that are connected by practice and research knowledge (Bogenschneider & Corbett, 2010; Gould, 2010; Hoefer & Jordan, 2008). If either of these bridges is missing, complex and evolving social problems, such as child abuse and neglect, family violence, separation, divorce, and iterations of parental conflict, may be explained to the courts in a manner that benefits the interests of a host environment but may ill-serve vulnerable and diverse families.

In the United States, societal acceptance of divorce and cohabitation, among other important social and cultural developments, has yielded, quite literally, millions of parents and minor children who have or will experience separation or divorce (Garrison, 2009; Goodwin, Mosher, & Chandra, 2010; Kennedy & Bumpass, 2008; Krieder, 2010; Kreider & Ellis, 2011; Simmons & O’Connell, 2003; Stevenson & Wolfers, 2007). Although there is some suggestion that child maltreatment and victimization rates of various types have been declining since the 1990s (Finkelhor & Jones, 2006), for the fiscal year 2009 an estimated 3.3 million referrals, involving the alleged maltreatment of approximately 6 million children, were received by child protective agencies (U.S. Department of Health and Human Services, 2010). These complex forms of familial dislocation and the resulting family reformations have required the expenditure of billions of federal and state dollars on court systems and related social services (Child Welfare League of America, 2010; Fackrell, Hawkins, & Kay, 2011).

As a preliminary matter, and though each state may use different nomenclature to identify its specialized or unified family courts, the term “courts” or “family courts” are intended to mean the division or branch of a state judicial system with the procedural and adjudicative authority to allocate the physical and legal custody of children between parents or other third parties (Bozzomo & Scolieri, 2004; Schepard, 2004). In child abuse and neglect cases, the state may initiate a child protection proceeding against the parents that temporarily or permanently removes a child from the parents’ custody (Chill, 2004; Pecora, Whittaker, Maluccio, & Barth, 2000). In private child custody litigation, parents unable or unwilling to resolve disputes through negotiation or mediation may sue the other parent in family court and request that a judge enter, modify, or enforce a child custody order that allocates the legal or physical custody of a child (Prescott, 2009; Reynolds, Harris, & Peeples, 2007; Singer, 2009). Despite important constitutional and legal differences between these forms of child custody litigation, social workers frequently testify in both forums as experts concerning the best interests of children and the present or future capacities of one or both parents to meet those needs (Kisthardt, 2006; Lewis, 2009; Maschi, Bradley, & Ward, 2009).
Whatever the specific identity or structure of the court, the adversarial process is a rather cumbersome means to manage or reduce parental conflict. Indeed, many parents today find themselves embedded in court for years litigating the physical and legal custody of their children with the attendant risk of negative educational, psychological, and social outcomes (Amato & Cheadle, 2008; Dong et al., 2004; Kim, 2011; Trinder, Kellet, & Swift, 2008). After all, child custody disputes exist in a continuum of adaptive change over the life span of parents and children, not a static moment in time when a judgment is entered after a trial. Thus, the vexing problem of courtroom fact-finding in child custody litigation is skewed by the ability of lawyers and clients to present a slice of life under high stress and in circumstances of imperfect information. To provide a semblance of rationality that the public will accept as more than random guesswork, a kaleidoscope of facts is often arranged into juridical truths through filters or “recommenders” from a variety of professions, including social workers.

These social workers acquire this authority when courts confer upon social workers, as well as other social science professionals, the judicial cloak needed to factually investigate the parents by speaking with lay and professional witnesses; obtaining records and information from therapeutic, medical, and educational resources; conducting child custody evaluations; and eventually, testifying concerning those facts and recommendations, as organized, weighted, and summarized by the social worker. (Private parties may also employ their own experts in child custody cases, which does not diminish or alter the scope of the problem under discussion.) The list of opinions that social workers may proffer to the family court is too long to list but those expert opinions can range from whether a parent committed child or sexual abuse to the appropriateness of overnight visitation to the choice of one parent over the other as physical custodian. This task of “social investigation,” as Peters (2011) describes the process in juvenile probation, is not uncommon to social workers acting within “coercive environments” (p. 356). The relevant assumption, of course, is that social workers (educated, trained, and licensed) can better locate an empirical difference when examining past behavior that will yield a historical truth, which, if compiled against present personality profiles, roughly correlates to a decision maker’s conclusion about what ought to be in the future best interests of a child.

In a book published by the National Association of Social Workers, Lewis (2009) succinctly summarizes this perspective from a positive position:

there is nothing antithetical between social work and the law. Social workers care about the well-being of families, and because of their training and experience, social workers can offer valuable services to family courts, particularly in matters of contested child custody. (p. 1)

The good faith nature of this assertion, and its blending of professional feelings and training, does deserve respect. After all, family court judges, untrained “in the dynamics of interpersonal relationships and the developmental needs of children,” and frustrated by the incoherency or self-serving nature of much of the testimony offered by parents and their lawyers, “increasingly looked to mental health professionals and the social sciences for help in determining the child’s best interest” (Elrod & Dale, 2008, p. 384).

The operative concern, however, is whether Lewis’ assertion, and its linkage to the institutional problem of resolving child custody litigation, digs deep enough into whether social workers understand the consequences of imprecisely confusing the privilege-of-opinion with the empirical prerequisites of science merely because “we” care about the well-being of families. After all, the judge, as decision maker, is the filter and finder of a truth about each fact as presented by lay and expert witnesses. A judge is then conferred extraordinary discretion as to the weight and sum of those facts before fitting those facts into a shifting matrix of standards from which a judgment is entered for and about parents and children. While the social work profession does obligate itself to
consider theoretical and empirical foundations for the delivery of expertise concerning vulnerable populations (Arrendondo & Rosen, 2007; van Wormer, 2009), courts regularly use the expertise of others to make normative judgments. There is, therefore, a profound risk that courts will use expert opinions with spurious theoretical underpinnings (if any) as a means to efficiently, at least for the institution, slice through various “so-called wicked social problems” (Bogenschneider & Corbett, 2010, p. 13).

In family court, this risk is multiplied because social work expertise is employed for tactical reasons (“to support decisions that have already been made or to justify positions arrived at for ideological or partisan reasons”) or as an imposed use (“the recent frenzy with requiring that practitioners use only evidence-based programs”; Bogenschneider & Corbett, 2010, p. 104). As a consequence, tactical or imposed practices may create or encourage cross-cultural or cross-contextual dissonance that collides with the scientific and social justice values required of social workers, whether in the classroom, the courtroom, or the laboratory. The immersion of social work knowledge in the form of EBPs so as to serve the tactical and imposed needs of family courts may then yield, as one social work research text succinctly warns, a “monolithic view of cultural and ethnic minorities and women” (Grinnell & Unrau, 2008, p. 363).

Although an ephemeral idea to some in the social work profession, the delivery of and advocacy for “social justice” within the shifting dimensions of social work practices remains a core value (Banerjee, 2011; Bellefeville, 2006; Gumz & Grant, 2009). For purposes of the ideas expressed in this article, social justice is an essential concept of personal liberty and self-determination that empowers individuals to make meaningful choices (Rhodes, 2007). Social work does have historical roots in the courts (Peters, 2011) but whether social work now serves the interests of the host or those diverse and vulnerable populations caught in that environment is the crucial concern. As social work knowledge became increasingly immersed in the social problem of child custody litigation, there was a proportional risk (perhaps unseen) that social justice, like other core values, could become trivialized or marginalized by demands for expediency consistent with the courts’ institutional and bureaucratic obligations and preferences.

THE HOST ENVIRONMENT AS A MISSING LINK

The necessity for critical and careful reflection concerning these dilemmas is highlighted by Grady’s (2010) suggestion that knowledge be converted into an answerable question, that best evidence is found with which to answer that question, that the evidence is critically appraised for its validity and usefulness, that the evidence is then integrated within a matrix of expectations, client values, and professional and clinical circumstances, from which outcomes may then be evaluated. In the aggregate, these elements may limit the likelihood that a court may impose some form of knowledge. Even though the explicit nomenclature of an “evidence-based practice” is rarely used in court, expert opinion concerning attachment theory, “parental alienation,” or the developmental effects of overnight visitations, for example, can quickly swerve into a handy form of judicial science so as to justify an outcome.

Even when one or more of these forms of researched knowledge are more controversial or less settled among social scientists than another, the literature may still legitimately guide clinical judgments for purposes of designing therapeutic interventions (Fraser, 2004). When social work knowledge is used to categorize and predict outcomes for parents in the throes of child custody litigation, however, courts, with the power to allocate and sanction, may cement biased assumptions by converting and adapting those assumptions into a scientific knowledge of child custody (Galatzer-Levy, Kraus, & Galatzer-Levy, 2009). Without a sufficiently critical appraisal the outcome of such a judgment may thereby excuse and justify the categorization of “good” or “bad” parents or a “good” or “bad” parenting plan.
The themes that echo through this section suggest that social work begin by embedding the linkage between EBPs and the influence of macro-environments and the efficacy of interdisciplinary practices in the graduate school classroom. Consistent with this point, the Council on Social Work Education assembled a set of competencies that included evidence-informed practices that engage an epistemology like intersubjectivity, “or the mutual knowing between two people of the other’s experience, including meaning, intentions, and emotions” (Arnd-Caddigan, 2011, p. 373). Yet intersubjectivity does not occur in the abstract but is a function of the ecological pressures and forces that surround and swarm the act of mutual knowing. Unless students who become practitioners or researchers (or both) understand how to act as co-equals with the courts, rather than social workers who practice their expertise at the behest of the courts, the “meaningful participation in decision making for all people” (National Association of Social Workers [NASW] Code of Ethics, 1999, p. 1) may be marginalized, if not abrogated.

What this means is that there are several competing and complex traps for social workers within host environments that employ expert knowledge to render judgments. Judicial decision-making, and thereby discretion, are constrained by legislative enactments that attempt to define non-evidence-based-policies like the “best interests of the child.” A phrase of this sort implicates social norms or values that are ever shifting (e.g., child abuse or domestic violence) or even constructs-of-a-kind. As such, these legal and legislative formulas may reflect profoundly important social movements or public health crises but are not the result of scientific methodology, implementation, and evaluation (for an example see Wilson, 2008).

Moreover, the judiciary is frequently asked by litigants to define “science” by sorting through fluid and controversial debates among scientists themselves whether the science proffered to the court is just handy guesswork or a product of generally accepted and reliable methodologies (Frank, 1930; Park & Saks, 2006; Schepard, 2004; Ulen, 2002). Given that these debates have engendered costly and complex litigation from the physical and medical sciences to fields like epidemiology, it should be rather unsurprising that the social sciences would avoid even stricter scrutiny. From the child abuse and neglect literature, for example, evidence-based services are defined as the competent and high-fidelity implementation of practices demonstrated through randomized controlled trials, with fidelity to mean that intervention protocols are followed during implementation (Chaffin & Friedrich, 2004). For legitimate reasons of institutional, legal, and ethical constraints, few of the elements suggested by Grady (2010) can be the subject of controlled or randomized study in family courts (Reynolds et al., 2007; Schepard, 2004). A more precise point is that the incentive to “get better” in clinical treatment, and the capacity to establish accepted study methodologies, arises in a very different environment than the jungle of litigation, which is coercive, clumsy, threatening, and limited to a specific set of facts.

The threaded connections between social work theory and practice, even without the courts, are not without controversy. In social work, evidence-based research may run counter to clinical lore and traditions or the legitimate concerns of practitioners seeking to protect the individual needs and interests of clients (Chaffin & Friedrich, 2004; Pozutto, 2007; Swenson, 2006). The lack of uniform cornerstones for EBPs in social work may even make it more difficult for social work to share knowledge with other disciplines, such as nursing, medicine, and other health care professions. Some factions of social work have, rather explicitly, argued that any source of knowledge is provisional, “meaning understandings are open to modification as new evidence unfolds” (Gilgun, 2005, p. 52). These intellectual and philosophical differences may appear of little consequence to the daily life of a social worker. This is, however, a deeply shortsighted approach for the “way one defines theory will have an even greater impact on the way one practices social work” (Pozutto, 2007, p. 66).

By itself, such philosophical debates would probably pose little harm to the public. When social workers move from the classroom to practice, the absence of an explicit linkage between social work knowledge and its employment as EBPs may cause harm if there is little appreciation
of how the host environment may warp the role and expertise of the social worker. If the phrase *evidence-based* implicates empirical knowledge as a predicate function of opinion then the duty of a social worker as expert advisor and filterer of opinion for the courts is much clearer. The social worker ought not to be part of a game of theories in which expert opinion is unmasked only through artful or hurtful cross-examination. Instead, the proffer of expert opinion should be made with an a priori disclosure of the limits of replication and generalizability transparently highlighted for all to understand.

This contemporarily shaky scientific and juridical fissure is not a result of historical accident. Social workers, and psychologists and psychiatrists before them, were historically granted privileged authority because justification was needed to render public perception of judicial decision making more than just the personal views or feelings of a judge. In more graphic form, though on a different topic, Irving (2007) aptly summarizes the roots of this confluence of expert disciplines and the judiciary today: “Everywhere, if one chose to look, the wounds and fissures in Enlightenment reason were beyond repair, the loss of blood too great, and we practice in the presence of a dying god” (p. 228). Of course, the best of science may laudably generate policies that better serve aspects of social justice, but, just as often, a science-of-the-moment derives from assumptions that reveal a desired policy-of-the-moment (Bogensneider & Corbett, 2010; Gambrill, 2005; Williams & Arrigo, 2002). Indeed, such is how “good” and “bad” parenting gradually became defined for the judiciary through features, labels, and social norms summed together to reach an aggregate of socially constructed and reconstructed mantras that fit standards like the best interests of the child. From this aggregation, implicitly endorsed by social work practitioners and adopted enthusiastically by the legal profession, family courts daily serve as an incubator for non-scientific experimentation.

**THE HOST AND THE CAPILLARIES OF EVIDENCE-BASED PRACTICE**

In a text commonly used for social work students, Compton and Galaway (1999) note that two sets of skills are necessary for social work practice: “skills in knowing what change strategies to use; and skills in the actual use of change strategies” (p. 7). If an intervention is a deliberately planned action that occurs after defining a problem and identifying the objectives of the desired resolution, social workers often determine which practices have an evidence-base for effectiveness. Unfortunately, a vacuum of knowledge may encourage social workers-in-practice to fill institutional needs for a “scientific” explanation by describing a pattern of socially constructed truths rather than evidence-based practices. Left to their own needs and knowledge, family courts are unlikely to connect the role of language and discourse, the role of institutions, and the role of social power so as to distinguish science from faith (Goldblatt, 2000).

From the time when the earliest social workers advocated for the powerless and the impoverished, the social work profession challenged the nature and consequences of various forms of power and, even more importantly, the effects of its distribution on social movements and political change (Marx, 2004; O’Connor, 2001). For more than three decades, the writings of Foucault have been employed in the graduate school classroom as the means to encourage students to understand the experience of clients who, by choice or misfortunate, find themselves subject to measurement and labeling as a prerequisite to treatment or punishment (Epstein, 1999; Irving, 2007). As Heron (2005) suggested, the Foucauldian concept of power is defined by the “capillary form of existence, the point where power reaches into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives” (p. 347, quoting Foucault, 1980, p. 39).

In the very capillary form of social work-in-the-courts, evidence-based knowledge and social constructionism share a relationship to ancient dialectics concerning when and how one person can
know the being of another (Blanchette, 2003). This problem of knowing another and converting that knowledge into effective clinical or judicial judgments is not new in philosophy or science. Leonardo da Vinci was purported to have said hundreds of years ago that, “one has no right to love or to hate anything if one has not acquired a thorough knowledge of its nature” (Freud, 1947, p. 40). As Foucault and many others remind us when we, as professionals, are listening, mere expressions of authority by a dominant class all too often underpinned sexism, racism, or homophobia (Barrett & George, 2004; Chodorow, 1989; Coleman, 1984; Masson, 1992; McNay, 1992; Wax, 2007). Despite these limitations, the judicial environment yielded many decades ago to a special reliance upon the expert soothsayer:

The long and rather tortuous history of the psychology-law interface makes it clear that ignorance has never been acceptable. It is a history characterized by marked fluctuations in the regard with which the courts have held the role of the expert and in the value placed on scientific evidence. It is a history of tensions between needs and expectations of the courts for assistance in understanding and adjudicating very difficult and vexing human problems, balanced against the scientific knowledge base of a young science that was limited in the assistance it could provide the courts. (Goldstein & Weiner, 2003, p. 34)

The contemporary habit of seeking a scientific explanation for a categorical label of good and bad parents is probably too ingrained in the family courts to be derailed. The power to change, and the correlative duty to do so, belongs to the social work profession. This fatalist statement of opinion should not be read as dismissive of the reciprocal responsibility of the courts and the legal profession to employ some form of social justice (Madden & Wayne, 2003; Weil, 1982). As long as there are no biological or chemical means to perform a biopsy to determine the presence of an observable anomaly or gene that reveals x- or y-parenting, and the social problem requires judicial interdiction, social workers, with degrees and license in hand, will continue to fill that knowledge gap. In the case of child custody judgments, however, the willingness of social work practitioners to inculcate a particular set of values as empirical science, without disclosure of the difference, is disconcerting but curable.

As Foucault well understood, when social workers participate as the privileged proprietors of a truth, the forces of government and other institutions may define and maintain practices that gradually subsume individual autonomy and freedom. This outcome occurs because, as social constructionists and narrative approaches suggest, individuals and groups create meaning from experience and those experiences provide clients with the opportunity to take the role of expert about their own life (Gergen, 2009; Graebner, 2004; Swenson, 2006). In that manner, organizational needs, such as the expeditious resolution of child custody allocations, may impose expert opinions of the privileged over the legitimate and multi-cultural experiences of the individual. Unchallenged social construction of categories may thereby endow a group with a label within an ideology of deviance or “social pollution” consistent with the dominant discourse of the political, the legal, and the scientific (D’cruz, 2004; Frohmann & Mertz, 1995; Urek, 2005; Weinberg, 2006).

From the earliest courses in graduate programs, social work students are required to critique the branding of such groups so as to recognize the explicit or subtle means of control and coercion that influences the practice and ethics of cross-cultural competence, evidence-based practice, and social justice (Dominelli, 2003; Fischer, 2009; Pollio, 2006; Roche, 2007). The modern graduate school education of social workers thereby encourages sensitivity and respect for the “insidious mechanisms of structural oppression” (Lichtenwalter & Baker, 2010, p. 305). If this educational goal is successful, social work students will “embrace uncertainty and complexity” (Irving & Young, 2004, p. 214) so as to become “public intellectuals” (Howard, 2010, p. 131) with “substantive expertise, analytic acumen, an ability to garner public attention, and the skills to make effective use of those opportunities in the furtherance of social justice” (p. 132). Unfortunately,
the modern educational experience of students (Barzun, 1959) suggests that accomplishment of this goal, as a foundation for social work practice and research, may require more than snippets in course syllabi from the writings of the “great thinkers” in the profession, or at least those thinkers who have influenced social work education, practice, and scholarship (Chambon, Irving, & Epstein, 1999).

Foucault, for example, developed theories, such as dividing practices that “constitutes polarities between self and other, good and bad, normal and pathological” (Chambon, 1999, p. 67), from his observation and analysis of specific organizations and the oppression of individual rights. Unlike Kant or Nietzsche, who relied upon a universe of thought experiments, Foucault understood that any effort to dissect the intersection of organized authority and the oppression of individual rights required specific knowledge of the institution (Foucault, 1978). Whatever the criticisms of post-modernism (Dybicz, 2010), these observations are of critical importance to social workers who choose to offer evidence-based expertise to family courts. The intrinsic design of an organization, particularly when judgments are made behind the veil of constitutional function and structure, may shield the intrinsic purposes and intentions of that organization. One plausible approach across all three domains of the profession is to begin the process of assuring that social workers understand interdisciplinary practices before serving host environments. Social workers may then disseminate and transfer their knowledge and skills consistent with, but not subsumed by, the host environment in which social workers perform their mission.

INTERDISCIPLINARY KNOWLEDGE AS LINKAGE

As divorce, cohabitation, and child abuse and neglect erupted into serious crises in our communities, the social work profession became more prominently embedded in the design and implementation of policy within organizations like the courts, schools, hospitals, and prisons (Brooks, 2005; Bronstein, 2003; Maschi et al., 2009; Peters, 2011). Although the historical and professional roots of each host environment are quite different, many years ago social work developed and integrated an ecological model that included complex bureaucratic organizations as “a salient feature of the social environment” (Gitterman, 1996, p. 391). Within the unique properties of any institution, there is an obligation to continuously examine the frail linkage between the education of social workers, the duty of practitioners when offering expert opinions, and the ethical deployment of “state-of-the-art research that documents conditions and evaluates programs” (Barusch, 2009, p. 380). Whether or not the specific form of social work knowledge is privileged, authoritative, or evidence-based (Gambrill, 2007; Reamer, 2006), the influence of the host is of no small consequence to parents and children, many of whom are vulnerable because of poverty, race, education, culture, language, psychological or physical disabilities, or other barriers.

The failure to demand interdisciplinary collaboration between the courts and social work expertise not only discourages the creation of new knowledge (Hutchinson, 2005) but may foster a silo effect in which social workers-in-practice impinge opinions that are not evidence-based (Howard, McMillen, & Pollio, 2003; Mullen, Bledsoe, & Bellamy, 2008; Netting & O’Connor, 2008). This outcome occurred (and continues to occur daily) because the social work profession failed to engage and facilitate an interdisciplinary partnership with the courts before entering the courthouse portal. A true partnership actively enhances policy development, implementation, and assessment by sharing skills, values, and outcomes so as to generate new professional roles, original models, a common language, unifying goals, and novel perspectives (Bard, Lowenstein, & Satin, 2009; Satin, 2009). Instead, family courts dominate knowledge without a shared platform or protocols for its ethical and scientific use. In this meaningful sense, the social work tradition
of “borrowing knowledge” (Compton & Galaway, 1999, p. 40) from the other social sciences is very different from the creation of “special expertise” (Satin, 2009, p. 5) when providing services to organizations like the courts.

Unlike borrowing knowledge, the creation of special expertise does not encourage the consumption of the knowledge of one discipline by the organizational appetites of an institutional host that provides services or judgments about clients. As a corollary principle, interdisciplinary processes require a mutuality of respect for each professional discipline, which is co-extensive with the systematic and equitable delivery of services to clients. Although this has not occurred to date between social work and the courts, such a relationship provides a future template for exploring interdisciplinary models that seed and amalgamate knowledge (Satin, 2009). As Satin suggests for the health management of older adults, such a process begins with a sound basis in design, methodology, and outcome measures supported by evidence-based alliances with disciplines such as psychology, nursing, sociology, medicine, public health, and the law (Bogenshneider & Corbett, 2010; Pecora et al., 2000). The advantages of a more expansive approach by social work educators, practitioners, and researchers must, of course, be carefully balanced with the ethical constraints that guide and differentiate each discipline; especially within macro-environments (Netting & O’Connor, 2008; Rubin & Parrish, 2007).

Of concern, is that some social workers, and particularly clinicians, have resisted embracing a practice-driven partnership that integrates knowledge or implements evidence-based approaches that are feasible and effective (McNeill, 2006). Nevertheless, at least this robust debate in the social work literature occurs through a shared language and culture. In language generally unfamiliar to courts, social work has spent decades exploring the tension between positivist and postmodernist traditions that implicate the fundamental question of when it is ethically and scientifically appropriate for social work practice to fit people within existing social patterns and when should social work foster new or emerging patterns (McNeill, 2006). From the interdisciplinary perspective, a response to this question is made much more complex by virtue of the recurring tension between social work practice and the perception of evidence-based knowledge as mechanistic (McNeill, 2006). If the conventions and traditions of social work had a uniform answer, the transfer to the courts of evidence-based knowledge as a means to create new patterns of knowledge sharing would be considerably more deliberate and efficient.

What remains unexplored, therefore, is how to orientate the interpretivist-constructivist paradigm of social work knowledge (McNeill, 2006; Swenson, 2006) when situated within macro-systems, such as family courts that lack the same values or traditions. Social workers often learn too late that courts “are legally sanctioned fight clubs, welcoming immoral, emotionally destructive contests that bring about little relief and tremendous suffering” (Rosenbaum, 2004, p. 50). Despite the authority and power imbued to the courts under the U.S. social contract, courts rarely engage in serious debate about human agency, subjective meanings, or dominant discourses that reveal casual connections between those attributes of conflict and conflict resolution. The lack of an evolutionary symbiosis between social workers and the courts did not occur by historical accident. Indeed, social work practice in the courts, like other psychological sciences, reveals

a history of tensions between needs and expectations of the courts for assistance in understanding and adjudicating very difficult and vexing human problems, balanced against the scientific knowledge base of a young science that was limited in the assistance it could provide the courts. (Goldstein & Weiner, 2003, p. 34)

The ongoing absence of a mutually accepted interdisciplinary matrix is the challenge for social work education, practice, and research if social work is to avoid institutional subservience to a host while embroiled in the midst of legally sanctioned conflict.
CONCLUSION

In response to demographic changes and institutional costs, child custody litigation is viewed as a complex social problem that is an important subject for study across disciplines. Any solution that intends to invoke evidence-based social work research must understand the unique functions and structures of the courts because if “social policy is the means” and “social welfare is the end” (Marx, 2004, p. 4), social workers contribute to policy development by connecting the scope of the social problem to the “various ways in which social policies impact vulnerable individuals, families, groups, and communities” (p. 5). The collaborative importation of various disciplines so as to avoid an ongoing “drift in the currency of policy discourse away from evidence and science” (Bogenschneider & Corbett, 2010, p. 7), however, requires much more thoughtful dialogue between disciplines to avoid recurring oppression and stereotyping when “science” is invoked to label or divide (Shonkoff, 2000; Williams & Arrigo, 2002).

This is not the same as debating what responsibility and/or contribution social workers make as experts in child custody cases (Lewis, 2009). What this article suggests is that teaching EBP and linking it to practice and research requires an additional element to those suggested by Grady (2010) and Hoefer & Jordan (2008) in an earlier article. Even if a good-faith insight, social workers need to better understand the influence or constraints of a specific environment so as to more profoundly appreciate what it means to exercise power and privilege in the courts and what it means to translate that knowledge into outcomes that categorize parents (or others). Once again, and at the risk of evangelizing, Foucault would have foreseen the consumption of science by the family courts, acting as a disciplinary institution, when parents fail to fulfill a dominant narrative of the traditional family or cooperative parenting after separation:

[whether] one attributes to it the form of the prince who formulates rights, of the father who forbids, of the censor who enforces silence, or of the master who states the law, in any case one schematizes power in a juridical form, and one defines its effects as obedience. (Foucault, 1990, pp. 84–85)

While social workers are certainly not naïve pawns, the segregation of knowledge-by-privilege rests upon values that are “not subject to critical verification” (Pozzuto, 2007, p. 67). Regrettably, courts do not always employ a tradition of examining the political, cultural, or social constructions that may provide an early warning system when beliefs, biases, and empirical knowledge substitute for empirically advanced knowledge (for such a discussion see Gelles, 2007). In this very sense, the failure to clarify and strengthen the linkage between social work education, practice, and research heightens the risk that the profession will abdicate its history, duties, and values when social workers enter the courthouse portal. As Kuhn (1962) warned when exploring the history and pathways of the physical sciences, restrictive thinking or rigid biases, and myths or beliefs about the superior traditions and values of one discipline, can calcify the development of original ideas.

What is particularly nettlesome about the relationship between social work (or social sciences more generally) and the law is that the “territorial instinct to maintain disciplinary seclusion conflicts with the natural attraction of ideas” (Engel & Gigerenzer, 2006, p. 1). To the extent that new “interdisciplinary braids” (Park & Saks, 2006, p. 949) advance the delivery of social justice to individuals and enhance the truth-seeking functions of host environments then evidence-based practices have a meaningful and ethical role for social work. Thus, the development of formal interdisciplinary processes for the creation and implementation of evidence-based practice and policy is a plausible answer if, but only if, social work takes seriously the consequences of continuing to encourage its students and practitioners to act as “experts” in child custody litigation. Ultimately, a social work profession embedded in the courts risks the transformation of its expertise
into folk-treatment methods of judgment about parents gilded as child custody science—but not really science—that is disconnected from the ethical use of evidence-based practices.

REFERENCES


