THE EFFECTS OF BACKGROUND CHARACTERISTICS OF JUDGES AND ATTORNEYS
ON DECISION MAKING IN DOMESTIC RELATIONS COURT:
AN ANALYSIS OF CHILD SUPPORT AWARDS

Walter L. Ellis, The University of New Hampshire[1]

Uncertainty surrounding judicial decision making prompted Congress to mandate state-specific child support guidelines by October 1, 1987. This study examined the effects of background characteristics of judges and attorneys on child support decisions in Franklin County, Ohio, with respect to adoption of the 1987 Ohio child support guidelines. Attorneys were found to be reluctant to win child support awards for their clients. Judicial integrity was not important in setting award amounts.

INTRODUCTION

There are many uncertainties surrounding judicial decision making. One uncertainty which is increasingly receiving public attention is the awarding of child support. In 1987 the Bureau of the Census reported that a quarter of eligible mothers were not awarded child support. And when mothers were awarded child support payments, the mean amount of income received was only $2,597 per year (United States Bureau of the Census, 1987). Recognizing the fact that personal attributes of judicial personnel could have an influence on decision making, Congress in 1984 mandated that states adopt state-specific child support guidelines by October 1, 1987. The intent of the child support guidelines is to make the decision making process surrounding the awarding of child support more predictable (Public Law 98-378, 1984).

The purpose of this study is to examine the effects of background characteristics of judges and attorneys on child support awards in Franklin County, Ohio, with respect to adoption of the 1987 Ohio child support guidelines (guidelines). This study does not compare frequency or amount of child support before and after the adoption of the guidelines, but it provides a picture at one point in time.

The 1987 Ohio child support guidelines are based on an income sharing model. The determination of child support is based upon parents' combined gross income. The parents' combined gross income is compared to a Schedule of Basic Child Support Obligations--a table which matches the combined gross income of parents with the number of children involved. Any child care related expenses are added to the basic child support obligation which comprises the total child support obligation. The obligation of each parent is computed by multiplying each parent's share of income by the total child support obligation (The Ohio Supreme Court Advisory Committee on Child Support Enforcement, 1987). Of the total number of children eligible for child support in 1987, the mean number was 1.6 (standard deviation=.805). The mean number of children receiving child support was 1.3 (standard deviation=.886) and the mean weekly dollars of support was 52.0 (standard deviation=36.209).

REVIEW OF LITERATURE

Theoretical models have viewed divorce as a bargaining process in which the outcome for an individual is a function of inputs to the marriage and characteristics of the legal system. Empirical studies of child support have modelled divorce as a function of either demographic characteristics or legal system characteristics, not both. In the case of child support, application of the principles of equity to the outcome/ inputs relationship translates into a discussion of need and division of responsibility-to-pay in accordance with relative ability-to-pay. This relationship has received more attention in empirical studies and is discussed first. The influence of the legal system on child support has received less attention and is discussed second.

Most studies of need and ability to pay (Robins and Dickinson, 1984; Robins and Dickinson, 1985; Beller and Graham, 1985; Beller and Graham, 1986) have relied upon the 1979 and 1982 April Match Files of the Current Population Survey (CPS) data which contain predominantly socioeconomic information on child support. Socioeconomic characteristics such as race, number of children, age of children, age of parents, marital status, employment status of parents and education attainment of parents have all been used as measures of need and ability to pay.

Most studies of the legal system (Stafford, Jackson and Burgess, 1987; Stafford, Jackson and Burgess, 1989; Yee, 1979; White and Stone, 1976) have relied upon information from court cases to study the impact of the legal system on child support awards. Court case characteristics such as divorce or dissolution, whether plaintiff or defendant, number of pages filed, grounds for decree, divorce contested, attorney present, attorney's work status, month of decree and presiding judge have all been used as measures of the legal system.

[1]Assistant Professor

Assessment of Previous Work

Although considerable research effort has been directed toward analyzing the uncertainty surrounding child support, most of the variation remains unexplained. While studies have used appropriate, state-of-the-art statistical techniques, their chief problem has been specification error. The major specification error has been omission of important variables due to data sets used in the analysis.

The 1979 and 1982 CPS have been used extensively, as mentioned previously, but are not without shortcomings. Consequently, results from these April supplements must be examined with caution. Robins (1987) criticized these April supplements for failing to target the relevant child support population by including children of any age and possibly grandchildren. Other criticisms are that these April supplements lack critical information on the absent father's income, establishment of legal obligations and omit mothers less than 18 years of age.

A few empirical studies (Stafford, Jackson and Burgess, 1987; Stafford, Jackson and Burgess, 1989; Yee, 1979; White and Stone, 1976) have used information from court records to study characteristics of the legal system. Characteristics used were those 1) determined by legislative statutes or 2) those related to legal procedures and available in court records.

Attorneys were analyzed only by their presence or absence and public versus private status. Although women who are represented by an attorney have a significantly higher probability of being awarded child support (Stafford et al., 1989), women represented by an attorney are likely to get a lower child support order than women without an attorney present (Yee, 1979). However, Yee (1979) found that when a child support agreement was reached entirely by a district attorney and the respondent by signed stipulation, child support orders tended to be higher.

Since attorneys are an integral part of the legal process, essential information such as their ability, attitude toward the legal issue being debated (e.g. child support), and their guiding ideology need to be studied.

Judges were analyzed only by name, temporary versus permanent status on bench, specialized versus general nature of judicial responsibilities, and a particular judge's case load (intra-judge reliability). The presence of presiding judges increases the probability of receiving a child support award (Stafford et al., 1987). However, there is variation across the range of presiding judges in setting child support orders (Yee, 1979). Yee (1979) reports that the variation in child support orders is tremendous when looking at full time judges and judges with heavy caseloads.

Judges are a part of all divorce cases. However, in Ohio a divorce may be decreed in one of two ways: 1) filing for divorce or 2) filing for dissolution. A divorce may be contested or uncontested in court by one or both parties. A dissolution is simply an agreed upon signed stipulation--without the involvement of a judge--by both parties dissolving the marriage. However, whether a divorce or dissolution is sought judges approve all child support settlements. As such, essential information on judges' performance--ability, temperament, integrity and handling of cases--needs to be studied.

While these studies clearly established the influence of the legal system on child support awards, they have only touched the surface.

THEORETICAL MODEL

The theoretical model for this study is based upon a theory of equity. The major assumption underlying all discussions of equity has been that people assess their contributions and outcomes in a marital relationship to evaluate the 'fairness' of social ties (Keith and Schaefer, 1987).

Lane and Meese (1971) defined an equitable relationship as:

$$(1.1) \quad \frac{\text{Inputs of party p}}{\text{Outcome of party p}} = \frac{\text{Inputs of party o}}{\text{Outcome of party o}}$$

Where:
    Inputs = Assets/liabilities and/or qualities which are perceived to be a person's contribution to a relationship
    Outcome = Rewards or punishments

In the context of a divorce when bargaining over a child support award, divorcing couples may perceive 'equity and fairness' in terms of whether the couples' perceived need for a child support award is in compliance with the couples' perceived ability to supply such an award. Consequently, in a divorce bargaining relationship involving a child support award, equation (1.1) can be more realistically expressed as:

(1.2)   Party p's DCS = f (Ip, Io)
(1.3)   Party o's CSS = f (Io, Ip)

Where:
    DCS = Party p's demand for child support
    CSS = Party o's supply of child support
    Ip = Need for child support
    Io = Ability to pay child support

Although divorcing couples engage in bargaining activities, such activities are constrained by the legal system. The legal system affects when a divorce may occur, how a divorce must be procured and what the consequences of divorce will be (Mnookin and Kornhauser, 1979). Since bargaining is contingent upon constraints imposed by the legal system, equations (1.2) and (1.3) may

be combined and rewritten as:

(1.4)   CSA = f (Io, Ip, S)

Where:
     CSA = Child support award and amount
     Io = Ability to pay child support
     Ip = Need for child support
     S = Legal system characteristics

While child support is a function of (Io), (Ip) and (S), the focus of this study is on a subset (S), legal system characteristics, i.e., judges and attorneys. The remainder of the function, (Io), (Ip) and (S), will be introduced and used as controls in the empirical child support award and amounts models.

DATA AND PROCEDURES

Data for this study comes from three sources. Two hundred and thirty-five October 1987 - March 1988 cases in Franklin County, Ohio Court of Domestic Relations were randomly selected. Randomization was accomplished through the use of a random digit table. Within the random sample of cases this analysis was limited to only cases involving minor children.

Court cases contained information on name(s) and age(s) of children; age of parents; income and employment status; name of attorney(s); name of presiding judge; date of marriage; date of filing and decree; all documents filed in the case such as motions, the separation agreement and decree. The decree specifies income (child support and alimony) and asset (disposition of residence and cash settlement) awards to both parties.

Questionnaires were mailed to a random sample of 350 central Ohio attorneys drawn from cases in Franklin County Court of Domestic Relations during 1987-88. One hundred and forty-seven questionnaires were returned in usable form.

Questionnaires provided information on 1) attorneys' ratings of Franklin County, Ohio domestic relations judges with respect to judges' temperament, integrity, courtroom management and legal ability; 2) attorneys' attitudes and exper-iences with the Ohio 1987 child support guide-lines; 3) attorneys' perception of judges' use of the Ohio 1987 child support guidelines; 4) attor-neys' legal practice; and 5) specific information on attorneys. For a discussion of the measure-ment of judicial performance, see appendix.

Interviews were conducted with judges in Franklin County Court of Domestic Relations. Interviews provided information on judges' background.

To analyze the effects of background characteristics of judges and attorneys on child support awards, the attorney sample was merged via case identification with the court case sample. Ninety-two attorneys were able to be matched with their actual court cases. The court case sample was used as the control in the empirical child support award and amount models.

The data sets used in this study yielded numerous explanatory variables which were thought to effect child support awards. Consequently, to avoid the problem of multicollinearity among the explanatory variables, a two-stage process was used to reduce the number of explanatory variables.

RESULTS

Model Building: Receipt of Child Support

At the first stage in variable reduction or model building the criteria for continued use in the second stage were inclusion in the final step of a stepwise discriminant function analysis and probit analysis, and significance at the .20 level or higher. At the second stage, the criterion for continued use in the final model was significance at .10 or higher in a probit analysis run on all variables which passed the criterion in the first stage.

As reported in Table 1, two background characteristics, attorney's gender and attorney employed in a legal corporation emerged as best discriminators between child support recipients and nonrecipients. These variables were significant at the .20 level or higher. Knowledge of these two background characteristics enables us to classify 76% of awards correctly.

Four background characteristics, attorney's age, favored passage of guidelines, attorney employed in a private practice and attorney's experience were significant at the .20 level or higher in the probit model.

TABLE 1. Stepwise Discriminant and Initial Probit Analysis of the Effects of Judges' and Attorneys' Background Characteristics on Receipt of Child Support Awards, 1987-88.

Background Characteristics	N = 92 Discriminant Coefficient	N = 92 Probit Coefficient
Attorney not specializing		1.66044
Favored passage of guidelines		-.49577*
Private practice		.90727*
Judge's age		-.05693
Attorney's ideology		.14571
Attorney's gender	0.87423*	-.21220
Attorney's income		-.00001
Legal corporation practice	-0.56873*	2.64184
Attorney's age		-.12264*
Judge's experience		-.04260
Attorney's experience		.17141*
Public defender practice		.00000
Corporation practice		.00000
Judge's temperament		-.06898
Judge's legal ability		.00000
Judge's courtroom management		.00000
Judge's integrity		.00000

Canonical R-square = .19
Percent classified correct = 76%
* = significant at the .20 level or higher

Once the impact of these six background charact-
eristics was taken into account, attorney not
specializing, judge's age, attorney's ideology,
attorney's income, judge's experience, attorney
employed as public defender, judge's temperament,
judge's legal ability, judge's courtroom manage-
ment and judge's integrity were rejected at stage
one. The statistical hypothesis that these
variables had no effect on receipt of a child
support award could not be rejected at the .20
level or higher.

As reported in Table 2, attorney's age,
attorney's experience and attorney employed in a
private practice remained significant in the
probit analysis on the reduced set of variables.
Attorney female, favored passage of guidelines
and attorney employed in a legal corporation were
rejected for inclusion in the final model. The
statistical hypothesis that these variables had
no effect on receipt of a child support award
could not be rejected at the .10 level or higher.

TABLE 2. Intermediate Probit Analysis of the
Effects of Judges' and Attorneys' Background
Characteristics on Receipt of Child Support
Awards, 1987-88.

Background Characteristics	N = 92 Probit Coefficient
Attorney female	-.41886
Private practice	.61456*
Favored passage of guidelines	-.19778
Legal corporation practice	2.52933
Attorney's age	-.09100*
Attorney's experience	.11938*

* = significant at the .10 level or higher

The Empirical Child Support Award Model

To arrive at the final child support award model,
controls which were introduced in the theoretical
model section are reintroduced. A model building
technique (similar to background characteristics
of judges and attorneys) was performed to arrive
at the final controls. The following child
support award model was estimated:

(1.5)   CSAward = f (background characteristics
                of judges/attorneys); Ip, Io, S

Where:

    CSAward = Child Support Award

    Ip = Need for Child Support

        Io = Ability to Pay Child Support
             Noncustodial employed

        Ip/Io = Need and ability
                Homeownership
                Both parents' assets

            S = Legal System Characteristics
                Attorney in a private practice
                Attorney's age

(Continued)

Attorney's experience
Number of pages filed
Woman had attorney
Divorce (versus dissolution)
Husband contested divorce
One year separation as grounds
Neglect as grounds

Child Support Award Model Estimation

Results of equation (1.5) are reported in Table
3.

Only a subset (S), legal system characteristics,
i.e., background characteristics of judges and
attorneys, significant at the .10 level or higher
are discussed.

The positive effect for attorney's experience may
be an indication that knowledge of the system,
ability to bargain, ability to persuade and
ability to present effective legal arguments
increase with experience. If so, the positive
effect for experience indicates there is a payoff
for skill acquisition.

Although attorneys have the ability to win child
support awards for their clients, women who were
represented by an attorney did not fare as well
as women who were not represented by an attorney.
These attorneys had a relatively large negative
effect on receipt of a child support award. This
finding is not consistent with results in prelim-
inary stages (not reported) nor with previous
empirical research (Stafford et al., 1987).

Preliminary results of this study and Stafford
et al., (1987) found women who were represented
by an attorney were more likely to receive child
support awards. These contradictory results
could be due to model specification error. Table
3 includes additional information on attorney
background characteristics such as age and
experience. For example, women represented by an
attorney was negatively correlated with attorney
experience (-.30). Thus, women were more likely
to be represented by less experienced attorneys.

On the other hand, the older the attorney the
lower the probability of receiving a child
support award. It is possible that the age
variable was capturing some of the effects from
the attorneys; ideological beliefs and attitudes
toward child support and the child support
system. Attorneys who were self-evaluated as
conservative or middle of the road were distri-
buted evenly across the age span. Seventy-seven
percent of the self-rated liberals were 40 years
older or younger. Further, younger attorneys
(.74) were more heavily in favor of passage of
guidelines than older attorneys (.68). These
findings reveal some of the conservative atti-
tudes toward child support in Franklin County.

Number of pages filed has been interpreted as
being an indicator of contentiousness or willing-
ness to fight for a child support award (Stafford
et al., 1987). Number of pages filed had a small
positive effect on receipt of a child support

award. Noncustodial employment could be viewed as an indication of ability to pay. Noncustodial employment had a large positive effect on receipt of a child support award. Homeownership could be viewed as an economic asset. Homeownership had a large negative effect on the receipt of a child support award.

TABLE 3. Probit Analysis of Factors Affecting Receipt of Child Support Awards, 1987-88

Factors	N = 92 Probit Coefficients (Standard Errors)
Attorney's age	-.17397* (-1.72)
Private practice	.39481 (.53)
Attorney's experience	.22690* (1.90)
Number of pages filed	.06027* (1.61)
Woman had attorney	-1.90199* (1.80)
Divorce	-2.62755 (.44)
Neglect	2.58851 (.43)
Homeownership	-1.60802* (-1.83)
Noncustodial employment	1.53515* (1.67)
Both parents' assets	2.52617 (1.37)

* = significant at the .10 level or higher
Pearson Goodness of Fit Chi Square = 18.291
P-value = 1.000

Model Building: Amount of Child Support

An OLS multiple regression technique was used to reduce the set of variables for entry into the final child support amount model. Only variables which were significant at the .20 level or higher were included.

Only one background characteristic, judge's integrity, emerged significant in the background characteristics model (Table 4).

Attorney employed in a legal corporation, attorney's income, attorney's age, judge's age, attorney not specializing, attorney's gender, favored passage of guidelines, attorney's experience, attorney's ideology, attorney employed in a private practice and judge's experience were rejected in the preliminary analysis. The statistical hypothesis that these variables had no effect on child support award amount could not be rejected at the .20 level or higher.

TABLE 4. The Effects of Judges' and Attorneys' Background Characteristics on Amount of Child Support, 1987-88.

Background Characteristics	OLS Unstandardized Coefficients
Judge's integrity	-2.465981*
Legal corporation practice	-22.137229
Attorney's income	.000012
Attorney's age	-.055511
Judge's age	-.632755
All type practice	4.992878
Attorney's gender	10.341226
Favored passage of guidelines	-5.877248
Attorney's experience	.758431
Attorney's ideology	.300720
Private practice	3.662887
Judge's experience	-.125104

R-square = .12
* = significant at the .20 level or higher

The Empirical Child Support Amount Model

To arrive at the final child support amount model, controls which were introduced in the theoretical model section are reintroduced. A model building technique (similar to background characteristics of judges/attorneys) was performed to arrive at the final controls. The following child support amount model was estimated:

(1.6)   CSAward = f (background characteristics of judges/attorneys); Ip, Io, S

Where:

    CSAward = Child Support Award
        Ip = Need for Child Support

            Custodial Income
            Custodial other income
            Custodial age
            Welfare

        Io = Ability to Pay Child Support

            Noncustodial employed

        Ip/Io = Need and ability

            Age of children
            Both parents' liabilities
            Number of children receiving support

        S = Legal System Characteristics

            Judge's integrity
            Divorce (versus dissolution)
            One year separation as grounds
            Woman had attorney
            Number of pages filed
            Husband was plaintiff
            Wife was plaintiff

Child Support Amount Model Estimation

Results of equation (1.6) are reported in Table 5. Only a subset (S), legal system characteristics (i.e., background characteristics of judges and attorneys) significant at the .10 level or higher, are discussed.

The judge's integrity could be interpreted as the judges' adherence to a code of judicial conduct. The judge's integrity had a large negative effect on child support award amount. This result could be due to the legislated mandate that judges follow federal mandated child support guidelines in setting child support award amounts. If judges follow child support guidelines, the judge's integrity is not important. The majority of central Ohio attorneys in this study reported these judges to be following the 1987 Ohio child support guidelines over 75% of the time. Rarely (less than 25% of the time) did these judges comply with attorneys' requests to deviate from the 1987 Ohio child support guidelines.

Alternatively, judges with higher integrity scores maybe following the 1987 Ohio child support guidelines while judges with lower integrity scores may deviate (on the high side) from the guidelines.

Number of children receiving support and age of children could be interpreted as being indicators of both need for child support and ability to pay child support. Number of children receiving support had a large positive effect on child support award amounts. Age of children had a small positive effect on child support award amounts.

Both parents' liabilities and noncustodial parents' income could be interpreted as being indicators of ability to pay child support. Both parents' liabilities had a large negative effect on child support award amounts. Noncustodial parents' income had a small positive effect on child support award amounts. Custodial parents' other income could be interpreted as being an indicator of need for child support. Custodial parents' other income had a small positive effect on child support award amounts.

A one year separation has fault implications. If a one year separation was cited as grounds for divorce, the couple was selecting the least faulty grounds for divorce. A one year separation had a large positive effect on child support award amounts.

TABLE 5. Factors Affecting Child Support Award Amounts, 1987-88.

Factors	N = 92 OLS Unstandardized Coefficient (Standard Errors)
Judge's integrity	-.745016* (-1.69)
Custodial income	.000032 (1.45)
Welfare	9.984379 (1.43)
Age of children	.242329* (6.24)
Husband was plaintiff	19.555749 (.68)
Both parents' liabilities	-3.113133* (2.26)
Noncustodial income	.001329* (8.59)
Custodial other income	.006435* (3.26)
One year separation	7.571147* (1.67)
Woman had attorney	7.762209 (1.34)
Custodial age	.190997 (1.40)
Divorce	-26.941127 (-.95)
Number of pages filed	.081307 (1.45)
Number of children receiving support	6.692427* (2.45)
Wife was plaintiff	24.130469 (.86)

R-square = .53
* = significant at the .10 level or higher

CONCLUSIONS

The purpose of this study was to examine the effects of background characteristics of judges and attorneys on child support awards in Franklin County, Ohio, with respect to adoption of the 1987 Ohio child support guidelines. Interestingly, the two sets of background characteristics had separate effects on child support awards. Attorneys' background characteristics affected receipt of child support. Judges' background characteristics affected amount of child support. While the Ohio Supreme Court Advisory Committee (1987) proposed that the 1987 Ohio child support guidelines would enable the court system to provide predictable and fair child support awards, findings in this study did not support such a proposition. This study found central Ohio attorneys to be reluctant to win child support awards for their clients. Consequently, the awarding of child support orders is not as predictable as it could be. This

reticence could be due to attorneys' perceptions that the guidelines are unfair. Some attorneys wrote additional comments on the questionnaire to the effect that: 1) award amounts are too high, 2) the high award amounts have led clients to file bankruptcy and 3) the guidelines are in need of revision.

The guidelines were also to provide fair child support awards. The judges' integrity was found to have a large negative effect on child support award amounts. This could be an indication that judges with lower integrity scores are deviating (on the high side) from the guidelines.

IMPLICATIONS

Findings from this study have implications for family counselors' advice. While clients have certain variables (e.g., race, sex, age) which cannot be manipulated, other variables can be manipulated in divorce proceedings. Clients can choose whether or not to be represented by an attorney. If clients decide to be represented by an attorney they have some choice as to whether to be represented by an older or younger attorney, and, to some extent, a liberal or conservative attorney.

Findings from this study also have implications for attorneys' strategies. Due to repeated exposure to judges, attorneys have some knowledge as to whether a particular judge's judicial conduct is appropriate. Perhaps attorneys may want to avoid those judges they perceive to be of low integrity.

APPENDIX

Central Ohio attorneys scored (on a scale of 1 [very bad] to 7 [very good]) domestic relations judges in Franklin County, Ohio on four performance attributes--temperament, integrity, courtroom management and legal ability. Although individual mean performance scores of the attributes were found to be in range with the overall mean performance score of the attributes, the means were scored differently. Consequently, individual mean performance scores were used as a statistical measurement of judicial performance.

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