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The Perceptions of Juvenile Judges Regarding Adolescent Development in Evaluating Juvenile Competency

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CRIMINOLOGY

THE PERCEPTIONS OF JUVENILE JUDGES REGARDING ADOLESCENT DEVELOPMENT IN EVALUATING JUVENILE COMPETENCY

COLLEEN M. BERRYESSA & JILLIAN REEVES*

This analysis provides the first known in-depth qualitative inquiry into if and how juvenile court judges take the psycho-social immaturity and development of adolescents into consideration when making attributions of adjudicative competency of offenders in juvenile court. Semi-structured interviews were conducted with twenty-seven U.S. juvenile court judges, followed by grounded theory analysis. Competency evaluations from psychologists and the juvenile's age, history, awareness, and mental capacity influence judicial determinations of competency. Although data show that understandings of adolescent development do play a large role in shaping judges' understandings of juvenile behavior—particularly related to emotional control, irrational behavior, lack of maturity, and social susceptibility—most judges only connected these characteristics to juvenile offending. Although cognizant that juveniles exhibit attributes that diminish competency-related abilities as part of their adolescent development, the majority of judges still stated that adolescent development is not important to them in assessing juvenile competency, potentially demonstrating a

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cognitive disconnect on these issues. These results indicate approaches to how judges might think about juvenile competency decisions (“building blocks” vs. “holistic” models) and the need for more direct education and training of judges on the role of adolescent development in competency.

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INTRODUCTION

In recent years, there have been vocal concerns about whether juvenile competency to stand trial in juvenile delinquency proceedings can be effectively measured by the *Dusky* two-prong test.¹ According to this test, a juvenile must first understand the charges and legal proceedings that are mounted against him, and, second, he must also be able to assist his lawyer in his own defense.² Regardless of jurisdiction, a judge evaluating a juvenile's competency may examine the juvenile's maturity.³ This may include an assessment of the juvenile's ability to understand the long-term consequences of his actions and decisions in court, and his susceptibility to being excessively influenced by others, including his lawyer.⁴ Each of these competency-related abilities is dependent on the juvenile's psycho-social maturity and developmental status and, particularly, changes in the juvenile's cognitive abilities resulting from neurological changes in adolescence and early adulthood.⁵

An appreciation of the extent to which a juvenile offender possesses competency-related abilities, especially by the juvenile judge ultimately making the competency determination, is necessary to ensure that the juvenile offender's case can be adjudicated without coercion in a "developmentally appropriate way."⁶ Therefore, understanding the ways in which juvenile judges consider research on adolescent development that is likely relevant to juvenile competency determinations is integral to ensuring fair and equitable outcomes for juvenile offenders. Further, this understanding may assist states that are considering developing or modifying

¹ Joseph B. Sanborn, Jr., *Juveniles' Competency to Stand Trial: Wading Through the Rhetoric and the Evidence*, 99 J. CRIM. L. & CRIMINOLOGY 135, 138 (2008).

² Richard E. Redding & Lynda E. Frost, *Adjudicative Competence in the Modern Juvenile Court*, 9 VA. J. SOC. POL'Y & L. 353, 357 (2001).

³ See Jennifer Mayer Cox et al., *The Impact of Juveniles' Ages and Levels of Psychosocial Maturity on Judges' Opinions About Adjudicative Competence*, 36 LAW & HUM. BEHAV. 21, 22 (2012).

⁴ See generally Nancy L. Ryba et al., *Juvenile Competence to Stand Trial Evaluations: A Survey of Current Practices and Test Usage Among Psychologists*, 34 PROF. PSYCHOL. 499 (2003) (presenting and analyzing elements assessed by psychologists in juvenile competency evaluations).

⁵ *Id.* at 500.

⁶ April R. Bradley et al., *Juvenile Competency and Responsibility: Public Perceptions*, 42 J. APPLIED SOC. PSYCHOL. 2411, 2412 (2012).

juvenile competency statutes, as well as help in the design of more tailored and effective educational programs for judges on these issues.⁷

This Article, which is exploratory as the first of its kind in in-depth qualitative analysis, considers the attitudes of juvenile judges regarding competency to stand trial in relation to their understandings and perceptions of adolescent development and psycho-social maturity. Presenting a qualitative analysis of twenty-seven interviews with a national sample of juvenile judges, we reveal the factors that judges find influential in determining juvenile competency,⁸ judges' understandings of existing research on adolescent development,⁹ and judges' views on the influence of age on competency and developmental-maturity-related abilities.¹⁰ We find that although data show that research on and understandings of adolescent development do play a large role in shaping judges' understanding of juvenile behavior,¹¹ the majority of judges only connected these characteristics to offending and did not suggest that adolescent development is important to them in assessing juvenile competency.¹² Thus, the data presented indicate that many judges consider juvenile competency as largely unrelated to adolescent development and do not see a connection between the two.¹³ This research does have limitations, as it only portrays the views of twenty-seven self-selected individuals, sampling was not nationally representative, and it is unknown how the views presented here may actually impact juvenile competency determinations in practice. As such, future studies, particularly those that use research designs with experimental components that may provide methodological triangulation on these issues, are warranted.

Nonetheless, we argue that the fact that many judges in our study do not consider adolescent development as relevant to competency determinations, yet still indicate that juveniles exhibit attributes due to adolescent development that diminish competency-related abilities, shows a cognitive disconnect in judges' perceptions on how adolescent development may affect competency.¹⁴ In response, in order to adjudicate juvenile cases in a

⁷ For discussions of how judge research can help juvenile justice policy, see generally GARY B. MELTON ET AL., *PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK FOR MENTAL HEALTH PROFESSIONALS AND LAWYERS* (3rd ed. 2007); Colleen M. Berryessa, *Potential Impact of Research on Adolescent Development on Juvenile Judge Decision-making*, 69 *JUV. & FAM. CT. J.* 19 (2018).

⁸ See *infra* Section V.A.

⁹ See *infra* Section V.B.

¹⁰ See *infra* Section V.C & V.D.

¹¹ See *infra* Section V.B.

¹² See *infra* Section V.C.

¹³ See *infra* Section V.C.

¹⁴ See *infra* Section VI.

“developmentally appropriate way,” these results indicate the need for further research and more direct education and training of judges on the role of adolescent development in not only offending, but also in competency.¹⁵ This analysis provides the first in-depth empirical qualitative inquiry on how juvenile judges perceive research on adolescent development and how it might affect the competency evaluation process.

I. JUVENILE LEGAL COMPETENCY

Competency to stand trial is a legal protection put forth to ensure that a defendant receives a fair trial.¹⁶ Standards of competency for criminal defendants were formalized in the landmark case *Dusky v. United States*, which established that competency to stand trial in criminal court involves two elements: (1) defendants must be able to assist their attorneys in mounting their defenses, and (2) defendants must fully understand court proceedings and the charges against them.¹⁷ This is contrasted with legal capacity, which is a person’s ability to make particular legal decisions such as entering a guilty plea or entering into a contract, and legal culpability, which is a person’s blameworthiness for a criminal act and to what degree he should be held responsible.¹⁸

In criminal court, adult defendants are typically declared incompetent due to severe mental illness or an intellectual disability.¹⁹ In the juvenile court setting, competency to stand trial played no role until 1967.²⁰ The legal rights of juveniles were not originally viewed as relevant within the juvenile court system given its rehabilitative purpose.²¹ The juvenile court system was a product of the Progressive Movement beginning in the late nineteenth century, which pushed for the creation of an independent legal system for

¹⁵ Bradley et al., *supra* note 6, at 2428.

¹⁶ See Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 473 (2009).

¹⁷ *Dusky v. United States*, 362 U.S. 402, 402 (1960); see also Dana Royce Baerger et al., *Competency to Stand Trial in Preadjudicated and Petitioned Juvenile Defendants*, 31 J. AM. ACAD. PSYCHIATRY L. 314, 314 (2003); Christina L. Riggs Romaine et al., *Evaluation of Juvenile Competency to Proceed: Applying the Dusky Standard*, 10 J. FORENSIC PSYCHOL. PRAC. 1, 2 (2010); Ryba & Cooper, *supra* note 4, at 499.

¹⁸ See Steinberg, *supra* note 16, at 472–73.

¹⁹ See Thomas Grisso et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 334 (2003).

²⁰ See David R. Katner, *Eliminating the Competency Presumption in Juvenile Delinquency Cases*, CORNELL J.L. & PUB. POL’Y 403, 410, 413–14 (2015).

²¹ Steinberg, *supra* note 16, at 474.

youth that was neither criminal nor adversarial in nature.²² The first juvenile court was established in 1899 in Cook County, Illinois, and by 1928, all but two states had a juvenile justice system.²³ The initial purpose of the system was to rehabilitate juvenile offenders and protect children from maltreatment.²⁴ Particularly, the creation of an independent system for juvenile offenders was built upon the principle that age and immaturity rendered juveniles less culpable compared to adults and, hence, capable of becoming good members of the community if offered suitable rehabilitation.²⁵ Thus, treatment and protection of the child were considered the best responses to delinquent behavior, as opposed to traditional punishment.²⁶

The latter half of the twentieth century saw a gradual increase in legal protections for juveniles generally and their rights found within the adult court setting. Initially, *Dusky* only applied to defendants tried in criminal court and did not extend to juvenile defendants in juvenile court.²⁷ However, *In re Gault* established juvenile rights to a fair trial and due process, including a right to an attorney, the right to be protected against self-incrimination, the right to an appeal, and most importantly in this context, the fundamental right to competency to stand trial in juvenile court.²⁸ The constitutional right of competency to stand trial and the potential extension of the *Dusky* standard suddenly became relevant to juveniles and a meaningful aspect of the juvenile justice adjudication process.²⁹

As competency to stand trial has become a significant component of juvenile justice, issues have been raised as to how the *Dusky* standards of competency should be practically applied to juveniles. While competency requires that juveniles be able to understand the nature of their charges and

²² *Id.* at 461–62.

²³ RANDALL G. SHELDEN, *DELINQUENCY AND JUVENILE JUSTICE IN AMERICAN SOCIETY* 443 (2d ed. 2012).

²⁴ For discussions of the founding of the juvenile justice system, see generally Laura S. Abrams, *Juvenile Justice at a Crossroads: Science, Evidence, and Twenty-First Century Reform*, 87 *SOC. SERV. REV.* 725 (2013); Redding & Frost, *supra* note 2.

²⁵ Elizabeth S. Scott & Thomas Grisso, *Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 *J. CRIM. L. & CRIMINOLOGY* 137, 141–44 (1997).

²⁶ See Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 *TEMP. L. REV.* 769, 772–73 (2015); Steinberg, *supra* note 16, at 461–62.

²⁷ Grisso et al., *supra* note 19, at 333–34.

²⁸ *In re Gault*, 387 U.S. 1, 34–42 (1967).

²⁹ See Frank Fortunati et al., *Juveniles and Competency to Stand Trial*, 3 *PSYCHIATRY* 35, 35–36 (2006); Ryba & Cooper, *supra* note 4, at 500; Scott & Grisso, *supra* note 25, at 141–48; Twila A. Wingrove, Note, *Is Immaturity a Legitimate Source of Incompetence to Avoid Standing Trial in Juvenile Court?*, 86 *NEB. L. REV.* 488, 494–98 (2007).

assist in mounting a defense, states have been largely silent regarding whether *Dusky* standards should apply equally to defendants in juvenile court.³⁰ Although several states have formally implemented statutes regarding competency to stand trial in juvenile court, around twenty states continue to process defendants in juvenile court without a well-defined statutory competency standard.³¹ Among the states that have adopted juvenile competency statutes, thirteen have adopted the *Dusky* standard almost verbatim, while eighteen states have adopted a version of the *Dusky* standard.³²

The addition of the *Dusky* standard to juvenile law has left many questions unanswered, particularly whether developmental immaturity should be integrated into competency standards.³³ While both adults and juveniles can be mentally ill or disabled, one unique and pertinent feature of the juvenile population is that their adolescent development, as well as their psycho-social immaturity, has the potential to influence competency.³⁴ A few states, such as Arkansas and Florida, have juvenile competency statute provisions related to developmental immaturity.³⁵ However, despite these statutory provisions, juvenile judges have no real guidelines on how to consider the impact of developmental factors, such as age and maturity, on adolescent development in competency determinations, either apart from or alongside the *Dusky* standard.³⁶ It is also unclear whether judges in these states actually consider adolescent development.³⁷ Judges in other jurisdictions either are not tasked with weighing adolescent development in juvenile competency evaluations or may take such information into account at their own discretion.³⁸

³⁰ See Sanborn, *supra* note 1, at 139.

³¹ *Id.* at 140.

³² *Id.*

³³ See Abrams, *supra* note 24, at 737; Eraka Bath & Joan Gerring, *National Trends in Juvenile Competency to Stand Trial*, 53 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 265, 265–67 (2014).

³⁴ See generally Scott & Grisso, *supra* note 25 (discussing psycho-social deficits related to juvenile capacity and competency).

³⁵ See Kellie M. Johnson, *Juvenile Competency Statutes: A Model for State Legislation*, 81 IND. L.J. 1067, 1085–86 (2006).

³⁶ See Sanborn, *supra* note 1, at 138–49.

³⁷ See *id.*

³⁸ See *id.* at 140–43.

II. ADOLESCENT DEVELOPMENT AND ITS RELATIONSHIP TO COMPETENCY

Research in the fields of neuroscience and psychology on the development of the human brain has produced new insights on and explanations of adolescent behavior in the last twenty years. For adolescents, certain brain regions mature much later than others; for example, the limbic system, implicated in emotional responses to stimuli, matures quickly during the teen years.³⁹ However, the frontal areas, which are responsible for skills associated with executive function, such as controlling inhibition, judgment, decision-making, and planning, do not finish development until an individual is around twenty-five years old.⁴⁰

This time difference in structural and functional maturation between the limbic system and frontal areas results in an “immaturity gap” between adults and juveniles.⁴¹ Although juveniles show similar reasoning ability and general intelligence levels as adults by the mid-teens, their decision-making abilities are significantly worse: compared to adults, juveniles have heightened responses to emotional stimuli and increased impulsivity.⁴² Juveniles tend to take more risks than adults, in large part due to the heightened value placed on reward and high susceptibility to peer and authority influence.⁴³ Planning abilities of juveniles tend to improve with age, suggesting that rash, impulsive behavior commonly seen in juveniles is the result of the developmental mismatch between the limbic system and frontal lobe.⁴⁴

³⁹ See Sarah-Jayne Blakemore & Suparna Choudhury, *Development of the Adolescent Brain: Implications for Executive Function and Social Cognition*, 47 J. CHILD PSYCHOL. & PSYCHIATRY 296, 301–07 (2006). For other reviews of studies addressing youth maturation of the limbic system, see generally Sarah-Jayne Blakemore et al., *The Role of Puberty in the Developing Adolescent Brain*, 31 HUM. BRAIN MAPPING 926 (2010); Sarah B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216 (2009).

⁴⁰ See Blakemore & Choudhury, *supra* note 39, at 301–02. For other reviews of studies demonstrating the lack of youth maturation of the frontal lobes before age twenty-five, see generally Jay D. Aronson, *Neuroscience and Juvenile Justice*, 42 AKRON L. REV. 917 (2009); Cohen et al., *supra* note 26; Staci A. Gruber & Deborah A. Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice*, 3 OHIO ST. J. CRIM. L. 321 (2006); Johnson et al., *supra* note 39; Steinberg, *supra* note 16.

⁴¹ See Aronson, *supra* note 40, at 922.

⁴² See Blakemore et al., *supra* note 39, at 927–31. For reviews of studies showing youth impulsivity and emotionality, see generally Blakemore & Choudhury, *supra* note 39; Cohen et al., *supra* note 26.

⁴³ See Lucy Foulkes & Sarah-Jayne Blakemore, *Is There Heightened Sensitivity to Social Reward in Adolescence?*, 40 CURRENT OP. IN NEUROBIOLOGY 81 (2016).

⁴⁴ See Abrams, *supra* note 24, at 737–44; Steinberg, *supra* note 16, at 466.

In the last twenty years, there has been at least a partial return to the rehabilitative goal of juvenile court, due in large part to an increase in acceptance of research on adolescent development.⁴⁵ Criminality in youth is thought to be a reflection of impulsivity, poor decision-making, and inability to think about long-term consequences.⁴⁶ Juveniles make riskier decisions and think less about consequences, which may lead to offending.⁴⁷ Inhibition control, short-term memory, and processing speed are also stunted during adolescence, which can lead to anti-social behavior fueled by reward and peer influence.⁴⁸ Therefore, recent research empirically confirms the principles upon which the juvenile justice system was originally built: that age and inexperience make juveniles different from adults and accordingly less culpable.⁴⁹ The use of research on adolescent development in major Supreme Court cases such as *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama* has signaled a legal shift toward acknowledging the differences between juveniles and adults in psycho-social maturity, and these cases have removed the most retributive punishments: the death penalty and life without the possibility of parole for juvenile offenders.⁵⁰

Yet, the same behaviors and tendencies associated with the “immaturity gap”⁵¹ that have signaled a legal change in understanding juvenile culpability and punishment have implications for juvenile competency as well.⁵² Particularly, maturity of judgment in legal contexts is significantly affected by adolescent development.⁵³ Although there might not be substantial differences between the cognitive abilities of “average” adolescents and adults, those cognitive abilities do not specifically help youth with

⁴⁵ See Steinberg, *supra* note 16, at 479.

⁴⁶ Alison S. Burke, *Under Construction: Brain Formation, Culpability, and the Criminal Justice System*, 34 INT’L J.L. & PSYCHIATRY 381, 382–83 (2011).

⁴⁷ See Claire Bryan-Hancock & Sharon Casey, *Young People and the Justice System: Consideration of Maturity in Criminal Responsibility*, 18 PSYCHIATRY, PSYCHOL. & L. 69, 73 (2011). For reviews of studies showing youth risk-taking, see generally Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCHOL. 625 (2005).

⁴⁸ See Blakemore & Choudhury, *supra* note 39, at 297–307; Johnson et al., *supra* note 39, at 218.

⁴⁹ See Scott & Grisso, *supra* note 25, at 172–76.

⁵⁰ See, e.g., *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); see also Cohen et al., *supra* note 26, at 773–75.

⁵¹ Aronson, *supra* note 40, at 922.

⁵² See Steinberg, *supra* note 16, at 473–76.

⁵³ See Laurence Steinberg & Elizabeth Cauffman, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 LAW HUM. BEHAV. 249 (1996).

competency-related behaviors for trial.⁵⁴ For example, a juvenile's ability to understand the long-term consequences of his actions and decisions in court; his ability to avoid being unduly influenced by others including his lawyer and the judge; the maturity of his decision-making related to waiving legal rights or taking pleas; and his ability to understand legal jargon, the legal process, the charges against him, and the weight of legal decisions are all potentially impaired by the adolescent immaturity gap.⁵⁵ Each of these competency-related capacities depends on the juvenile's current developmental status and cognitive abilities, which in turn are directly influenced by the psychological and brain changes that take place in adolescence and early adulthood.⁵⁶ These capacities, as well as knowledge of trials and legal concepts, appear to be lacking for a huge number of adolescents across age groups and particularly for children under sixteen.⁵⁷

A few studies have used "competency screening" measures to assess the abilities of juveniles, but these often fail to consider maturity and psychosocial abilities.⁵⁸ The use of the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) as a proxy for competency has shown mixed results when used in juvenile populations.⁵⁹ The MacCAT-CA has three subcategories thought to measure cognitive aspects of competency: *Understanding* (the ability to understand the law); *Reasoning* (the ability to reason in legal proceedings and with respect to legal decisions); and

⁵⁴ See *id.* at 334–36.

⁵⁵ See *id.* at 335.

⁵⁶ See Ryba et al., *supra* note 4, at 500.

⁵⁷ See Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 BEHAV. SCI. & L. 741, 742–45 (2000). For discussions on the lack of legal capacities of youth, see generally Michele Peterson-Badali et al., *Young Children's Legal Knowledge and Reasoning Ability*, 39 CAN. J. CRIMINOLOGY 145 (1997); Steinberg & Cauffman, *supra* note 53.

⁵⁸ See, e.g., Richard J. Bonnie, *The Competence of Criminal Defendants: A Theoretical Reformulation*, 10 BEHAV. SCI. & L. 291 (1992) [hereinafter Bonnie, *A Theoretical Reformulation*]; Richard J. Bonnie, *The Competence of Criminal Defendants: Beyond Dusky and Drope*, 47 U. MIAMI L. REV. 539 (1993) [hereinafter Bonnie, *Beyond Dusky and Drope*]; Deborah K. Cooper, *Juveniles' Understanding of Trial-Related Information: Are They Competent Defendants?*, 15 BEHAV. SCI. & L. 167 (1997).

⁵⁹ Compare Molly S. Jacobs et al., *Competence-Related Abilities and Psychiatric Symptoms: An Analysis of the Underlying Structure and Correlates of the MacCAT-CA and the BPRS*, 32 LAW & HUMAN BEHAV. 67 (2008) (showing validation of instrument), with Nancy R. Panza & Theresa Fraser, *Effects of Age, Adaptive Behavior, and Cognitive Abilities on Competence-Related Abilities in Children and Adolescents*, 15 J. FORENSIC PSYCHOL. PRAC. 138 (2015) (showing results contrary to expected clustering of abilities as measured by instrument).

Appreciation (the ability to appreciate legal consequences).⁶⁰ Although several studies have shown little difference in juvenile and adult competency scores using the MacCAT-CA, some research has found that juveniles between ten and fifteen years old are often incompetent according to this measure.⁶¹ Children between nine and twelve years old who have been administered the MacCAT-CA are often significantly more compromised than older adolescents, although the MacCAT-CA may not be able to effectively measure the long-term consequences of *Understanding* and *Appreciation* abilities for older juveniles.⁶² Indeed, older adolescents have shown they cannot weigh long-term consequences, which is exemplified by their readiness to accept “bad” plea bargains for the sole purpose of ending a case.⁶³

Ultimately, research has indicated that juveniles are generally able to understand the words said in court proceedings, but, across all ages, are often unable to properly interpret their legal effect; adolescents possess everyday “competency,” but the inability to be aware of the consequences of decisions and think long-term are signs that psycho-social development can impair abilities necessary for full adjudicative competency.⁶⁴ Accordingly, whether a juvenile is ruled competent while exhibiting these shortcomings has immense legal significance and potential repercussions and can lead to adjudication involving coercion.⁶⁵ The *Dusky* standard, as extended to juvenile proceedings in *In re Gault*, holds that individuals must be competent to stand trial in order for the proceedings to be fair.⁶⁶ Yet the inability to help oneself or one’s defense lawyer, susceptibility to undue influence by one’s lawyer, and inability to understand court proceedings handicap the offender

⁶⁰ Janet I. Warren et al., *Correlates of Adjudicative Competence Among Psychiatrically Impaired Juveniles*, 31 J. AM. ACAD. PSYCHIATRY & L. 299, 301 (2003).

⁶¹ For studies showing significant differences between juveniles and adults according to this measure, see Eraka Bath et al., *Correlates of Competency to Stand Trial Among Youths Admitted to a Juvenile Mental Health Court*, 43 J. AM. ACAD. PSYCHIATRY & L. 329 (2015); Darla M.R. Burnett et al., *Adjudicative Competency in a Juvenile Population*, 31 CRIM. JUST. & BEHAV. 438 (2004); Allison D. Redlich et al., *Pre-adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393 (2003). For an example of a study showing similar competency levels between adults and juveniles, see Jodi L. Viljoen et al., *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 BEHAV. SCI. & L. 1 (2007).

⁶² Warren et al., *supra* note 60, at 300–04.

⁶³ Philip C. O’Donnell & Bruce Gross, *Developmental Incompetence to Stand Trial in Juvenile Courts*, 57 J. FORENSIC SCI. 989, 990 (2012).

⁶⁴ *See id.* at 990–93.

⁶⁵ Bradley et al., *supra* note 6, at 2412.

⁶⁶ *See Dusky v. United States*, 362 U.S. 402, 402 (1960).

and increase the likelihood of an unfair legal outcome.⁶⁷ If a juvenile lacks the ability to satisfy either or both of the *Dusky* competency standards due to developmental immaturity, the juvenile's decisions over the course of the trial could be detrimental to his future.⁶⁸ Yet, as discussed above, competency screening measures and judicial determinations of competency have not to date actively and effectively taken psycho-social maturity into account to ensure fair and equitable outcomes for juveniles.⁶⁹

III. JUVENILE JUDGES AND DETERMINING JUVENILE COMPETENCY

Juvenile judges, using evidence, their own opinions, and competency evaluations from psychologists or clinicians, are the individuals who make the ultimate rulings whether or not juveniles are competent to stand trial.⁷⁰ When looking at competency evaluations, juvenile judges tend to put significant weight on the opinions of a clinician or psychologist who conducts a competency evaluation.⁷¹ Age sometimes increases a judge's likelihood of declaring incompetence, with younger juveniles being more likely to be ruled incompetent, although results are inconsistent.⁷² For example, within a sample of Chicago juvenile offenders, roughly 27% of incompetent juveniles were less than twelve years old, compared to only 11% of competent juveniles.⁷³ Similarly, in a study of juvenile offenders in Los Angeles, juveniles younger than fifteen years old were more likely to be ruled incompetent than older juveniles.⁷⁴ Evidence of a mental health issue, such as a psychiatric diagnosis, has also been known to be influential to juvenile judges' competency decisions.⁷⁵

Yet there is far less evidence about the influence of developmental maturity on juvenile judges' competency decisions. A survey of juvenile judges and defense attorneys from seven states showed roughly 75% of judges did not believe that a youth's developmental immaturity significantly affected competency.⁷⁶ Conversely, Cox et al., utilizing experimental

⁶⁷ See Bath & Gerring, *supra* note 33, at 265–67.

⁶⁸ See *id.* at 266–68.

⁶⁹ See *supra* Section I.

⁷⁰ See Sanborn, *supra* note 1, at 192.

⁷¹ Viljoen et al., *supra* note 61, at 115–17.

⁷² Cox et al., *supra* note 3, at 24–25.

⁷³ Baerger et al., *supra* note 17, at 316–18.

⁷⁴ See Bath et al., *supra* note 61, at 333–35.

⁷⁵ See Jodi L. Viljoen & Twila Wingrove, *Adjudicative Competence in Adolescent Defendants: Judges' and Defense Attorneys' Views of Legal Standards for Adolescents in Juvenile and Criminal Court*, 13 PSYCHOL. PUB. POL'Y, & L. 204, 216–19 (2007).

⁷⁶ *Id.* at 218–19.

vignettes, found that judges considered juvenile psycho-social maturity to be significant to judicial determinations of competency for adolescents between twelve and seventeen years of age.⁷⁷ Thus, the limited evidence that exists on how judges prioritize adolescent development in competency decisions uses quantitative research designs and is conflicting.

Marked changes have occurred in the last twenty years as the justice system, including the Supreme Court, has used research on adolescent development in rulings to recognize key differences in psycho-social development between juveniles and adults.⁷⁸ However, judges' attitudes may affect the ways in which they view and rule upon juvenile competency, which may correspondingly shape caselaw.⁷⁹ Juvenile judges have been recognized as the main individuals who dictate the philosophy of the juvenile justice system.⁸⁰ A juvenile judge is responsible for ensuring that the court treats juveniles fairly and has the means to offer effective services and treatment to juveniles.⁸¹ Therefore, juvenile judges' appreciation of the role of adolescent development in making competency determinations is both practically and philosophically important.

Overall, it remains unclear how adolescent development may fit into competency determinations for judges.⁸² There is no national standard for juvenile competency, nor unanimity about the influence of developmental immaturity on juvenile competency amongst juvenile judges.⁸³ Utilizing semi-structured interviews with twenty-seven juvenile judges from across the U.S. and grounded theory methods, this study examines juvenile judges' perceptions of the factors that affect juvenile competency to stand trial, particularly their understandings and perceptions of adolescent development and psycho-social maturity.⁸⁴ Specifically, we were interested in determining if, how, and why judges take psycho-social immaturity into consideration when making attributions about juveniles' adjudicative competency, whether or not judges' attitudes toward adolescent development and competency related to one another, if judges had been trained on these

⁷⁷ Cox et al., *supra* note 3, at 24–26.

⁷⁸ See generally *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005); Cohen et al., *supra* note 26, at 773–75.

⁷⁹ Viljoen & Wingrove, *supra* note 75, at 206.

⁸⁰ See Leonard P. Edwards, *The Role of the Juvenile Court Judge*, 43 JUV. & FAM. CT. J. 25, 25–29 (1992).

⁸¹ See *id.*

⁸² See Viljoen & Wingrove, *supra* note 75, at 220–26.

⁸³ Amanda NeMoyer et al., *Attorney Perspectives on Juvenile and Adult Clients' Competence to Plead Guilty*, 24 PSYCHOL., PUB. POL'Y, & L. 171, 172 (2018); Ryba et al., *supra* note 4, at 500.

⁸⁴ See *infra* Section V.

issues, and if such attitudes might negatively impact the adjudication of cases in juvenile court.⁸⁵

IV. MATERIALS AND METHODS

This research uses qualitative methodology, which allows for complex descriptions, detailed understandings and contextualization of the experiences being studied, and a grounded theory approach.⁸⁶ Ultimately, our data consist of semi-structured interviews with twenty-seven juvenile court judges from sixteen different states, collected from January 2018 to March 2018. This study has been approved by the authors' institutional review boards (IRBs).

A. PARTICIPANT SELECTION

Purposeful random sampling was used for this research.⁸⁷ The purposeful sample for this study is a random selection of judges from across the U.S. who sit on juvenile courts and hear juvenile delinquency proceedings. Only juvenile judges whose mailing addresses were publicly available were accessible for study selection, resulting in targeting only thirty-nine of the fifty states. Further, no previous time on the bench, experience with competency, or previous knowledge of adolescent development, neuroscience, or psychology, was required of judges to participate in the study.

Purposeful sampling, which allows for the methodical selection of participants who can provide valuable information relevant to the study's focus, is a commonly used theoretical sampling technique that provides cases to deeply study the research questions and allow for the emergence of grounded theory.⁸⁸ While random sampling is often used to provide representativeness and generalizability to a sample and research questions,⁸⁹ neither were goals of this research, and this study instead used purposeful random sampling, rather than purposeful sampling, for two main reasons.

⁸⁵ See *infra* Section V.

⁸⁶ For descriptions of qualitative methodologies, see generally JOSEPH A. MAXWELL, *QUALITATIVE RESEARCH DESIGN: AN INTERACTIVE APPROACH* (3d ed. 2013); SHARON M. RAVITCH & NICOLE C. MITTENFELNER CARL, *QUALITATIVE RESEARCH: BRIDGING THE CONCEPTUAL, THEORETICAL, AND METHODOLOGICAL* (2016); ANSELM L. STRAUSS & JULIET M. CORBIN, *BASICS OF QUALITATIVE RESEARCH* (1990).

⁸⁷ See generally MAXWELL, *supra* note 86, at 96–98.

⁸⁸ *Id.*

⁸⁹ See generally RAVITCH & CARL, *supra* note 86 (describing sampling techniques for qualitative research).

First, the intent of this research was not to focus on the views of judges in one particular state because juvenile competency is a national issue that affects all juvenile judges in all jurisdictions.⁹⁰ Therefore, we believed our research questions were relevant to judges from across the United States, and a deep, emergent understanding of these issues, which is the goal of grounded theory research,⁹¹ required participants from several states. Since we chose to sample juvenile judges from the across the United States, purposeful random sampling was used because it would be impossible to contact every juvenile judge in the country. There are thousands of judges that review thousands of cases in juvenile courts across states, meaning that every judge who fit the selection criteria could not be contacted or interviewed.⁹² Therefore, as described below, we chose to randomly select counties and fifteen judges from those counties in order to provide a methodical sampling technique for each state that would provide a feasible sampling strategy. Second, although judges' jurisdictions did not appear to affect their views in this research, we also wanted to allow for data collection from many jurisdictions in order to allow for and record those differences in views by jurisdiction if present.⁹³

The initial goal for the research sample was between twenty and thirty judges, the model size for grounded theory to reach theoretical saturation.⁹⁴ The selection of judges for this research occurred in two stages. First, juvenile judges in the state of Georgia were targeted. These interviews served as a pilot for the interview protocol, and a random selection of fifteen judges were sent an interview request via U.S. mail. Juvenile judges in Georgia were targeted at this stage because Georgia has a Council of Juvenile Court Judges that makes the mailing addresses of all juvenile judges in the state available online in one location.⁹⁵ Once those judges were contacted and some of them interviewed, the protocol was slightly amended for clarity (but no changes to content), and the second stage of selection was undertaken.

⁹⁰ See Sanborn, *supra* note 1, at 138–49.

⁹¹ See generally STRAUSS & CORBIN, *supra* note 86 (describing the purposes of grounded theory methodology).

⁹² For juvenile court statistics, see NAT'L CTR. FOR JUVENILE JUSTICE, JUVENILE COURT STATISTICS (2016), <https://www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2016.pdf> [<https://perma.cc/7DLV-3KZZ>].

⁹³ See *supra* Section IV.E.

⁹⁴ Mark Mason, *Sample Size and Saturation in PhD Studies Using Qualitative Interviews*, 11 FORUM: QUALITATIVE SOC. RES. 4 (2010).

⁹⁵ Judges were contacted via their addresses available at https://georgiacourts.gov/wp-content/uploads/2020/01/Juvenile-Court-Judges-by-County_Web-Index-1.pdf [<https://perma.cc/8S4Z-5SDE>].

Second, a random selection of juvenile judges in thirty-eight other states were targeted. Eleven states (Delaware, Alaska, Kentucky, Maine, Minnesota, Montana, New Hampshire, North Carolina, North Dakota, South Dakota, Vermont) and the District of Columbia were omitted from the sampling because there was either no public posting of these states' juvenile judges or the mailing addresses of posted judges were not publicly available. A random sample of seven counties from each of the remaining thirty-eight states was tabulated; then, a random sample of fifteen juvenile judges from across those seven counties for each state was collected from online court websites. Judges were contacted via U.S. mail to request participation. In total, 570 judges were targeted from these remaining thirty-eight states.

Combined with the fifteen judges targeted from Georgia, this study targeted 585 judges from thirty-nine states by mail. This number of judges (585) was targeted in order to obtain a sample of twenty to thirty judges as a model sample size for this grounded theory study. Previous research interviewing state court judges has shown that the interview request response rate for judges is traditionally around 5%,⁹⁶ meaning that contacting 585 judges was likely necessary to secure the participation of between twenty to thirty judges. In all, twenty-seven of the 585 judges contacted agreed to participate, resulting in a 5% response rate.

B. DATA COLLECTION

Sources of data include semi-structured interviews with judges fitting the selection criteria above. The courthouse mailing addresses of targeted judges (N=585), which are publicly available online, were collected, and judges were contacted via U.S. mail with interview requests. Each interview request included a letter with information on the study and contact information for the first author, including email address and phone number. Interviews were scheduled, conducted via telephone, audio-recorded, and transcribed. Verbal consent from participants was also gathered before beginning the interviews.

⁹⁶ For examples of studies with judicial response rates of around 5%, see Colleen M. Berryessa, *Brief Report: Judicial Attitudes Regarding the Sentencing of Offenders with High Functioning Autism*, 46 J. AUTISM & DEV. DISORDERS 2770 (2016) [hereinafter Berryessa, *Sentencing of Offenders*]; Colleen M. Berryessa, *Judges' Views on Evidence of Genetic Contributions to Mental Disorders in Court*, 27 J. FORENSIC PSYCHIATRY & PSYCHOL. 586 (2016) [hereinafter Berryessa, *Genetic Contributions*]; Colleen M. Berryessa, *Judicial Perceptions of Media Portrayals of Offenders with High Functioning Autistic Spectrum Disorders*, 3 INT'L J. CRIMINOLOGY & SOC. 46 (2014) [hereinafter Berryessa, *Portrayals of Offenders*]; Colleen M. Berryessa, *Judiciary Views on Criminal Behaviour and Intention of Offenders with High-Functioning Autism*, 5 J. INTELL. DISABILITIES & OFFENDING BEHAV. 97 (2014) [hereinafter Berryessa, *Intention of Offenders*].

C. INTERVIEW PROTOCOL

Interviews lasted on average thirty-two minutes and ranged in length from thirteen minutes to one hour and three minutes.⁹⁷ They included areas of questioning, noted below, that allow for the development of grounded theory.⁹⁸ There was one interviewer, Dr. Colleen Berryessa, who completed all twenty-seven interviews. She was trained via cognitive pretesting, which involves testing the interview instrument with colleagues by asking them to “think aloud” about each interview question to make sure questions are being interpreted as intended.⁹⁹ She was also trained in dialogic engagement, which involves discussing different points of view on the interview process and protocol with experts in the current methodology and substantive topics of study in order to better attune the interview protocol and process to the research population and study goals.¹⁰⁰

Judges were asked several “opinion and values” questions so that they could describe their thoughts about factors that they may consider in determining or evaluating juvenile competency, including things most important in determining adjudicative competency for juveniles, thoughts on reports and opinions of psychologists in these contexts, and other related questions. “Knowledge” questions were asked to seek an understanding of judges’ knowledge of research regarding how juveniles behaviorally, socially, and emotionally develop during adolescence. “Experience and behavior” questions were asked to explore past experiences with research related to adolescent development and training on such issues.

In addition to open-ended prompts, a series of questions from Bradley et al.¹⁰¹ (some of which are not presented here due to space constraints), were asked to assess judges’ opinions on the influence of age on competency-related abilities, as well as when full brain development occurs; judges were asked to provide an age or age range as a response to each of these questions.¹⁰² Finally, “background and demographic” questions were asked

⁹⁷ Further detail as to interview protocol is available upon request.

⁹⁸ See generally MICHAEL QUINN PATTON, *QUALITATIVE RESEARCH & EVALUATION METHODS: INTEGRATING THEORY AND PRACTICE* (4th ed. 2015) (discussing of areas of questioning that allow for the development of grounded theory in interview-based qualitative methodology).

⁹⁹ See Kristin L. K. Koskey, *Using the Cognitive Pretesting Method to Gain Insight Into Participants’ Experiences: An Illustration and Methodological Reflection*, 15 *INT’L J. QUALITATIVE METHODS* 1, 1 (2016).

¹⁰⁰ See Trena M. Paulus et al., *Extending the Conversation: Qualitative Research as Dialogic Collaborative Process*, 13 *QUALITATIVE REP.* 226, 226–27 (2008).

¹⁰¹ Bradley et al., *supra* note 6, at 2419.

¹⁰² See *infra* Table I.

to identify and capture judges' basic demographics that could have influenced their perceptions as they relate to the current research.

Table 1. Selected questions asked to assess judges' opinions on the age of full brain development and the influence of age on competency-related abilities from Bradley et al.

At what age do you think the human brain fully developed?

At what age is a person old enough . . .

- a. to understand court proceedings and utilize an attorney in his/her own defense?
- b. to weight long-term consequences of trial such as considering plea bargains?
- c. to avoid being unduly influenced by authority figures (such as attorneys)?

D. DATA ANALYSIS

A grounded theory approach was used to analyze the data.¹⁰³ Dedoose software was used to organize, store, and code the data in a multi-step process. First, open coding was used, which is the initial process of iteratively organizing data into preliminary themes observed in the data, after twelve interviews were conducted.¹⁰⁴ Next, following full data collection, axial coding was used, described by Strauss and Corbin as the process of "reassembling data that were fractured during open coding."¹⁰⁵ During this stage, themes established during open coding were grouped into categories by examining the data to determine how categories are related.¹⁰⁶ Finally, selective coding was used, in which the main theoretical patterns were developed by comparing and interpreting categories of data to illuminate the ways in which categories from axial coding are connected, as related to the study's research focus.¹⁰⁷

Further, interrater reliability of the coding scheme was calculated during the coding process to validate the coding scheme. Interrater reliability involves the coding of the data by multiple individuals during data analysis

¹⁰³ See generally STRAUSS & CORBIN, *supra* note 86 (reviewing the step-by-step analysis and coding process of grounded theory methodology).

¹⁰⁴ See *id.* at 62.

¹⁰⁵ ANSELM L. STRAUSS & JULIET M. CORBIN, *BASICS OF QUALITATIVE RESEARCH: GROUNDED THEORY PROCEDURES AND TECHNIQUES* 124 (1998).

¹⁰⁶ *Id.*

¹⁰⁷ See STRAUSS & CORBIN, *supra* note 105, at 116–18.

and helps to establish the rigor of a qualitative study's coding scheme.¹⁰⁸ Three independent co-coders coded and analyzed a random sample of nineteen transcripts to calculate the interrater reliability of the coding scheme. Initial interrater reliability was confirmed (Cohen $k=0.72$), and inconsistencies were remedied through discussion between co-coders. Slight changes were made to data in this piece for readability, but none altered the essences of the presented quotations.

E. DEMOGRAPHICS

Basic demographics of the twenty-seven interviewed juvenile judges can be found in Table 2. Although social demographic categories (e.g., gender, age, etc.) have been found to potentially influence judges' views and philosophies,¹⁰⁹ none of the demographics collected in this study, including the particular states in which judges served, appeared to be connected to or influence any specific themes observed in the data related to this study's research focus. Judges were from sixteen different states. All judges handled juvenile offenses in delinquency proceedings and held juris doctor degrees.¹¹⁰

¹⁰⁸ Rosaline S. Barbour, *Checklists for Improving Rigour in Qualitative Research: A Case of the Tail Wagging the Dog?*, 322 BRIT. MED. J. 1115, 1116 (2001).

¹⁰⁹ See CASSIE C. SPOHN, *HOW DO JUDGES DECIDE? THE SEARCH FOR FAIRNESS AND JUSTICE IN PUNISHMENT* 105–21 (2d ed. 2009); Brian D. Johnson, *The Multilevel Context of Criminal Sentencing: Integrating Judge-and County-Level Influences*, 44 CRIMINOLOGY 259, 280 (2006).

¹¹⁰ Other demographics of note not indicated here are also available upon request.

Table 2. Judge Demographics (N=27)

Demographic	Value
Gender	
Female	10 judges (37.04%)
Male	17 judges (62.96%)
Average Age	58.96 years (SD = 8.37)
States Served (N=16)	
Arizona	1
California	1
Colorado	1
Florida	1
Georgia	9
Indiana	1
Louisiana	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	1
Pennsylvania	3
Rhode Island	1
South Carolina	1
Texas	1
Wisconsin	1
Average Juvenile Cases Per Day	22.50 years (SD = 32.53)
Average Years as a Judge	12.54 years (SD = 8.02)
Average Years as a Juvenile Judge	11.36 years (SD = 8.32)

V. RESULTS

Based on the findings, we present five main themes, further divided into sub-themes, that speak to the nuances of the perceptions of juvenile judges on adolescent development in relation to their determinations of competency.¹¹¹ The first main theme focuses on the perceptions of juvenile judges on the range and importance of factors that they consider in determining juvenile competency (*A. Factors that Influence the Determination of Juvenile Competency*).¹¹² The second overarching theme focuses on judges' understandings of existing research on adolescent development and how they believe it generally affects juvenile behavior (*B. Perceptions of How Adolescent Development Influences Juvenile Behavior*).¹¹³ The third main theme examines if, how, and why judges consider adolescent development as important in determining juvenile competency (*C. Judges' Application of Adolescent Development to Juvenile Competency*).¹¹⁴ The fourth general theme discusses a series of questions judges were asked concerning at what age juveniles develop competency-related abilities (*D. Opinions on Age of Competency-Related Abilities*).¹¹⁵ The final theme examines judges' previous training on and exposure to adolescent development research in legal contexts, as well as their levels of knowledge on and hope for future training on these issues (*E. Training on Adolescent Development and Psycho-social Maturity*).¹¹⁶

A. FACTORS THAT INFLUENCE THE DETERMINATION OF JUVENILE COMPETENCY

I. Age

Judges reported taking age into account when evaluating a juvenile's competency, but many did not consider it the most important factor in their determinations. Emphasis was placed on responding to the juvenile in what the judges considered to be an age-appropriate manner, particularly if the juvenile is thirteen years old or younger. Several judges commented that young children might be unable to meet the standards of competency based on cognition and context. Judge 7 linked age to immaturity: "There are some children that may come before the court at very early ages because there are

¹¹¹ See *infra* Sections V.A.–V.E.

¹¹² See *infra* Section V.A.

¹¹³ See *infra* Section V.B.

¹¹⁴ See *infra* Section V.C.

¹¹⁵ See *infra* Section V.D.

¹¹⁶ See *infra* Section V.E.

some acute issue[s] going on, but because of their age, they may well be deemed not competent to stand trial just because of their age.”¹¹⁷ Further, most judges believed that the restoration of youth competency (which includes meetings and exercises with a restoration counselor, as well as waiting a period of time in order for a youth to become competent enough to stand trial) for young children was unnecessary and something that judges sought to avoid. As Judge 2 explained, “If you’re 13 years old and you do something, why do I want to put you somewhere for a year or two to get you competent so I can get you back in and then sentence you? That works against solving the problem.”¹¹⁸

2. Awareness

Judges emphasized awareness as important to their considerations of juvenile competency. “Awareness” was described as behaviors that demonstrate to a judge a juvenile’s ability to meet the standards of competency. As such, awareness was considered necessary by judges because “if your goal is to punish someone, then you want to be sure they understand, you know, what it is that is going on and [. . .] why they’re being punished.”¹¹⁹ Judge 22 explained what he looked for when assessing awareness:

One is, does the child understand who he is working with? As to an attorney and a judge and so forth. And two, is he able to understand that whatever brought him into court could lead to consequences for him or her? And if he doesn’t know who he’s working with or that there are consequences to things happening in court, I guess beyond those two, we have to take another approach.¹²⁰

In describing awareness, judges mentioned the importance of certain features and behaviors of a juvenile such as a juvenile’s demeanor in the courtroom and during interviews and conversations with judges. Behavioral cues, judges noted, also bear on juvenile competency, as they are often indicative of how well a juvenile understands court proceedings and can assist his defense lawyer. Several judges also mentioned paying attention to statements made by juveniles about why they had committed criminal acts and the responses that juveniles give when asked awareness-related questions by psychologists during competency evaluations. Finally, a juvenile’s interactions with his attorney were also described to be a key measure of juvenile “awareness.” Judge 12 gave an example of a tell-tale statement:

¹¹⁷ Judge 7.

¹¹⁸ Judge 2.

¹¹⁹ Judge 19.

¹²⁰ Judge 22.

In the courtroom, you'll see the child say, 'Well, I know I did this,' and the attorney can't stop them, or 'I know I'm a bad kid.' And so, we wind up having statements that show that they don't understand their rights or that there's a process and that process could be beneficial to the outcome of their situation.¹²¹

3. Evidence and History

The "narratives" of juveniles were highlighted as important for judges in determining competency for the purposes of contextualizing them and their behavior. Judges acknowledged the possible influences of a juvenile's background and experiences with neglect, abuse, and maltreatment that may affect why a juvenile is in court. For example, one judge stated that she liked to take background into account "because part of the decision-making for me is always, where's that child going to be for the next period of time? And so, I certainly don't want to send them to a place that might be detrimental to their well-being."¹²²

Judges vocalized an interest in obtaining a "fuller picture" of the juvenile in competency determinations, including a juvenile's background, particularly the psychological and social context in which he is situated. Judges discussed some of the ways in which they are able to obtain this "fuller picture," such as accessing school records and speaking to parents, case officers, psychologists, and the adolescent's school to learn about behavior outside of the courtroom. The importance of understanding this background was noted by Judge 4, who explained:

You have a better understanding and perspective on how to handle delinquency cases because a lot of times, you know, children make bad decisions. A lot of times, it's because of their environment or the way they were brought up or what's going on in the home and a lot of times that can be changed or affected when they're very young. But if it's not caught, then a lot of times these are the same kids that [grow up to] be what we would call a delinquent.¹²³

4. Mental Capacity

The mental capacity of juveniles came up frequently as important pieces of evidence in competency determinations. Capacity, in this context, speaks to the youth's legal capacity to make *particular* legal decisions, such as entering a guilty plea or entering into a contract; such capacity can be affected by mental disorder, intellectual disability, or other factors.¹²⁴

¹²¹ Judge 12.

¹²² Judge 20.

¹²³ Judge 4.

¹²⁴ Steinberg, *supra* note 16, at 472–73.

Judges particularly took capacity as it relates to mental health into consideration, often being “particularly concerned about . . . [the] competency of children with special needs.”¹²⁵ Many judges stated that a juvenile’s mental ability influenced or even often determined whether a judge would decide to move forward with adjudication; particularly intellectual disability, meaning an IQ below 70, was seen as compelling evidence to reject competency. If a child does not have appropriate mental capacity, then he or she will not be able to understand court proceedings, assist his or her attorneys, or communicate effectively, all key elements of competency. Judge 20 gave an example of a previous case in which a defense lawyer did not believe his older juvenile client was competent, but the juvenile was discovered to have high-functioning autism during the competency evaluation. Interestingly, that diagnosis was considered, but ultimately the child was ruled competent, as the judge believed that the diagnosis did not affect the child’s intellectual capacity. Judge 20 stated that such a diagnosis helped both the judge and the lawyer to understand the juvenile’s behavior and tailor the court proceedings to his social and affective deficits.

5. *Evaluations*

Information collected and reported by psychologists in evaluations was reported by many judges to be most important in competency decisions. In deciding how best to handle the juveniles that come before them, judges frequently use the reports to get a sense of whether competency may be a potential issue. Evaluations were also viewed as a means through which judges could get information while still protecting the child. Judges were aware of the potential for error and the intimidating effect of trying to consider competency without the evaluations.

The evidence found within these evaluations was considered essential for a subset of judges, who acknowledged that they lacked the “expertise and the knowledge to evaluate a child’s or a person’s ability to understand.”¹²⁶ Yet, for many, evaluations are only one of many pieces of evidence taken into account when determining juvenile competency. A few judges asserted that “no one area is going to be sufficient all unto itself in my opinion.”¹²⁷ Particularly, trust in the results of an evaluation was important to the weight a judge would give these evaluations. Judges had different expectations for the accuracy and contents of these reports, although many repeatedly mentioned length and amount of detail as greatly important. Some judges

¹²⁵ Judge 3.

¹²⁶ Judge 14.

¹²⁷ Judge 3.

typically receive shorter reports, but most who placed high value on evaluations expected longer, more in-depth reports. These judges wanted to see the evaluators describe their methods and provide their sources of information about the child. Clarity in results was also a common desire of judges, along with observations, justifications of results, and for some judges, evaluators' recommendations for treatment.

Ultimately, the performance of an evaluator is incredibly important to juvenile judges, and some judges appeared suspicious of the methods used by evaluators and the results of evaluations in their jurisdictions. As one judge stated, "Sometimes the evaluation is only as good as those who are arranging it, providing the information, and their understanding of it."¹²⁸ Judges who expressed a high amount of trust in reports stated that they only trust these reports at the level they do because they are most often being performed by evaluators with whom they have worked for a significant period of time. Judge 15 expressed that "there are some clinicians I probably have a little bit higher level of confidence in than others, partly because of how much time I've spent with them."¹²⁹

B. PERCEPTIONS OF HOW ADOLESCENT DEVELOPMENT INFLUENCES JUVENILE BEHAVIOR

1. Increased Social Susceptibility

Judges stressed that the continuing psychological and neurological development of the juvenile brain makes juveniles more susceptible to the influence of their peers and authority figures compared to adults. Particularly, judges considered peer pressure to be a partial explanation of offending behavior. Judges generally regarded many of the juveniles that come before them not as "criminals," but young people who have fallen prey to bad influence and would not have otherwise offended if not for their peers. Judge 23 offered an example:

This juvenile, by himself alone would never have done this, but this group of kids in this particular situation, he got caught along, went along with what everyone else was doing, was part of it and then something horrible happened. So, I think it has a big effect on how juvenile offenders and how they— why they do the things that they do. A good example would be . . . kids tearing stuff up, doing things that are just totally illogical. Usually, many times it's in a group.¹³⁰

¹²⁸ Judge 16.

¹²⁹ Judge 15.

¹³⁰ Judge 23.

The influence of research on the social susceptibility of juveniles manifested in judges taking a more sympathetic and understanding view of juveniles and their behavior. Rather than taking a punitive approach, Judge 2 suggested that the more judges understand social susceptibility, “the more we know that we shouldn’t hold [juveniles] to the same standard, especially if there’s a group of people.”¹³¹

2. *Irrational Behavior and Immaturity*

Judges also indicated a belief that the rebellious and greater risk-taking behaviors exhibited by juveniles are the result of adolescent development. Judges consistently repeated scientific findings showing that juveniles are more likely to take risks due to lack of impulse control and incomplete frontal lobe development, which is knowledge they have procured from previous trainings. They stated that they often assess how the brain could increase irrationality in adolescent behavior. Judge 6 explained that “there’s no question to me that juveniles and adolescents, because their brains are not fully developed at this point, will make rash or irrational acts and actions that they themselves may not make once they’re 28, 29, 30 and their brains are more fully developed.”¹³²

Judges also explained how an appreciation of this research has led them to adapt their methods of handling juveniles in court. Judge 24 explained that she has worked to simplify the court process for juveniles in her court because of the recognition that juveniles lack the ability to “reason through things and understand consequences long-range.”¹³³ Specifically, she talked about how it influences standards she sets for juveniles that come into her court regarding probation and how she makes terms less stringent than she would for adults. Although she talked about adjusting the court process based on her knowledge of adolescent development, it is worth noting that she did not mention adjusting her lens regarding competency; she ascribed competency related to adolescent development as being relevant to or involved in “the more serious crimes,” while within the juvenile court setting “we don’t see a lot of competency [issues].”¹³⁴

Finally, judges largely remained cognizant of the fact that criminal behavior of juveniles might be especially emotion-driven. One judge described juveniles as being “more emotionally than pragmatically driven” and later expressed beliefs that juveniles’ “brain development is going to be

¹³¹ Judge 2.

¹³² Judge 6.

¹³³ Judge 24.

¹³⁴ *Id.*

secondary to their emotional response to things, whether it's other kids pressuring them, getting upset, reacting, not thinking it through. I just think it's so intertwined . . . their brain is not as great a resource as it will be later on."¹³⁵ Instead of veering toward punishment, their enhanced understanding of juveniles' developmental immaturity has led these judges to take an approach that is more focused on helping juveniles. As Judge 25 put it, "We expect them to do stupid things. It's how you limit the potential consequences when you do those stupid things—that's key."¹³⁶

3. *Lack of a Developed Value System*

Judges frequently referenced the character of juveniles when discussing the influence of adolescent development on behavior. Character was described by judges as an individual's morals, value systems, and how those morals and value systems influence actions. Juvenile behavior was often discussed in terms of the societal impact; a juvenile's immaturity is harmful not only to them, but their community as well. Juveniles are less able to meet societal expectations, such as "empathy, the ability to see things from another person's perspective or to understand the consequences in terms of how their conduct affects other people" because of their adolescent development.¹³⁷

However, judges regarded juveniles' lack of developed value systems and poor character not as fixed but merely the result of juveniles' developmental immaturity. Judge 13 tied together the biological and social elements of this juvenile character development, saying, "I think of it as probably more heavily influenced environmentally than biologically, but it's all part and parcel of the brain."¹³⁸

C. JUDGES' APPLICATION OF ADOLESCENT DEVELOPMENT TO JUVENILE COMPETENCY

1. *Judges Who Do Not Consider Adolescent Development Important to Competency*

Surprisingly, despite its influence on their understandings of juvenile behavior, adolescent development had a mixed influence on judges' determinations of competency. Although judges universally expressed beliefs in findings showing the lack of developmental and behavioral maturity in juveniles, sixteen out of twenty-seven (59.3%) said that

¹³⁵ Judge 8.

¹³⁶ Judge 25.

¹³⁷ Judge 19.

¹³⁸ Judge 13.

adolescent development and the immaturity gap bears no influence on their decisions on competency. These judges viewed adolescent brain and psychosocial development as disconnected from competency. For example, Judge 9 explained that “I don’t know that [information on adolescent development] helps me at all understand juvenile competency. In fact, I truthfully, when it comes to that research, I don’t think any of the research I would’ve seen would explain or help me understand juvenile competency any better.”¹³⁹

Judge 4 had previously spoken about his experiences of learning about research on adolescent development in prior judicial training and was able to explain the process of brain maturation over time. Research does play a role in his consideration of juvenile behavior generally, as he stated, “We have to consider [research on adolescent development] . . . That’s one reason why they’re juveniles, because you assume that their brain hasn’t totally developed and they make rash decisions without thinking sometimes about different things. So yeah, you have to consider that.”¹⁴⁰ Yet, when asked about the potential relationship between juvenile competency and adolescent development, he explained that “competency is different from brain development. . . . That’s a different issue altogether.”¹⁴¹ While he viewed brain development as influential to juvenile decision-making in offending, he did not consider adolescent development as relevant to determinations of juvenile competency; instead, he viewed impaired decision-making as an explanation of why a juvenile was in the courtroom in the first place. This response particularly reflects the sentiments of the other fifteen judges who said that adolescent development bears no influence in their competency decisions. Judge 26 similarly felt that:

Brain development in and of itself doesn’t necessarily affect competency. There might be other things within the section of brain development, if you have intellectual—an intellectual disability, a brain injury, something like that. But I think that’s a little bit different than just, kind of, adolescent brain development. That I think, there’s a whole lot of differences to that kind of adolescent brain development.¹⁴²

Indeed, although overall judges indicated the importance of a juvenile’s “awareness,” meaning behavioral cues and a juvenile’s demeanor that demonstrate to a judge a juvenile’s competency,¹⁴³ these judges did not appear to connect how a juvenile’s awareness in competency was relevant to adolescent development. Instead, judges appeared to believe that adolescent development was only connected to criminal actions that result in a juvenile’s

¹³⁹ Judge 9.

¹⁴⁰ Judge 4.

¹⁴¹ *Id.*

¹⁴² Judge 26.

¹⁴³ See *supra* Section V.A.

presence in court, while competency focuses on awareness as it relates to mental capacity and understandings of the legal process. For example, Judge 20 explained that competency is about “whether or not right now, they’re mentally stable enough to communicate with their attorney to proceed the trial,” while “[adolescent development] research mostly deals—with just consequences and acting in the moment versus thinking about risk and actions have consequences and things like that.”¹⁴⁴ Similarly, Judge 19, commenting that competency is a legal but not a psychological concept, stated that during competency evaluations, “you’re asking a psychologist to . . . help you make a determination using terminology that doesn’t mean anything from a psychological perspective.”¹⁴⁵

When asked about the possible connection between research and competency, some judges were surprised at the very idea that there could even be a tangible connection between the two. Judge 13 expressed that it was entirely novel to him: “I’ve never thought of that, I’ve generally thought of them as, well—except for very young children, I tend to think of those as independent variables.”¹⁴⁶ Judge 10 began to see training differently after being asked about a possible connection between competency and adolescent development. He believed that more training should be given on competency within the context of adolescent development because the relationship was “an area that we all kind of are uncertain about and I never really thought of it as much—you’re making me think more as to how [competency] relates to the adolescent brain.”¹⁴⁷

2. *Judges Who Consider Adolescent Development Important to Competency*

The eleven of the twenty-seven (40.7%) judges who drew a link between competency and adolescent development view brain development as having a “domino effect” on a juvenile’s competency-related abilities, meaning more competency-related abilities are accrued as the brain matures. These judges believe that juveniles, given their limited maturity, have limited understanding that should be taken into account in competency. According to Judge 23:

If their brain function is such that they can’t really control their behavior, at least don’t have the ability to appreciate what it is they’re doing, who it might affect and the

¹⁴⁴ Judge 20.

¹⁴⁵ Judge 19.

¹⁴⁶ Judge 13.

¹⁴⁷ Judge 10.

consequences, then I think you have to take that into account when you're determining [competency] . . . So, I think it's all part of a better, or bigger picture.¹⁴⁸

Adolescent development even makes some judges question the competency inquiry itself. Judge 19 emphasized uncertainty "about whether competency is even an appropriate yardstick to apply in juvenile cases."¹⁴⁹

Overall, there are two main dimensions along which adolescent development affects these eleven judges' views on juvenile competency. First, research on adolescent development has played a notable role in the way that these judges analyze the behavior of juveniles and understand their motivations in the court process.¹⁵⁰ Judges go into the courtroom setting with the knowledge and understanding that juveniles have poorer cognitive function skills, judgment and decision-making capabilities, and behave less rationally; as they work, judges try to make sense of the world from the viewpoint of juveniles and the decisions that they are making.¹⁵¹ They then use this understanding as an explanation of behavior, and this explanation then plays a role in how the judge will respond to them in competency-related matters. Judge 7 explained her mental process: "How does a brain affect how one thinks and how one perceives their world and their environment, and how they evaluate what other people do, that's all part of brain function. You put those kinds of perceptions together and that's where kids' behavior comes from."¹⁵²

Second, knowledge on adolescent development has led judges to take different approaches when interacting with juveniles in the court setting; in particular, they are more likely to favor using their discretionary powers to tailor the court process to fit the individual child and account for their continuing development. If judges are unable to effectively tailor the process around a juvenile's deficits related to adolescent development, then competency is questioned. This might involve cautioning attorneys on the social susceptibility of a juvenile or repeating consequences of legal decisions in order for juveniles to understand the full weight of such choices. As Judge 27 explained, "When the kid first comes into court, you know, we need to be figuring out how we are adjusting our language, how we're adjusting our form, how we're adjusting our conversation, you know, all of that we need to do in terms of what the research is saying."¹⁵³ Overall, understandings of adolescent development have changed the ways that these

¹⁴⁸ Judge 23.

¹⁴⁹ Judge 19.

¹⁵⁰ *See supra* Section V.B.

¹⁵¹ *See supra* Section V.B.

¹⁵² Judge 7.

¹⁵³ Judge 27.

judges view juvenile behavior and how juveniles might not understand the legal process. Judge 2, a judge who worked as a juvenile judge for the entirety of his career, criticized others for not taking information about adolescent development into account in competency determinations: “I think the more we know about it, the better decisions we’ll be able to make. . . . I think that is inherently wrong for the child, it’s inherently wrong for society when you see how their brains develop.”¹⁵⁴

D. OPINIONS ON AGE OF COMPETENCY-RELATED ABILITIES

Judges were asked their opinions regarding the age at which individuals gain certain features of competency: the ability to understand court proceedings, the ability to weigh the consequences of trial, and the ability to not be unduly influenced by authority figures, particularly one’s attorney. Additionally, judges were asked at what age they thought the brain fully develops. Every judge who gave a response (twenty-five total) said that the brain developed at the age of twenty-four years old or later. They relied heavily on their previous training and exposure to research as an explanation for their views (“from what I read and heard, the brain development reaches its sort of physical maturity at about age twenty-four”).¹⁵⁵ A gap in adolescent and brain development between the sexes was believed to play a role as well, with judges believing that women’s brains mature faster than men’s, explaining the “bone-headed” behavior seen more often in boys.¹⁵⁶

Even though all responding judges believed that brain development finishes in an individual’s mid-twenties, most judges’ answers were much lower than that when asked about the age at which a youth acquires different competency-related abilities. Over half of judges felt that a juvenile’s understanding court proceedings was not dependent on age alone and instead was dependent upon the individual child. These judges indicated that they would not strike down competency automatically based on age, even for very young children. Their answers tended to reflect their viewing competency on a case-by-case basis, regardless of age. Ultimately, sixteen judges gave an answer that fell within the range of adolescence (thirteen to sixteen years old), with the rest indicating older ages.

Sixteen judges viewed juveniles sixteen years of age and older as able to weigh the consequences of trial. However, eleven responses were ages between twelve and fourteen years old. Those who believed that only older youth, sixteen years of age or older, could handle these consequences

¹⁵⁴ Judge 2.

¹⁵⁵ Judge 8.

¹⁵⁶ Judge 14.

believed that younger children are largely unable to emotionally and cognitively process what a trial entails. The ability to avoid being unduly influenced by authority figures, particularly attorneys, was seen to develop primarily once an individual is past eighteen years of age for about half the sample. For these judges, this ability develops once an individual is able to “think for themselves.” However, over half of judges believed that the ability to resist undue influence from authority figures, like other competency-related abilities, should be determined more on a case-by-case basis; these were the judges who primarily answered below the age of eighteen for this prompt. For example, Judge 12 felt that “there are some fifteen-year-olds that are really confident, then there’s thirty-year-olds who can’t stand up for themselves.”¹⁵⁷

Regardless of the age at which they believed the brain fully develops, judges’ answers and overall views on these questions indicated two perspectives regarding these competency-related skills. On one side, some judges seemed to view these competency-related abilities as “building blocks” that, with additional information, might “check enough boxes” that a juvenile understands the legal process, the role of his attorney, and other consequences of trial enough to be determined competent. These judges tended to view things on a “case-by-case basis.”¹⁵⁸ Judge 8 listed “the learning of mental age” and “social development” as more informative of a child’s ability to handle trials, more so than age. Judge 4 expressed confidence that youth can possess these abilities, saying that “you can have some young kids who know what an attorney is and know how to deal with the attorney and effectively communicate with an attorney. And then you got others that cannot. So, I think at a younger age, sometimes that’s possible.”¹⁵⁹ Interestingly, the large majority of judges discussing this “building blocks” model of competency were those that indicated that considering adolescent development is not important to them in competency determinations.

On the other side, other judges, particularly those who tended to give higher ages to these questions, saw competency as requiring several different layers of understanding legal consequences and processes, many of which they argued are not possible in young kids. Judges, moving away from the “building blocks” perspective, argued that all features related to competency-related abilities need to be present to indicate juvenile competency. Age played a larger role in their beliefs in competency generally, not on a case-by-case basis. Judge 21 felt that only those older than twenty-one years old

¹⁵⁷ Judge 12.

¹⁵⁸ Judge 20.

¹⁵⁹ Judge 4.

could understand court proceedings. From his perspective, “If you say the word ‘fully’ and that’s the problem, because fully, younger people can, you know, in the system, they can utilize it, but they can’t ‘fully’ understand and ‘fully’ utilize it.”¹⁶⁰ The large majority of judges discussing this “holistic” model of competency were those that indicated that considering adolescent development is important to them in competency determinations.

E. TRAINING ON ADOLESCENT DEVELOPMENT AND PSYCHOSOCIAL MATURITY

Judges reported that they gained their knowledge about adolescent development and developmental science from a variety of sources, the most common being local judicial trainings (seventeen judges or 63%). Trainings were most often part of national or state conferences. Six judges had attended seminars held during the National Council of Juvenile and Family Court Judges conference. The amount of time allotted for these trainings is often sparse; training sessions typically last between forty minutes and two and a half days. In addition to conferences, many judges had attended seminars, usually at the county level for judges, attorneys, and other legal actors, held by mental health professionals on these issues, usually during a lunch in the courthouse (thirteen judges). Judges had also received literature and pamphlets on these issues through conferences and seminars, some of which they refer back to often (thirteen judges). When asked about the content of trainings, seminars, and other information judges had received on adolescent development as part of their judgeships, the overwhelming sentiment was that this information was about adolescent development as it relates to juvenile offending, not juvenile competency.

A few judges also commented on learning about adolescent development from personal experience. Six judges considered their having raised children as beneficial to their understandings of adolescent development. For example, Judge 8 explained, “Some of my own experience both as a dad of two kids and going through that, as well as other children I’ve seen over the years, sort of reinforces what we’ve learned.”¹⁶¹ Judge 25 viewed parenting as helpful in shaping his approach in the courtroom, saying, “I always felt that experience of putting yourself in the shoes of a parent and how you deal with this child, when in doubt, I usually go for that.”¹⁶² In these situations, parenting helped judges observe adolescent behavior within an everyday context; their experiences with children in the courtroom are easier

¹⁶⁰ Judge 21.

¹⁶¹ Judge 8.

¹⁶² Judge 25.

because of this, as they are familiar with this behavior and able to easily attribute it to developmental immaturity.

In interviews, judges were asked to rate their knowledge of research on adolescent development. Judges tended to rate their knowledge in terms of four categories: (1) a general rating of one's knowledge, (2) knowledge as compared to judicial peers, (3) knowledge as compared to the general public, and (4) knowledge as compared to experts on the topic. In response to the general rating of one's knowledge, nineteen judges rated themselves as higher than six on a general scale from one to ten, showing a tendency to view themselves as very knowledgeable. When comparing themselves to other judges, judges rated themselves highly with an average around 8, suggesting that they may view themselves as more aware of these issues than their colleagues. In comparisons to the general public, the ratings were also high, with the lowest score being a seven and the highest a ten. Comparisons to experts yielded the lowest ratings, with an average of one.

These rankings reflect a pattern throughout the interviews, namely, that the judges expressed confidence in their knowledge. Judge 19 stated that, "I would say I am more open to these concepts [than] most judges. . . . People can know things and they don't influence how they try to do their work. I'm very influenced by this information."¹⁶³ Judge 25 referred to his faith in this research as his having "drank the Kool-Aid early on."¹⁶⁴ Despite expressing confidence in their knowledge, there was overwhelming support for receiving more information about adolescent development. All except one judge held a strong belief that they would still benefit from additional training. They expressed eagerness to be informed of changes in the field and new research findings. As Judge 4 put it, "That's why you have continuing education. Because, you know, at the minimum you need to be refreshed on it, because you forget, and you need to understand, and you need to know, and research is always changing."¹⁶⁵ Judges were also specific about what they desire to learn. They desire more scientific information about development, as well as guidance on how to treat juveniles effectively within the juvenile justice framework as related to development. They also sought help in figuring out how to respond to and resolve cases in ways that are most beneficial to the juveniles and even how to adjust the juvenile system and their courtroom in response to this research.

While judges indicated that they valued training for themselves, more emphasis was placed on ensuring that their colleagues were properly

¹⁶³ Judge 19.

¹⁶⁴ Judge 25.

¹⁶⁵ Judge 4.

educated about adolescent development. Judges viewed some of their colleagues critically and in great need of training on these issues. For example, Judge 25 described them as “pay[ing] lip service” to the idea of developmental science,¹⁶⁶ while Judge 14 explained how some of the other judges “believe that we should come down on these kids like a ton of bricks.”¹⁶⁷ Judge 10 explained the resistance in the judicial “field” to this new information: “It’s science and sometimes judges in the criminal justice systems come kicking and screaming into accepting what really is acceptable science.”¹⁶⁸ Increased training was seen as a means through which their colleagues could become oriented towards seeing juveniles as these judges do.

VI. DISCUSSION

Through these in-depth interviews with a sample of twenty-seven judges from across the U.S., we uncover a range of explanations regarding if and how juvenile judges consider adolescent development in determinations of juvenile competency.¹⁶⁹ Although data show that research on and understandings of adolescent development do play a large role in shaping judges’ understandings of juvenile behavior, particularly related to emotional control, irrational behavior, lack of maturity, and social susceptibility,¹⁷⁰ most judges only connected these characteristics to the underlying reasons for offending behavior and not to juvenile competency.¹⁷¹

This research does have a few limitations. First, although twenty-seven interviewees for a qualitative interview study is large for research on judges,¹⁷² this research still only portrays the views of twenty-seven individuals.¹⁷³ Second, our sample was from sixteen different states, yet was not nationally representative, and for most of the sixteen participating states, only one judge was interviewed from each state.¹⁷⁴ Conversely, juvenile judges from the state of Georgia were overrepresented in this study.¹⁷⁵

¹⁶⁶ Judge 25.

¹⁶⁷ Judge 14.

¹⁶⁸ Judge 10.

¹⁶⁹ See *supra* Section V.C.

¹⁷⁰ See *supra* Section V.B.

¹⁷¹ See *supra* Section V.B & V.C.

¹⁷² See, e.g., Berryessa, *Intention of Offenders*, *supra* note 96; Berryessa, *Portrayals of Offenders*, *supra* note 96; Berryessa, *Sentencing of Offenders*, *supra* note 96 (studies with sample sizes smaller than twenty-seven judges).

¹⁷³ See *supra* Section IV.A.

¹⁷⁴ See *supra* Section IV.A.

¹⁷⁵ See *supra* Section IV.A.

However, as mentioned above, the state in which judges served did not appear to have any connection with their views (e.g. Georgia judges did not appear to express any particular opinions more than other judges).¹⁷⁶ That said, our data are not fully nationally representative,¹⁷⁷ and we do not know how the views found in this sample may align with those of other juvenile judges across the country.

Third, as discussed in other qualitative research on judges, our interview request may have resulted in a self-selected sample.¹⁷⁸ Particularly, these judges may be individuals more likely to be interested in participating in a study on competency than other judges. However, taking these limitations of the sample into account, representativeness is not the goal of qualitative research, and the data from our diverse range of juvenile judges did reach theoretical saturation regarding the themes presented above.¹⁷⁹ Finally, we have discussed the views expressed by judges on adolescent development and juvenile competency,¹⁸⁰ but we do not have data on how these views may actually impact juvenile competency determinations in practice.

With these limitations in mind, this research produced four main takeaways. First, juvenile judges reported considering the same types of factors when determining juvenile competency as those discussed in the existing literature on judicial views of juvenile competency.¹⁸¹ Although some judges were somewhat suspicious of competency evaluations and many considered them only one piece of the puzzle, opinions put forth in competency evaluations by psychologists or clinicians were described by judges as important to their determinations,¹⁸² which is similar to previous literature.¹⁸³ A juvenile's age, although described by many judges as considered on a case-by-case basis, was also considered impactful.¹⁸⁴ Particularly, similar to Cox et al. and Baerger et al., most judges believed that some very young children likely will not have the awareness to understand legal proceedings or aid their attorneys and therefore may not possess competency-related abilities.¹⁸⁵ Finally, evidence of a psychiatric diagnosis

¹⁷⁶ See *supra* Section IV.E.

¹⁷⁷ See *supra* Section IV.A.

¹⁷⁸ For discussions of the limitations of self-selected judge samples, see Berryessa, *Genetic Contributions*, *supra* note 96; *Intention of Offenders*, *supra* note 96; Berryessa, *Portrayals of Offenders*, *supra* note 96; Berryessa, *Sentencing of Offenders*, *supra* note 96.

¹⁷⁹ RAVITCH & CARL, *supra* note 86, at 173.

¹⁸⁰ See *supra* Section V.A.

¹⁸¹ See *supra* Section II & V.A.

¹⁸² See *supra* Section V.A.

¹⁸³ See, e.g., Viljoen & Wingrove, *supra* note 75, at 216–19.

¹⁸⁴ See *supra* Section V.A; see also Bath et al., *supra* note 61, at 333.

¹⁸⁵ Baerger et al., *supra* note 17, at 316–18; Cox et al., *supra* note 3, at 24–25.

or issues with mental capacity has also been known to influence juvenile judges' competency determinations.¹⁸⁶ Our data corroborated the importance of mental capacity in judges' determinations of juvenile competency.¹⁸⁷

Second, our research suggests that juvenile judges are very aware of psychological and neurological research on adolescent development and the corresponding immaturity gap between adults and juveniles.¹⁸⁸ They repeated commonly accepted research on these issues and even knew the names of particular brain regions related to adolescent development, such as the prefrontal cortex and limbic region.¹⁸⁹

Judges also appear to be very influenced by their understandings of adolescent development when thinking about their own responses to juvenile offending, with the majority believing that it should guide their decisions on how to address juvenile behavior in court.¹⁹⁰ These views appeared to be at least in some way influenced by judicial trainings or seminars on adolescent development related to juvenile offending that the large majority of judges in this sample have previously taken.¹⁹¹ Indeed, judges highlighted that they had found the information in these previous learning opportunities helpful, interesting, and imperative in their rulings and in those of their colleagues.¹⁹²

Overall, judges' sentiments on adolescent development and its effect on juvenile behavior, particularly offending, mirror the historical philosophy of the juvenile justice system: that age and inexperience make juveniles less culpable for their actions compared to adults and more likely to be rehabilitated.¹⁹³

Third, although very aware of research on adolescent development and cognizant of the effects it may have on juvenile behaviors related to emotionality, social susceptibility, risks, and judgment,¹⁹⁴ juvenile judges were divided on whether adolescent development is important (or unimportant) to determining juvenile competency, with the majority conveying that they saw no real relationship between the two and do not consider it.¹⁹⁵ This division supports the limited quantitative research that shows conflicting results on whether judges believe adolescent development

¹⁸⁶ See Viljoen & Wingrove, *supra* note 75, at 220–22.

¹⁸⁷ See *supra* Section V.A.

¹⁸⁸ See *supra* Section V.B.

¹⁸⁹ See *supra* Section V.B.

¹⁹⁰ See *supra* Section V.B.

¹⁹¹ See *supra* Section V.E.

¹⁹² See *supra* Section V.E.

¹⁹³ See Scott & Grisso, *supra* note 25, at 172–76.

¹⁹⁴ See *supra* Section V.B.

¹⁹⁵ See *supra* Section V.C.

and psycho-social maturity is significant to consider in juvenile competency considerations,¹⁹⁶ and this research provides much needed qualitative data that suggests many judges see these concepts as separate, unrelated issues.

Those judges who do consider adolescent development important to competency determinations recognize that juveniles have poorer cognitive function skills, behave less rationally, and should be treated differently than adults during court proceedings.¹⁹⁷ Particularly, these psycho-social deficits signal to judges to take different approaches when interacting with juveniles in the court setting, using their discretionary powers with caution and working to tailor the court process to the developmental status of the juvenile in order to make sure they are understanding the legal process.¹⁹⁸

On the other hand, it was surprising that sixteen judges saw no connection between adolescent development and juvenile competency,¹⁹⁹ as the literature provides evidence that the same behaviors and tendencies associated with the juvenile immaturity gap also have implications for juvenile competency.²⁰⁰ Particularly, juvenile judges recognized how psycho-social deficits associated with adolescent development can affect a juvenile's judgment and decision-making,²⁰¹ which are known to significantly influence competency-related abilities, such as a juvenile's ability to understand future consequences and the weight of his decisions in court.²⁰² Yet most did not recognize these deficits as potentially causing problems for juvenile competency.²⁰³ Judges identified key differences between juveniles and adults in their cognitive abilities,²⁰⁴ but these judges generally did not recognize how these differences could affect behaviors related to trial, such as understanding and processing legal proceedings.²⁰⁵ Additionally, although acknowledging that juveniles are significantly more socially susceptible than adults,²⁰⁶ the majority of participants did not discuss or understand how this susceptibility to peer or authority pressure might cause a juvenile to be unduly influenced by others, such as his lawyer and

¹⁹⁶ See generally Cox et al., *supra* note 3, at 24–26; Viljoen & Wingrove, *supra* note 75, at 218–19.

¹⁹⁷ See *supra* Section V.B.

¹⁹⁸ See *supra* Section V.B.

¹⁹⁹ See *supra* Section V.C.

²⁰⁰ See Steinberg, *supra* note 16, at 473–76.

²⁰¹ See *supra* Section V.B.

²⁰² See Grisso et al., *supra* note 19, at 333–35.

²⁰³ See *supra* Section V.C.

²⁰⁴ See *supra* Section V.B.

²⁰⁵ See Grisso et al., *supra* note 19, at 333–35.

²⁰⁶ See *supra* Section V.B.

the judge.²⁰⁷ Judges also accepted the immaturity gap between juveniles and adults²⁰⁸ but did not recognize how this immaturity may impair competency-related abilities, such as understanding what it means to waive legal rights, take pleas, or the meaning of legal jargon, legal process, and the charges mounted against them.²⁰⁹

Further, the dissimilar ways in which judges understood age as related to competency and adolescent development were particularly interesting and illuminating.²¹⁰ Literature indicates that both younger and older adolescents have a demonstrated lack of knowledge regarding trials and legal concepts, as well as the inability to weigh long-term consequences.²¹¹ Yet many judges felt that a juvenile's competency is not necessarily dependent on age or developmental status but should be determined on a case-by-case basis.²¹² These judges said they would not find a juvenile incompetent automatically based on age or any one factor, even for very young children.²¹³

Indeed, although indicating that brain development does not stop until the mid-twenties, the large majority of judges that indicated that adolescent development is not important to them in competency determinations appear to view individual competency-related abilities, such as the ability to understand court proceedings, weigh the consequences of trial, and not be unduly influenced by authority figures, as "building blocks" that might build a case for the judge that a juvenile is competent to stand trial, regardless of age.²¹⁴

The ways in which these judges discussed competency allude to the "competency screening" measures that gauge juveniles' abilities to "understand," "reason," and "appreciate" in different categories and ways in order to determine whether a juvenile is competent, regardless of age.²¹⁵ However, the MacCAT-CA, which uses these three subcategories to measure the cognitive aspects of competency, has been found to be inconsistent in its ability to effectively measure competency across all ages.²¹⁶ This may

²⁰⁷ See *supra* Section V.C; see also Bradley et al., *supra* note 6, at 2412.

²⁰⁸ See *supra* Section V.B.

²⁰⁹ See *supra* Section V.C; see also Grisso et al., *supra* note 19, at 333–35.

²¹⁰ See *supra* Section V.D.

²¹¹ See generally O'Donnell & Gross, *supra* note 63; Peterson-Badali et al., *supra* note 57; Riggs Romaine et al., *supra* note 17.

²¹² See *supra* Section V.D.

²¹³ See *supra* Section V.D.

²¹⁴ See *supra* Section V.D.

²¹⁵ For descriptions and discussions of competency screening measures, see Bonnie, *A Theoretical Reformulation*, *supra* note 58; Bonnie, *Beyond Dusky and Drope*, *supra* note 58; Cooper, *supra* note 58; Warren et al., *supra* note 60.

²¹⁶ Bath et al., *supra* note 61, at 333–35; Warren et al., *supra* note 60, at 300–04.

suggest that this “building blocks” model may not be an effective method in determining competency, as just “checking boxes” to build a case for competency can leave out other important competency-related abilities and indicators, such as age and developmental status, that are not measured by this method.

Fourth, the fact that many judges do not consider adolescent development as relevant to competency determinations,²¹⁷ yet still indicate that adolescents exhibit attributes due to adolescent development that diminish competency-related abilities,²¹⁸ appears to show a cognitive disconnect. We argue that a likely reason that this disconnect exists for over half the judges in this study might be because judges have not yet been taught to think about competency as a psychologically- or developmentally-related concept, and instead, have been only taught to think of offending as a concept related to these issues. To highlight, several judges stated that “competency is different from brain development”²¹⁹ and “brain development in and of itself doesn’t necessarily affect competency.”²²⁰ “You’re asking a psychologist to . . . help you make a determination using terminology that doesn’t mean anything from a psychological perspective,”²²¹ said one judge. For these judges, competency is about “whether or not right now, they’re mentally stable enough to communicate with their attorney to proceed to trial,” while “[adolescent development] research mostly deals . . . with just consequences and acting in the moment versus thinking about risk and actions have consequences”²²²

CONCLUSION AND IMPLICATIONS FOR FUTURE RESEARCH

Our results suggest that many judicial determinations of competency do not actively and effectively take psycho-social maturity into account,²²³ which may result in unfair and inequitable outcomes for juveniles.²²⁴ Particularly, the ways in which many juvenile judges currently think about competency as a sort of “building blocks” process in which age and developmental status may not play a key or vital role could lead some juveniles who lack key competency-related abilities to be found

²¹⁷ See *supra* Section V.C.

²¹⁸ See *supra* Section V.B.

²¹⁹ Judge 4.

²²⁰ Judge 26.

²²¹ Judge 19.

²²² Judge 20.

²²³ See *supra* Section V.C.

²²⁴ See *supra* Section II.

competent.²²⁵ In order for juveniles to be adjudicated in a “developmentally appropriate way,”²²⁶ judges must be educated on the potential downfalls of using the “building blocks” model of juvenile competency and the role of adolescent development in shaping competency-related abilities.

The data provided in this study may help to design more tailored and effective educational programs for judges on these issues.²²⁷ Judges appear to heavily rely on trainings for making explicit connections between research and how to deal with juveniles in court.²²⁸ Unless the training makes those direct connections, many judges appear not to be able to abstractly apply the general principles and findings related to adolescent development to other areas of juvenile justice, including competency, that are not related to offending.²²⁹ Nonetheless, even in discussing these issues with judges who do not currently consider adolescent development as important to their competency determinations, many began to see these issues differently after being asked about a possible connection—“you’re making me think more as to how it [competency] relates to the adolescent brain,”²³⁰ as one judge stated. Thus, these results indicate that by making stronger and obvious ties to competency in trainings, seminars, and other judicial education materials, it is very possible that more direct education and training of judges on the role of adolescent development in competency-related abilities may be helpful.

Judges largely appear to be supportive of a return to the rehabilitative goals of the juvenile justice system, and treating juveniles fairly and providing effective services to them is a responsibility that falls within the domain of the juvenile judge.²³¹ By providing direct education to judges on these issues, we can potentially adjust training to help judges appreciate how understanding competency in these ways can help maximize rehabilitative, effective, and equitable outcomes for juvenile offenders.²³² As juvenile judges have been thought to have the most impact on setting the tone and philosophy of the juvenile justice system,²³³ we must shape their minds on these issues before seeing more systemic effects in the juvenile justice system.

²²⁵ See *supra* Section V.D.

²²⁶ Bradley et al., *supra* note 6, at 2428.

²²⁷ See Berryessa, *supra* note 7, at 34.

²²⁸ See *supra* Section V.E.

²²⁹ See *supra* Section V.C.

²³⁰ Judge 10.

²³¹ Edwards, *supra* note 80, at 25–29.

²³² See *supra* Section II & V.E.

²³³ Edwards, *supra* note 80, at 25–29.

Further, this research can help to revise existing competency measures, such as the MacCAT-CA, and assist states that are considering developing or modifying juvenile competency statutes.²³⁴ The *Dusky* standard is thought to be an incomplete model of competency for juveniles, particularly leaving out the potential consideration of developmental immaturity or even age.²³⁵ The few states that have added statutory additions to competency standards related to adolescent development have given juvenile judges no real guidelines on how to consider developmental factors in competency determinations.²³⁶ This study's findings can help identify blind spots of judges on these issues and craft statutory guidelines on how judges should analyze and consider developmental factors. In recognition of the limitations and pitfalls of thinking about juvenile competency from a "building blocks" perspective, competency screening measures can also be amended, taking judicial behavior and certain developmental factors into account based on this data.

Ultimately, this study highlights many areas for future research. Research designs that involve experimental components, in addition to qualitative ones, may be able to provide methodological triangulation on these issues, as well as provide important information on how judges' views expressed here may practically affect judges' decision-making processes in juvenile competency determinations. Further, future research should directly examine the influence of judicial training and different levels of judges' knowledge on adolescent development in relation to their views on competency and competency-related abilities. As this sample included judges who described themselves as knowledgeable on these issues,²³⁷ it would be interesting to discuss these issues with judges who have not had training or exposure to information on adolescent development. As an experiment, it might be interesting to do a survey or interview on these issues before and after the training of judges who have recently rotated into juvenile court for the first time in states that have rotating judicial assignments. Finally, as this research discusses the role and importance of competency evaluations by clinicians and psychologists, future inquiries may aim to survey those individuals on how they would want judges to incorporate the information they provide into juvenile competency determinations and in what ways they think adolescent development affects competency-related abilities.

²³⁴ See generally MELTON ET AL., *supra* note 7; Berryessa, *supra* note 7, at 34.

²³⁵ See Sanborn, *supra* note 1, at 138–49.

²³⁶ *Id.*

²³⁷ See *supra* Section V.E.