UIC Law Review

Volume 45 | Issue 1 Article 4

Fall 2011

Suicide Causation Experts in Teen Wrongful Death Claims: Will They Assist the Trier of Fact?, 45 J. Marshall L. Rev. 51 (2011)

Andrea MacIver

SUICIDE CAUSATION EXPERTS IN TEEN WRONGFUL DEATH CLAIMS: WILL THEY ASSIST THE TRIER OF FACT?

ANDREA MACIVER*

I. INTRODUCTION

After moving from Ireland to South Hadley, Massachusetts, fifteen-year-old Phoebe Prince was ready to start her new life.[1] Moving to a new country would mean starting school at a new high school and making all new friends. But this new life was not a story of happy endings for Phoebe Prince. Rather, it was a story that ended in tragedy. After only a few months of attending South Hadley High School, Phoebe Prince hung herself in the closet of her new home.[2] Why did she feel the need to take her life at such a young age? At first glance, the obvious answer seemed to be the relentless bullying that she endured day in and day out at her new high school. After a short fling with the a senior football player, Phoebe became "the target of the Mean Girls, who decided then and there that Phoebe didn't know her place and that Phoebe would pay."[3] The "Mean Girls" would call her a slut, they would stalk her in the hallways, intimidate her, and even throw things at her.[4] On the day she committed suicide—in fact, only moments before her suicide—the "Mean Girls" drove by Phoebe, who was walking home from school, shouted insults out the window about her and threw an energy drink at her.[5] Rather than fight back, "Phoebe kept walking, past the abuse, past the can, past the white picket fence, into her house . . . [and then] into a closet and hanged herself."[6]

However, after all the hype surrounding her suicide died down, it appeared that there may have been other factors that, at least in part, could have contributed to Phoebe's suicide. Apparently, Phoebe had a history of problems, including a previous suicide attempt that occurred even before she met the

* Attorney at Law, The Deratany Firm, Chicago, Illinois

1. Kevin Cullen, *The Untouchable Mean Girls*, THE BOS. GLOBE, Jan. 24, 2010, http://www.bexno.com/familiaressay/TheUntouchableMeanGirls.html.
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*

"Mean Girls."[7] Were these earlier problems what caused Phoebe to commit suicide? Was it the "Mean Girls" as everyone had initially suspected? Was it both? While learning what caused Phoebe to commit suicide will not do anything to bring her back, the cause of her death could have important legal implications as some legal experts have opined that Phoebe's family could have a cause of action for wrongful death.[8] In order to succeed on a wrongful death claim, a plaintiff would have to prove that the defendant's action was what caused, or at least was a substantial factor in causing, the decedent to commit suicide.[9] As teenage suicide continues to be a serious problem—one that is the third leading cause of death among fifteen- to twenty-four-year-olds[10]—and while courts have increasingly permitted liability in suicide cases[11]—it is only a matter of time before wrongful death lawsuits in teenage suicide cases become common. However, determining suicidal causation, as exemplified in the case of Phoebe Prince, is not always clear cut. And as these cases multiply, it seems inevitable that experts will be offered to testify as to what caused the teenager to commit suicide. Ultimately, in deciding the admissibility of such experts ("suicide causation experts"), judges are going to have to determine whether such expert testimony will assist the trier of fact.[12] In the case of teenage suicide, because of the psychological and neurological characteristics that are unique to teenagers and often unknown to the average lay person, suicide causation experts will not only assist

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7. Tim Nudd, *Bullied Teen Phoebe Prince 'Deeply Troubled' Long Before Suicide: Report*, PEOPLE MAGAZINE (July 21, 2010, 10:10 AM), *available at* http://www.people.com/people/article/0,,20403676,00.html ("According to interviews with her mother and others, Prince had a history of cutting herself dating to 2008, when she was in boarding school in Ireland, and was hospitalized for a week last November after reportedly swallowing a bottle of pills.").

8. *Bullying Raises Questions on School Vigilance*, ASSOCIATED PRESS, http://www.msnbc.msn.com/id/36099680/ns/us_news-crime_and_courts/t/bullying-raises-questions-school-vigilance/ (last updated March 30, 2010) ("Legal experts said it would be difficult to charge school officials criminally, but said Prince's family could have a cause of action in a wrongful death lawsuit.").

9. Majitech v. P.T. Fero Const. Co., 906 N.E.2d 713, 717-18 (Ill. App. 2009).

10. *Facts for Families No. 10, Teen Suicide*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, http://aacap.org/page.ww?name=Teen+Suicide&section=Facts+for+Families (last updated May 2008).

11. *See infra* notes 32-69 and accompanying text.

12. Daubert v. Merrell Dow Pharm., 509 U.S. 579, 591 (1993). Under *Daubert*, the judge must determine whether the expert's testimony is reliable, which will have to be handled on a case-by-case basis by looking at the expert's credentials, the extent of research and tests the expert has performed both in the instant case and in general, and whether the expert's testimony will assist the trier of fact. *Id.* This Article focuses on the third requirement: whether suicide causation experts will assist the trier of fact.

the trier of fact, but they will be necessary in the jury's decision to impose, or not impose, liability.

Part II of this Article will look at the trend and statistics of suicide in the United States.[13] This Part will then look at suicide and how it has been reflected in the United States's legal system over the past one hundred years.[14] Lastly, this Part will discuss the requirements that must be met in order for a suicide causation expert's testimony to be admissible in federal court.[15] Part III of this Article will discuss why suicide experts will—and must—assist the trier of fact in wrongful death lawsuits brought on behalf of a teenager who has committed suicide.[16] This Part will also discuss the scope of the testimony that a suicide causation expert will be allowed to testify to under Federal Rules of Evidence 702, 703, and 704.[17] Part IV will discuss the impact of allowing suicide causation experts to testify in teenage suicide wrongful death cases.[18] Finally, Part V will conclude that not only will suicide causation experts assist the trier of fact, but they are necessary in assisting the trier of fact.

II. BACKGROUND

A. Suicide in the United States

Suicide is one of the leading causes of death in the United States. Over 34,000 people die every year by committing suicide; in 2007 alone, there were 34,598 reported suicide deaths.[19] This number makes suicide the fourth leading cause of death for adults between the ages of eighteen- and sixty-five-years-old.[20] Overall, suicide is the tenth leading cause of death in the United States.[21]

With respect to youth in the United States, suicide is the fifth leading cause of death among those who are between the ages of five and fourteen, and is the third leading cause of death for those who are between the ages of fifteen and twenty-four.[22] Among those children between the ages of ten and fourteen, 1.5 per 100,000 will commit suicide; among those adolescents between the ages of fifteen and nineteen, 8.2 per 100,000 will

13. *See infra* notes 19-31 and accompanying text.
14. *See infra* notes 32-69 and accompanying text.
15. *See infra* notes 70-118 and accompanying text.
16. *See infra* notes 118-83 and accompanying text.
17. *See infra* notes 184-220 and accompanying text.
18. *See infra* notes 221-28 and accompanying text.
19. *Facts and Figures: National Statistics*, AM. FOUND. FOR SUICIDE PREVENTION, http://www.afsp.org/index.cfm?fuseaction=home.viewPage&page_id=050FEA9F-B064-4092-B1135C3A70DE1FDA (last visited Sept. 27, 2011).
20. *Id.*
21. *Id.*
22. *Id.*

commit suicide; and among those young adults between the ages of twenty and twenty-four, 12.8 per 100,000 will commit suicide.[23] Regardless of whether one finds these statistics significant, many argue that due to the stigma attached to committing suicide and the difficulty in determining when a suicide has occurred, these numbers are, in fact, an underrepresentation of the number of people, including youth, who commit suicide each year.[24] Moreover, these numbers do not account for suicide attempts among teenagers.[25] If these statistics were to be taken into consideration, the numbers mentioned above would undoubtedly be higher.[26] Some estimate that nearly two million U.S. adolescents will attempt suicide each year.[27] Research has also shown that "[s]uicidal activity among young people has been on the rise."[28]

What causes an adolescent to commit suicide is "the result of many complex factors."[29] More than ninety percent of youth who commit suicide suffer from at least one major psychiatric disorder; although those who are in their younger adolescent years have lower rates of psychopathology.[30] Other risk factors for suicide and suicidal behavior include: prior suicide attempt(s); co-occurring mental and alcohol or substance abuse disorders; parental psychopathology; hopelessness, impulsive and/or aggressive tendencies; easy access to lethal methods, especially guns; exposure to suicide of a family member, friend, or other significant person; history of physical or sexual abuse; same-sex orientation (although this has only been shown for suicidal behavior, not suicide); impaired parent-child relationships; life stressors, especially interpersonal loses and legal or disciplinary problems; and lack of involvement in school and/or work ("drifting").[31] Because the cause of youth suicide can be contributed to any number of factors or combination of factors, youth suicide is an inherently complex issue.

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23. *Suicide and Youth*, NAT'L ALLIANCE ON MENTAL ILLNESS, http://www.nami.org/Template.cfm?Section=By_Illness&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=54&ContentID=23041 (last visited Sept. 27, 2011).

24. PAUL R. ROBBINS, ADOLESCENT SUICIDE 11 (1998).

25. *Id.*

26. *See* Daniel E. Grosz et al., *A Review of Risk and Protective Factors, in* TREATMENT APPROACHES WITH SUICIDE ADOLESCENTS 17, 19 (James K. Zimmerman et al. eds., 1995) (noting, however, that it is unclear whether attempts to commit suicide and completed suicides should be treated as distinct behaviors).

27. NAT'L ALLIANCE ON MENTAL ILLNESS, *supra* note 23.

28. ROBBINS, *supra* note 24, at 13.

29. NAT'L ALLIANCE ON MENTAL ILLNESS, *supra* note 23.

30. *See supra* note 26 and accompanying text.

31. Grosz, *supra* note 26, at 19.

B. Suicide and the Law

At common law, suicide was considered a felony unless the person committing suicide could not decipher right from wrong.[32] Suicide was considered a felony due in large part to the fact that "[h]istorically, religious and social leaders considered suicide to be an immoral and culpable act."[33] Based upon these notions—that the suicidal decedent was the culpable one—courts later developed two legal theories that "cut the legal causation chain to the original tortfeasor,"[34] keeping the "blame" on the suicidal decedent and denying him any recovery.[35] The first theory was based upon the idea that the suicidal decedent had committed a wrongful act and, therefore, that act would break the causal connection between a defendant's wrongdoing and the decedent's suicide since "culpable intent could not be foreseen. . . . Therefore, even where the plaintiff could establish that the original tortfeasor negligently caused the suicide, courts would not allow him to recover against the tortfeasor."[36] The second theory was based upon the idea that suicide is an intentional act "that intervenes and supersedes as the proximate cause of injury."[37] As a result of the intentional act (suicide), "liability for the injury cannot be traced beyond that point."[38] Under both theories, the original tortfeasor would not be held liable for another's suicide even if it could be proven that it was the original tortfeasor's action or inaction that brought about the suicide.

However, since the creation of these legal theories, courts have begun to view the issue of suicide and how it relates to tort law differently. As a result, three rules of law regarding liability for injury-based suicide have been adopted by courts. The first rule of law, which is still used in a minority of jurisdictions, was created during the time period when the belief that the suicidal decedent was always culpable for his suicide was at its height.[39] This rule makes it impossible for a suicidal decedent to recover under a theory of wrongful death because it "denies recovery on the ground that suicide, even if coupled with insanity, is a superseding cause of death."[40]

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32. Tate v. Canonica, 180 Cal. App. 2d 898, 901–03 (1960).

33. Allen C. Schlinsog, Jr., Comment, *The Suicidal Decedent: Culpable Wrongdoer, or Wrongfully Deceased?*, 24 J. MARSHALL L. REV. 463, 469 (1991).

34. *Id.* at 471.

35. *Id.*

36. *Id.*

37. *Id.* at 472.

38. *Id.*

39. *Id.* at 472-73. *See generally* Scheffer v. R.R. Co., 105 U.S. 249 (1881) (holding that the decedent's suicide, which occurred after he suffered mental and physical injuries in a railroad collision, was not a foreseeable consequence of his injuries).

40. Schlinsog, *supra* note 33, at 472.

The second rule of law, used in a majority of jurisdictions, reflects the idea that mental illness can be a foreseeable injury in light of an original injury caused by the defendant. This rule provides that suicide, if the result of insanity, can be a foreseeable consequence of an intentional, reckless, or negligent action and, therefore, liability against the defendant could be found.[41] In order to determine whether to hold the defendant liable under this rule of law, courts have developed two tests: the "cognitive awareness" test and the "irresistible impulse" test.[42]

Under the cognitive awareness test, if the suicidal decedent did not understand the nature of his suicidal act, the tortfeasor could be liable for the decedent's suicide.[43] However, if the court found the suicidal decedent even slightly understood his actions, the tortfeasor would not be liable for the suicide as it would be considered an independent cause of death.[44] Under the irresistible impulse test, courts hold the tortfeasor liable for the decedent's suicide when the decedent was aware of the consequences of his suicidal act, but due to emotional distress that resulted from the defendant's negligence, the decedent was unable to control his suicidal act.[45] Compared to the cognitive awareness test, the irresistible impulse test is slightly broader in exposing tortfeasors to liability when their tortious act results in a decedent's suicide.

The third rule of law, followed by a minority of jurisdictions, holds the tortfeasor liable for the decedent's suicide if the suicidal behavior is a reasonably foreseeable consequence of the tortfeasor's negligent act, regardless of whether the decedent was insane at the time of his suicide.[46] This third rule of law has been said to be more in line with present-day psychology,[47] which now finds that those people who commit suicide do so as a result of some mental illness or unconscious pressures and, therefore, never appreciate their suicidal actions.[48] Further, this third rule of law is also supported by several studies that support the idea that

41. *Id.* at 473.

42. *Id.* at 474.

43. *Id.*

44. *Id.*

45. *Id.*; *see generally* Long v. Omaha & Council Bluffs St. Ry. Co., 187 N.W. 930 (Neb. 1922) (holding that after defendant's streetcar negligently collided with decedent, the defendant was liable for the decedent's ultimate suicide, which he committed after experiencing considerable physical and mental pain and suffering).

46. Schlinsog, *supra* note 33, at 476; *see* Fuller v. Preis, 322 N.E.2d 263, 266 (N.Y. 1974) (stating that "recovery for negligence leading to the victim's death by suicide should . . . be had even absent proof of a specific mental disease or even an irresistible impulse provided [that] there is sufficient causal connection [between the negligence and the suicide].").

47. Schlinsog, *supra* note 33, at 477.

48. D. HENDERSON & R. GILLESPIE, TEXTBOOK OF PSYCHIATRY 69 (10th ed. 1969).

suicide can be a foreseeable consequence of traumatic injuries, negative changes in lifestyle, or occupation.[49]

Several cases illustrate how the abovementioned rules play out in wrongful death claims involving suicide. In *Best Homes, Inc. v. Rainwater*,[50] the decedent, Rainwater, was injured in a construction accident.[51] This accident caused Rainwater to suffer considerable pain, which prevented him from working, placed him in financial hardship, and created stress in his marriage.[52] Rainwater also took pain medication three times a day and eventually became addicted to it.[53] Ultimately, Rainwater's life fell apart—he divorced his wife and was sent to jail for acting out after taking too much pain medication.[54] While in jail, Rainwater committed suicide.[55] Best Homes moved for partial summary judgment of Rainwater's wrongful death claim on the grounds that "Rainwater's suicide was an independent intervening and superseding cause which served to cut off the liability of Best Homes for Rainwater's death."[56] Best Homes's motion was denied and it appealed this matter to the Indiana Court of Appeals.[57] Based on Indiana common law, which states "[s]uicide constitutes an intervening cause only if it is the 'voluntary' and 'willful' act of the victim,"[58] the court found that "a jury could reasonably conclude that decedent's suicide was accomplished in delirium or frenzy and was not a voluntary and willful act."[59] Therefore, the court denied Best Homes's motion for summary judgment.[60]

In *Sims v. Crates*,[61] sixteen-year-old Christopher Sims shot himself in the head while he was attending a party at the defendant's home.[62] Sims's father brought a wrongful death claim against the defendant alleging that Christopher's death was proximately caused by the negligence or willful and wanton conduct of the defendant—namely that the defendant left a loaded handgun in the house and allowed minors to drink there.[63] The

49. *See* David F. Greenberg, *Involuntary Psychiatric Commitments to Prevent Suicide*, 49 N.Y.U. L. REV. 227, 234-355 (1974) (noting several studies indicate that suicide attempts are linked with depression).

50. Best Homes, Inc. v. Rainwater, 714 N.E.2d 702 (Ind. Ct. App. 1999).

51. *Id.* at 704.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 705.

57. *Id.*

58. *Id.* at 706 (quoting Hooks SuperX, Inc. v. McLaughlin, 642 N.E.2d 514, 521 (Ind. 1994)).

59. *Id.* at 707.

60. *Id.*

61. Sims v. Crates, 789 So. 2d 220 (Ala. 2000).

62. *Id.* at 222.

63. *Id.* at 223.

trial court ruled in favor of the defendant and on appeal that judgment was affirmed in part and reversed in part.[64] The Alabama Court of Appeals found that "Chris's own actions were sufficient to break any chain of causation between [defendant's] actions and Chris's death."[65]

In *Edwards v. Tardif*,[66] Craig Edwards, as executor of the estate of Agatha Edwards, brought suit against the defendants seeking damages for defendants' medical malpractice that resulted in Agatha's suicide.[67] In determining whether Agatha's suicide was an act that broke the chain of causation, the court applied the rule that "suicide will not break the chain of causation if it was a foreseeable result of the defendant's tortious act."[68] Based upon this rule, the court affirmed the lower court's decision holding the defendant doctor liable for Agatha's suicide.[69]

C. Expert Testimony Requirements: The Daubert *Factors*

Today, almost every civil trial involves the use of an expert witness.[70] However, before an expert is allowed to give expert testimony in a federal trial, the trial judge must determine whether the expert's testimony is relevant and reliable.[71] The judge's guidelines for doing this can be found in Federal Rules of

64. *Id.* at 222.
65. *Id.* at 224.
66. Edwards v. Tardif, 692 A.2d 1266 (Conn. 1997).
67. *Id.* at 1267.
68. *Id.* at 1269.
69. *Id.* at 1267. The court also cited several other cases in which courts have held that a defendant doctor could be liable for a decedent's suicide where the defendant's negligence resulting in the decedent's suicide was foreseeable. *Id.* at 1269-70; *See, e.g.*, Wozniak v. Lipoff, 750 P.2d 971 (Kan. 1988) (holding that the jury could have reasonably found that the danger of suicide as a result of the defendant's treatment was foreseeable); Meier v. Ross Gen. Hosp., 445 P.2d 519 (Cal. 1968) (holding that the trial court erred when it refused to instruct the jury on a presumption of *res ipsa loquitur* liability where the defendants could have reasonably inferred that the decedent would attempt to commit suicide); Summit Bank v. Patios, 570 N.E.2d 960 (Ind. App. 1991) (reversing and remanding to allow the trier of fact to determine whether decedent's death was the natural and probable consequence of defendant's alleged negligence); Fernandez v. Baruch, 244 A.2d 109 (N.J. 1968) (holding that since there was no evidence that decedent had an inclination toward suicide which the defendants should have foreseen and addressed, judgment in favor of the defendant was proper on remand); Champagne v. United States, 513 N.W.2d 75, 76-77 (N.D. 1994) (noting that if the decedent's death was a reasonably foreseeable result of the defendant's actions, then defendant would be at least partially responsible for it).
70. THOMAS A. MAUET & WARREN D. WOLFSON, TRIAL EVIDENCE 275 (4th ed. 2009).
71. *Id.* at 277.

Evidence ("FRE") 702-705.[72] FRE 702 states:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.[73]

FRE 702, as it appears today, is the result of several amendments that were made in response to three Supreme Court cases: *Daubert v. Merrell Dow Pharmaceuticals*,[74] *General Electric v. Joiner*,[75] and *Kumho Tire Co. v. Carmichael*.[76] In *Daubert*, the Court granted trial court judges the responsibility of acting as "gatekeepers" who are responsible for keeping unreliable expert testimony out of the courtroom.[77] *Kumho Tire* clarified *Daubert* in that the trial court's gatekeeper responsibility applied to all expert testimony, not just scientific expert testimony.[78] *Joiner* emphasized the trial court judge's gatekeeper role as it determined that the "abuse of discretion standard applies to appellate review of rulings excluding expert testimony."[79] Further, *Joiner* authorized the judge to look beyond the methodology employed by the expert in reaching his conclusions and find that a methodology, even if considered a reliable one, could be considered unreliable if it was improperly applied to the facts of a specific case.[80]

As the gatekeepers of reliable expert testimony, trial court judges look to the *Daubert* factors when determining whether to exclude an expert from testifying. These factors include:

> (1) whether the expert's technique or theory can be or has been tested—that is, whether the expert's theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability; (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of

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72. FED. R. EVID. 702-05; MAUET & WOLFSON, *supra* note 70, at 277. While the federal courts and most state courts had originally adopted what is known as the *Frye* general acceptance test, because that test was thought to be too "rigid," exclusive of "novel or new principles," and difficult to apply consistently to all types of scientific cases, the Supreme Court got rid of the *Frye* test and replaced it with the *Daubert* test. *Id.*

73. FED. R. EVID. 702.

74. *Daubert*, 509 U.S. 579.

75. Gen. Elec. v. Joiner, 522 U.S. 136 (1997).

76. Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999).

77. FED. R. EVID. 702 advisory committee's note.

78. *Id.*

79. MAUET & WOLFSON, *supra* note 70, at 278.

80. *Id.*

> error of the technique or theory when applied; (4) the existence and maintenance of standards and controls, and (5) whether the technique or theory had been generally accepted in the scientific community.[81]

These factors are not codified, and no single factor is to be considered dispositive.[82] Further, courts are free to—and have—considered other factors in determining their rulings on the admissibility of expert testimony.[83] Moreover, it is important to note that nothing in FRE 702 or its amendment:

> [I]s intended to suggest that experience alone—or experience in conjunction with other knowledge, skill, training, or education—may not provide a sufficient foundation for expert testimony. To the contrary, the text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience. In certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert testimony.[84]

When qualifying an expert, specifically a suicide causation expert, to testify under the *Daubert* standard, it is important to note that "an expert need not present evidence that makes causation an absolute, indisputable certainty."[85] Moreover, the temporal relationship between the suicide and the event alleged to have caused the suicide will be one factor considered in the "overall determination of whether an expert has 'good grounds' for his or her conclusion."[86] "Both a differential diagnosis and a temporal analysis, properly performed, would generally meet the requirements of *Daubert* . . . ."[87]

In *Smith v. Pfizer*,[88] the plaintiff brought suit against Pfizer, a drug company, claiming that Pfizer's drug, Zoloft, caused the

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81. FED. R. EVID. 702 advisory committee's note.

82. *See, e.g.*, Heller v. Shaw Indus., Inc., 167 F.3d 146, 155 (3d Cir. 1999) (stating that the *Daubert* factors are "flexible").

83. Courts have also considered the following factors: (1) whether experts are offering testimony about conclusions they have reached as a result of research they have done independently of litigation or whether they have conducted that research for the sole purpose of the litigation; (2) whether the expert has improperly applied a reliable methodology to a set of facts; (3) whether the expert had accounted for other obvious alternatives; (4) whether the expert is being as careful as he would be in the litigation research as he would be in conducting research for his own professional work; and (5) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give. FED. R. EVID. 702 (2000 amendment advisory committee's note).

84. *Id.*

85. Quickel v. Lorillard, Inc., 1999 U.S. Dist. LEXIS 23453, at *11 (D. N.J. 1999).

86. *Heller*, 167 F.3d at 154.

87. *Id.*

88. Smith v. Pfizer, 1001 U.S. Dist. LEXIS 12983 (Kan. 2001).

plaintiff's decedent's suicide.[89] The district court in this case allowed testimony of the plaintiff's specific causation expert finding that "[d]efendant's claims that [the expert] has failed to account for other potential casual factors goes to the weight and credibility of the opinion, not its admissibility."[90] Similarly, in *Giles v. Wyrth, Inc.*,[91] the plaintiff claimed that her husband's ingestion of the drug Effexor caused his suicide.[92] The defendant moved to exclude the testimony of Dr. Maris, a suicide causation expert, for failing to rule out every other risk factor that could have contributed to the decedent's suicide.[93] The court found that Dr. Maris's testimony that "suicide is a 'multifactoral' phenomenon for which it is impossible to rule out other factors entirely" to be plausible, and further stated "[b]ecause a combination of factors generally cause one to commit suicide, it is not surprising that Maris would refuse to admit that depression, financial hardship, and other factors played no role . . . ."[94]

Ultimately, the court held that Dr. Maris's testimony was "sufficiently reliable and relevant to present to a jury."[95] Thus, so long as the suicide causation expert's testimony is relevant and reliable, and the expert is qualified to testify, suicide causation experts should have very little difficulty in meeting the reliability requirements of *Daubert*.[96]

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89. *Id.* at *1, 2.
90. *Id.* at *28.
91. Giles v. Wyrth, Inc., 500 F. Supp. 2d 1048 (S.D. Ill. 2007).
92. *Id.* at 1049.
93. *Id.* at 1062.
94. *Id.*
95. *Id.*
96. It should be noted that when offering an expert to testify in federal court as to the cause of a person's suicide, causation must be proven to a "reasonable certainty." Wheat v. Sofamor, S.N.C., 46 F. Supp. 2d 1351, 1357 (N.D. Ga. 1999). This means that the expert being offered to testify must be able to state with reasonable certainty: (1) that the intentional, reckless, or negligent acts of the defendant could have caused a person to commit suicide in general (general causation); and (2) that the defendant's acts complained of did in fact cause the plaintiff decedent to commit suicide in this case. *Id.*; *see* Vanderwerf v. SmithKline Beecham Corp., 603 F.3d 842, 843 (10th Cir. 2010) (stating that in order for the plaintiff to prove that a drug caused the decedent to commit suicide, the plaintiff needed to offer expert testimony that proved the drug was capable of causing the person taking it to commit suicide and that the drug did in fact cause the decedent to commit suicide). Where an expert fails to prove both types of causation, the court has found that such testimony is not reliable and, therefore, not helpful in assisting the jury. *See generally* Estate of Moffett v. SmithKline Beecham Corp., 2005 WL 1595664 (S.D. Miss. 2005) (granting summary judgment in favor of defendant because plaintiff's expert failed to provide sufficient causal link to allow a jury to find that Paxil more likely than not caused her husband's suicide).

D. Expert Testimony Requirements: Assisting the Trier of Fact

In addition to determining whether the testimony to be elicited by a qualified expert will be reliable, a trial judge must also determine whether the expert's testimony is relevant, i.e., will the expert's testimony "assist the trier of fact."[97] Expert testimony is admissible whenever "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue."[98] Expert testimony must meet the "assist the trier of fact" requirement in order to keep out unnecessary expert testimony; expert testimony is generally only necessary where it relates to matters outside the experience of most lay people, where the subject is confusing, and where it fills in gaps of knowledge that the jury might not know.[99] In general:

> The true test of the admissibility of such testimony is not whether the subject matter is common or uncommon, or whether many persons or few have some knowledge of the matter; but it is whether the witnesses offered as experts have any peculiar knowledge or experience, not common to the world, which renders their opinions founded on such knowledge or experience any aid to the court or the jury in determining the questions at issue.[100]

Trial courts have ample discretion in determining whether an expert's testimony will assist the trier of fact.[101] In general, however, trial courts find that expert testimony will not assist the trier of fact when the expert testimony: (1) is unrelated to the fact at issue; (2) is based on factual assumptions not supported by evidence; (3) is based on reasoning that is so illogical that it cannot affect the existence of a fact at issue; (4) is relevant, but the unfair prejudice of allowing it substantially outweighs any probative value; (5) is confusing or misleading; or (6) is ambiguous.[102] Expert witnesses are also not necessary where "the jury has no need for an opinion because it easily can be derived from common sense, common experience, the jury's own perceptions, or simple logic."[103]

In determining whether the expert's testimony assists the trier of fact, the court must also determine whether the expert's testimony "fits" the issues that the expert is being offered to

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97. FED. R. EVID. 702.

98. *Id.*

99. 29 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 6264 (1st ed. 2011).

100. Taylor v. Towne of Monroe, 43 Conn. 36, 44 (1875).

101. Salem v. U.S. Lines Co., 370 U.S. 31, 35 (1962); *see also* WRIGHT, *supra* note 99 (explaining that judges are given discretion because the admissibility of expert testimony must be determined on a case-by-case basis).

102. *See* WRIGHT, *supra* note 99 (examining several factors courts look at to determine whether an expert witness will assist the trier of fact).

103. *Id.*

testify about.[104] "Scientific testimony does not assist the trier of fact unless the testimony has a valid scientific connection to the pertinent inquiry."[105] "There is no 'fit' where there is 'simply too great an analytical gap between the data and the opinion offered . . . .'"[106] For example, there is no "fit" when an expert offers studies of one type of cancer in animals to support causation of another type of cancer in humans.[107] Therefore, before offering an expert to testify as to a teenager's cause of suicide, the party offering such testimony must ensure that the specific testimony to be elicited will assist the trier of fact and will "fit" the issue the expert is being offered to testify to—whether the defendant's actions, or inaction, caused the teenager to commit suicide.

In the field of "soft sciences,"[108] which includes psychology and psychiatry, such evidence "may 'assist' the trier of fact because the trier of fact usually lacks the background needed to render a psychiatric diagnosis."[109] However, where is it found that the trier of fact would be able to reach similar conclusions without the expert's testimony, the evidence will be rejected.[110] In offering a suicide causation expert to opine as to what caused an individual to commit suicide, it can be anticipated that the opponent of such an expert will argue that such testimony cannot assist the trier of fact as it is within the ken of the jury to understand what might have caused a person to commit suicide. Such arguments have been made in numerous cases. In *Cook* ex rel. *Estate of Tessier v. Sheriff of Monroe County*,[111] a case in which a jail inmate committed suicide, the court excluded the plaintiff's expert witness in part because the plaintiff failed to prove how the suicide expert's testimony would assist the trier of fact.[112] The court stated that "opinions expressed in [the expert's] report concern matters that arguably lie within the understanding of the average lay person, making expert testimony unnecessary."[113] In the case of *Estate of Melinda Duckett v. CNN*, the plaintiff tried to offer an expert witness to testify as to the cause of Melinda Duckett's

104. *Daubert*, 509 U.S. at 591.

105. Siharath v. Sandoz Pharm. Corp., 131 F. Supp. 2d 1347, 1352 (N.D. Ga. 2001) (citing *Daubert*, 509 U.S. at 591).

106. *Id.* (citing *Joiner*, 522 U.S. at 146).

107. *Id.*

108. Soft Sciences can be defined as "science, such as sociology or anthropology, that deals with humans as its principle subject matter, and is therefore not generally considered to be based on rigorous experimentation." THEFREEDICTIONARY, http://www.the freedictionary.com/Soft+science (last visited Sept. 27, 2011).

109. WRIGHT, *supra* note 99.

110. *Id.*

111. Cook *ex rel.* Estate of Tessier v. Sheriff of Monroe Cnty., 402 F.3d 1092 (11th Cir. 2005).

112. *Id.* at 1107.

113. *Id.* at 1111.

suicide.[114] In a pretrial motion, the defendants sought to have this expert testimony barred.[115] In support of their motion, the defendants argued in part that the expert's opinions were unhelpful and unnecessary.[116] Defendants argued that the expert's opinions regarding whether the decedent was misled by the defendants and whether the defendants were aware of her mental state—information alleged to have caused her to commit suicide—were objective findings that could easily be reached by a juror.[117]

Thus, while it may be true that in some suicide wrongful death cases an expert might not be necessary, this argument fails in *all* teenage suicide cases because: (1) the trier of fact, without assistance, cannot appreciate the unique dynamics of a teenager's life; and (2) the trier of fact, without assistance, cannot understand the complexities in the development of a teenager's brain.

IV. ANALYSIS

Suicide causation experts are necessary in order to assist the trier of fact in determining whether the defendant caused the decedent to commit suicide. First, teenagers face and deal with challenges in unique ways that many adult jurors have difficulty relating to and understanding. Second, recent scientific developments suggest that a child's brain is not finished developing until the end of adolescence, rather than by the age of 12,[118] therefore, it seems nearly impossible that jurors would know or fully understand such technical and scientific information. Because these complexities, which are beyond the ken of the average juror, are essential in determining whether to hold a defendant liable for a teenage decedent's suicide, suicide causation experts will—and must—assist the trier of fact.

A. Psychiatric Factors That Contribute to Adolescent Suicide

A teenager views life and his or her experiences very differently than a grown adult. In general, due to a lack of life experience, teenagers:

> [O]ften feel as though they are the only ones who ever experience bad things. This lack of a larger perspective allows them to believe there is no way out, that they are helpless, hapless, and hopeless.

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114. Defendant's Motion to Exclude Expert Testimony and Report of Dr. Harold Bursztajn, Estate of Melinda Duckett v. CNN, No. 5:06-cv-444-WTH-GRJ (M.D. Fla. July 14, 2010).

115. *Id.*

116. *Id.*

117. *Id.* This case was ultimately settled and the details of the settlement were sealed from the public.

118. Ann MacLean Massie, *Suicide on Campus: The Appropriate Legal Responsibility of College Personnel*, 91 MARQ. L. REV. 625, 660 (2008).

> Adults often fail to understand the limited perspectives of adolescence. Adolescents may look like adults, but many teens are not able to think on an adult developmental level. They often are expected to act like adults but do not know how. They lack the life experiences that teach self-acceptance, patience, critical thinking, and an adult understanding that even the worst of conditions can change, that "now" is not "forever."[119]

As a result of this lack of life experience, there are certain risk factors unique to adolescents that place adolescents at a greater risk of committing suicide. These factors include: (1) psychosocial factors; (2) social skills, problem solving, and support factors; and (3) psychiatric factors.[120]

1. Psychosocial Risk Factors

The psychosocial factors that affect suicide in teenagers can be broken down into four subcategories: family risk factors, exposure to physical or sexual abuse, stressful life events, and imitation and contagion.[121] With respect to the first subcategory, "changes in the composition of the family" frequently occur during adolescence as a result of deaths, parental separation or divorce, and other losses that occur when the adolescent or family members relocate.[122] "Adolescents who have undergone these adjustments in their family life have been shown repeatedly to be more at risk for suicidal behavior."[123]

In addition, family violence, which can include both physical and sexual violence, generally only occurs to children when they are young.[124] Adolescents who have been victims of physical or sexual abuse have a significantly higher incidence rate of suicide, and numerous studies have found links between physical or sexual abuse and suicide.[125]

Excessive stress is another factor that increases the chances of someone committing suicide, in both adolescents and adults.[126] However, the events that cause adults stress and the events that cause teenagers stress are different. Generally

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119. WANDA Y. JOHNSON, YOUTH SUICIDE: THE SCHOOL'S ROLE IN PREVENTION AND RESPONSE 7 (1999).

120. Grosz, *supra* note 26, at 19–30.

121. *Id.* at 21–24.

122. *Id.* at 21.

123. *Id.*

124. *See id.* (stating that a study found that, out of 159 adolescents hospitalized for suicide attempts, one in eight attempted suicide due to familial abuse).

125. *Id.* at 23.

126. *Id.* at 22. *See generally* R. Vilhjalmsson, E. Sveinbjarnardottir & G. Kristjansdottir, *Factors Associated with Suicide Ideation in Adults*, *in* 33 SOCIAL PSYCHIATRY AND PSYCHIATRIC EPIDEMIOLOGY 97 (1997) (stating that life stress is one of many factors that leads to suicide ideation in adults).

speaking, stress factors affecting teenagers include "conflicts with parents, loss of a boyfriend or girlfriend, school changes, or loss of a parent due to divorce or death."[127] As mentioned above, due to the teenager's lack of life experiences, these stress factors are amplified, sometimes to the point of triggering suicide or a suicide attempt.

Last, "[s]everal lines of evidence support the contention that imitation can play a role in the pathogenesis of adolescent suicidal behavior."[128] Thus, exposure to suicide can lead a teenager to try and imitate that suicide. An adolescent can be exposed to suicide in two ways: (1) when a family member or someone he or she knows has committed suicide (direct exposure); and (2) when suicide is portrayed through the media (indirect exposure).[129] In terms of direct exposure to suicide, studies suggest that the risk of adolescent suicide rises when the adolescent has been exposed to either a family member or peer who has committed suicide.[130] Similar conclusions have been reached with respect to instances of suicide that are learned indirectly by an adolescent. Notably, "[t]here is an apparent relationship between an increase in suicides and the publicity given in the media to suicides of well-known celebrities, particularly those in politics and entertainment."[131] But even in the event of non-celebrity suicides, many psychologists have found that media coverage of any teen suicide has a tendency to result in several other copycat suicides.[132] Surprisingly, this finding of imitation suicide has been such a concern that some have found that "suicide prevention programs for adolescents in schools are ineffective or even negative and may actually increase suicidality among those at

127. Grosz, *supra* note 26, at 22.
128. *Id.* at 23.
129. *Id.*
130. *Id.* at 24.
131. *Id.* at 23.
132. Allison Roy, *Gay Teen Suicide Coverage May Spark Contagion, Experts Say*, MEDILL REPORTS, Oct. 26, 2010, http://news.medill.northwestern.edu/chicago/news.aspx?id=171197 ("Mental health experts say they worry media coverage of the recent cluster of bullying-related suicides like the headline may spark a media contagion of 'copycat' suicides."); *see generally* Keith Hawton & Kathryn Williams, *Media Influences on Suicidal Behavior: Evidence and Prevention*, *in* PREVENTION AND TREATMENT OF SUICIDAL BEHAVIOUR 293 (Keith Hawton, ed., 2005) (describing how media portrayals of suicide can affect suicidal behavior); Daniel Louis Zahl & Keith Hawton, *Media Influences on Suicidal Behaviour: An Interview Study of Young People*, 32 BEHAV. & COGNITIVE PSYCHOTHERAPY 189 (2004) (discussing how media portrayals of suicide "have been identified as having a significant influence on suicidal behavior."); Keith Hawton & Kathryn Williams, *Influences of the Media on Suicide*, 325 BMJ 1374 (2002) (stating that "the media may have potentially negative influences and facilitate suicidal acts by people exposed to such stimuli.").

high risk."[133] If these studies about teenagers and imitation suicide are true—and there seems to be ample support that they are—the problem could worsen as electronic media expands and becomes more accessible to teenagers. Overall, these psychosocial factors, which are amplified by a teenager's lack of life experience, create circumstances unique to a teenager's life that places them at an increased risk of committing suicide.

2. Social Skills, Problem Solving, and Support Risk Factors

While some studies suggest that adolescents who have poor social skills or who have poor peer relationships are at increased risk for committing suicide, such findings are controversial because: (1) it is difficult to accurately measure social adjustment; and (2) other studies have suggested that there is no link.[134] With respect to problem-solving skills, it has been found that adolescents with poor problem-solving skills often have poor coping abilities, which can lead to depression, hopelessness, and suicidal behavior.[135] Also, a lack of social support has been found to be a risk factor associated with adolescent suicide, while the opposite, adequate social support, has been shown to help reduce the risk of suicidal behavior.[136]

3. Psychiatric Risk Factors

Mood disorders, such as depression, have a strong association with adolescent suicide.[137] One of the main causes of depression in adolescents is loss, which can include anything from the end of a relationship with a boyfriend or girlfriend to the death of a parent, sibling, close friend, or relative.[138] Another main cause of depression is triggered when an adolescent feels as though he or she is a disappointment.[139] When combined with other risk factors, this type of disappointment depression can lead to suicide ideation.[140] "Many teens do not confront disappointment well; and any setback, from a poor grade to not making the cheerleading squad, can be blown out of proportion. Inability to cope realistically with disappointment makes some teens emotionally vulnerable."[141]

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133. Grosz, *supra* note 26, at 24.
134. *Id.*
135. *Id.* at 25.
136. *Id.*
137. *Id. See* JOHNSON, *supra* note 119, at 7 (stating that "[d]epression, whether generalized or specific, makes one vulnerable to suicidal ideation, or the generation of suicidal thoughts.").
138. JOHNSON, *supra* note 119, at 7-8.
139. *Id.* at 8.
140. *Id.*
141. *Id.*

Other psychiatric factors that often increase the risk of teenage suicide are: previous suicide attempts or previous suicidal thoughts, hopelessness, conduct and personality disorders, and substance abuse.[142] However, these factors are equally prevalent in adults who commit suicide as they are in adolescents who commit suicide.[143] Nevertheless, due to the teenager's lack of life experience and the unique challenges and experiences they face, they are prone to suicide in ways that adults are not.

B. Differences in Teenage Brain Development

Due to advances in magnetic resonance imaging devices, "neuroscientists [have] been able safely to conduct longitudinal studies on the brains of healthy children as they progress through normal developmental stages."[144] Before this, such testing on a child's brain was not considered safe. Thus, "[t]his breakthrough allows scientists to safely scan children over many years, tracking the development of their brains."[145] From these studies, which have been headed by Dr. Jay Giedd, Chief of Brain Imaging in the Child Psychiatry Branch at the National Institute of Mental Health, researchers have discovered "to their surprise, that a number of structural changes occur in the brain much later . . . than anyone had supposed."[146]

1. Studies of Dr. Jay Giedd

Before Dr. Jay Giedd began his studies of the adolescent brain, which entailed taking MRI images of 1800 teenagers every two years:[147]

> [M]ost scientists believed that the brain had completed its development by around the age of twelve. . . . They know now that at about age eleven in girls and age twelve in boys, there is a second wave of synapse formation and a spurt of growth in the cerebral cortex, followed by a 'pruning back' throughout adolescence.[148]

During this second wave of brain formation, the "neural waxing and waning alter not the number of nerve cells but the

142. Grosz, *supra* note 26, at 26–27.

143. *See generally* Vilhjalmsson, *supra* note 126, at 97-103 (stating that life stress is one of many factors that leads to suicide ideation in adults).

144. Massie, *supra* note 118, at 659.

145. Adam Ortiz, *Adolescence, Brain Development and Legal Culpability*, A.B.A. JUV. JUSTICE CTR., Jan. 2004, http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf.

146. Massie, *supra* note 118, at 659–60.

147. Claudia Wallis, *What Makes Teens Tick*, TIME, Sept. 26, 2008, http://www.time.com/time/magazine/article/0,9171,994126,00.html.

148. Massie, *supra* note 118, at 660.

number of connections, or synapses, between them."[149] This means that during the teenage years the brain continues to go through developmental changes.[150]

The most notable change that occurs is the growth of the prefrontal cortex, which is found in the frontal lobe of the brain.[151] The prefrontal cortex is the area of the brain that controls what is referred to as the "executive functions"—planning, impulse control, and reasoning.[152] The late development of the prefrontal cortex is a noteworthy finding because it likely explains why teenagers are so willing to engage in risky behaviors;[153] this part of the brain is "associated with impulse control, regulation of emotions, risk assessment, and moral reasoning."[154] Accordingly, critical developments in the brain do not occur until late adolescence.[155] Further, "[s]ome experts believe that structural changes seen at adolescence may explain the timing of such major illnesses as schizophrenia and bipolar disorder. These diseases typically begin in adolescence and contribute to the high rate of teen suicide."[156] In light of these studies, Dr. Giedd has stated:

> [I]t seems almost arbitrary that our society has decided that a young American is ready to drive a car at 16, to vote and serve in the Army at 18 and to drink alcohol at 21. . . . the best estimate for when the brain is mature is 25, the age at which you can rent a car. "Avis must have some pretty sophisticated neuroscientists."[157]

Another series of MRI studies on teenage brain development, which focuses on how teenagers process emotion differently than adults, has also recently been conducted. "Using functional MRI (fMRI), a team led by Dr. Deborah Yurgelun-Todd at Harvard's McLean Hospital scanned subjects' brain activity while they identified emotions of pictures of faces displayed on a computer screen."[158] The study showed that during this task, young teens

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149. Wallis, *supra* note 147.
150. Massie, *supra* note 118, at 660.
151. *Id.* at 660-61.
152. *Id.* at 661.
153. *Id.* at 662.
154. *Id.* at 663-64.
155. *Id.* at 664.
156. Wallis, *supra* note 147.
157. *Id.*
158. *Teenage Brain: A Work in Progress*, NAT'L INST. OF MENTAL HEALTH, http://wwwapps.nimh.nih.gov/health/publications/teenage-brain-a-work-in-progress.shtml (last visited Sept. 27, 2011); *see generally* Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 195 (1999), *available at* http://faculty.vassar.edu/abbaird/PreviousSite/oldFolders/pubs/jaacap1999.pdf (describing the study of facial affect recognition in adolescents using fMRI technology).

used the amygdale part of their brain, which resulted in poor results on the test.[159] However, the study found that "[a]s teens grow older, their brain activity during this task tends to shift to the frontal lobe, leading to more reasoned perceptions and improved performance."[160]

Dr. Elizabeth Sowell came to similar conclusions while a member of the UCLA brain research team. During her studies of brain development from adolescence to adulthood, she and her colleagues found that "the frontal lobe undergoes far more change during adolescence than at any other stage in life."[161] Further, because the frontal lobe is the last part of the brain to develop, "even as they become fully capable in other areas, adolescents cannot reason as well as adults: '[m]aturation, particularly in the frontal lobes, has been shown to correlate with measures of cognitive functioning.'"[162] Likewise, according to Ruben Gur, MD, PhD, and director at the University of Pennsylvania Medical Center, "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable . . . ."[163] These new developments discovered in the teenage brain are significant discoveries on their own. However, in the legal field, and specifically when offering teenage suicide causation experts to testify at trial, they are extremely significant as they illustrate why expert testimony on the subject of teenage suicide is necessary if jurors are going to make reasoned and knowledgeable decisions in determining the cause of a teenager's suicide.

2. *Discussion of Child Brain Development in Excessive Punishment Cases*

Arguments regarding teenage brain development are not solely relevant to lawsuits regarding teenage suicide. These arguments have already found their way into the legal field in recent criminal cases where a defendant has been charged with a capital crime that he committed while he was a minor (teenager). In *Roper v. Simmons*,[164] seventeen-year-old Christopher Simmons committed a capital offence—murder.[165] After the Missouri Supreme Court set aside Simmons's death sentence in favor of life imprisonment without eligibility of release, certiorari

159. NAT'L INST. OF MENTAL HEALTH, *supra* note 158.
160. *Id.*
161. Ortiz, *supra* note 145, at 2.
162. *Id.*
163. *Id.* at 3.
164. Roper v. Simmons, 543 U.S. 551 (2005).
165. *Id.* at 556.

was granted and the United States Supreme Court affirmed the Missouri Supreme Court's holding.[166] The Supreme Court held that: "The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed."[167] In pressing for this holding, the American Bar Association, the American Psychological Association, the Coalition for Juvenile Justice, the American Medical Association, as well as numerous other organizations, wrote amicus curiae briefs supporting Respondent, Christopher Simmons.[168] Many of these groups, at least in part, argued that the death penalty was inappropriate for individuals under the age of eighteen because they lack the necessary moral and mental capacity to be convicted and charged with such a punishment.[169]

The American Medical Association, joined by several other organizations,[170] argued in its amicus brief that "the average adolescent cannot be expected to act with the same control or foresight as a mature adult"[171] because they "do not have adult levels of judgment, impulse control, or ability to assess risks."[172] Relying on MRI testing done in healthy adolescents, as discussed above, the American Medical Association concluded that "the region of the brain associated with impulse control, risk assessment, and moral reasoning is the last [portion of the brain] to form, and is not complete until late adolescence or beyond."[173]

Similarly, the American Bar Association argued in its amicus brief that "[j]uvenile offenders do not possess the heightened moral culpability required to justify the death penalty."[174] This argument was supported by the "recent scientific research [which] supports the conclusion that the brains of juveniles are less developed than those of non-mentally retarded adults."[175] The argument was further supported by the fact that "juveniles have fewer life

166. *Id.* at 559-60.

167. *Id.* at 578.

168. *See infra* notes 169-79 and accompanying text.

169. *See infra* notes 169-79 and accompanying text.

170. The other organizations include: American Psychiatric Association, American Society for Adolescent Psychiatry, American Academy of Child & Adolescent Psychiatry, American Academy of Psychiatry and the Law, National Association of Social Workers, Missouri Chapter of the National Association of Social Workers, and National Mental Health Association.

171. Brief for the Am. Med. Ass'n et al. as Amici Curiae Supporting Respondent, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1633549, at *2.

172. *Id.* at *4.

173. *Id.* at *18.

174. Brief for the Am. Bar Ass'n as Amicus Curiae Supporting Respondent, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1617399, at *5.

175. *Id.* at *9–10.

experiences to inform their decision making."[176]

Based upon several behavioral studies, the American Psychological Association, along with the Missouri Psychological Association, argued in its amicus brief that adolescents "are not yet mature in ways that affect their decision making."[177] Specifically, its brief stated that "[i]n comparison with adults, studies show that adolescents are less likely to consider alternative courses of action, understand the perspective of others, or restrain impulses."[178] Based on the same MRI studies discussed above and in the American Medical Association's brief, this brief concludes that "[a]lthough the precise underlying mechanisms continue to be explored, what is certain is that, in late adolescence, important aspects of brain maturation remain incomplete, particularly those involving the brain's executive functions."[179]

Although these briefs were written to support not imposing the death penalty on minor children, these arguments are relevant to this Article. As made clear by the briefs, adolescents do not have the same mental capacity as adults because their brains are not yet done developing. For this reason, the manner in which adolescents make decisions and the manner in which adults make decisions are very different. As such, the average juror would not be able to appreciate these unique differences in the development of a teenager's brain without the assistance of expert testimony.

C. An Average Juror Would Not Be Able to Appreciate These Differences

As described above, the process an adolescent's brain goes through before deciding to commit suicide is different than the process an adult's brain goes through in deciding to commit suicide, or in making any decision for that matter.[180] Additionally, adolescents face different challenges than adults, and they react to those challenges differently than an adult would react to the same challenges.[181] However, the six to twelve citizens sitting on the jury panel will all be eighteen-years-old or older.[182] This means that in most cases, almost every juror on the panel will have surpassed the age of adolescence. Such an age gap between the teenager who

176. *Id.* at *11.

177. Brief for the Am. Psychological Ass'n & the Mo. Psychological Ass'n as Amici Curiae Supporting Respondent, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1636447, at *2.

178. *Id.* at *7.

179. *Id.* at *12.

180. *See supra* notes 144-79.

181. *See supra* notes 119-42.

182. *What to Do If You Receive a Summons for Jury Duty*, ILL. STATE BAR ASS'N, http://www.illinoislawyerfinder.com/articles/rights-and-responsibilities/jury-duty/jury-duty-juror-summons-illinois (last visited Sept. 27, 2011).

committed suicide and the jurors (who may all be well removed from their teenage years), risks jurors deciding a case based on what *they* would do, without fully appreciating the fact that what they would do is quite different than what a teenager would do. This is especially true with respect to the decision to commit suicide, because an adult would almost certainly rationalize that decision to a greater extent than an impulsive teenager would. Reminding the jury of the unique characteristics of teenagers is essential in making sure that jurors are fully aware of what went into the teenager's decision to commit suicide, since they must ultimately decide whether the defendant's actions were part of what caused the teenager to commit suicide.

In addition, the fact that a teenager's brain is not fully developed until the end of adolescence has only recently been discovered. Moreover, this discovery was made by scientists and experts using new MRI technology. The average juror is typically a layperson with less than a college education.[183] Thus, it is extremely unlikely that any juror would know—let alone appreciate—the complexities of a teenager's brain development; information that has only recently been discovered and that has only come to light through new technologies and experts who have studied neurological development in teenage brains for years. Due to the gaps in understanding created by the age difference between the jurors and the suicidal teenager, and the recent studies regarding the development of a teenager's brain, it is essential that expert testimony be offered to assist the trier of fact so that jurors do not fill those gaps with misguided assumptions or false premises.

D. Suicide Causation Expert Testimony in Practice: How Far Can Such Testimony Go?

Once a suicide causation expert is allowed to testify at trial (because the trial court judge finds that he is qualified to testify on the topic and his testimony is reliable, relevant and will assist the jury), the question then becomes: "What can the expert testify to?" Can he give his opinion as to the ultimate conclusion, i.e. that the defendant's action or inactions caused the teenage decedent to commit suicide? Can the expert reveal the underlying facts, data, and opinions that he relied on in formulating his opinion? What happens if those facts, data, and opinions are otherwise inadmissible at trial?

183. Harry Plotkin, Litig. Counsel of Am., *April Jury Tip: "Educating Your Jurors During Trial,"* 1 (Apr. 2011), *available at* http://www.litc ounsel.org/April/Plotkin.pdf.

1. The Ultimate Issue: 704(a) and (b)

In general, experts are allowed to give opinions or make inferences that embrace an "ultimate issue [that is] to be decided by the trier of fact."[184] Federal Rule of Evidence 704(a) states, "[e]xcept as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."[185] Subsection (b) deals with criminal cases in which an expert is offered to testify as to the mental state of a criminal defendant in order to determine whether that defendant had the requisite mental state for the charge he or she is being tried for.[186] Because this Article focuses on suicide wrongful death cases (civil cases), Rule 704(b) poses no problems for experts testifying to the cause of a teenager's suicide. However, Rule 704(a) requires a deeper look.

At first glance, it might appear that Rule 704(a) poses no problem for experts testifying as to the cause of a teenager's suicide. However, two words in that rule, "otherwise admissible," require a closer look.[187] In the case of expert testimony, "otherwise admissible" refers to "admissibility under 702," which requires that the expert's opinion "will assist the trier of fact to understand the evidence or to determine a fact in issue."[188] "Thus, the admissibility of opinion testimony that may involve legal conclusions ultimately rests upon whether that testimony helps the jury resolve the fact issues in the case."[189] Based upon these requirements, "courts have permitted witnesses to give opinion testimony on a wide array of matters that might be considered 'ultimate issues,'"[190] including matters relating to the issue of causation.[191]

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184. FED. R. EVID. 704(a).

185. *Id.*

186. FED. R. EVID. 704(b) ("No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.").

187. *See* FED. R. EVID. 704(a) (stating that testimony that would otherwise be admissible is not objectionable, if it concerns the ultimate issue to be decided by the trier of fact).

188. WRIGHT, *supra* note 99; *see* FED R. EVID. 702 (providing that if specialized knowledge will assist the trier of fact in understanding the evidence or determine a fact, a qualified expert may give their opinion as testimony).

189. WRIGHT, *supra* note 99.

190. *Id.*

191. *See, e.g.*, Peckham v. Cont'l Cas. Ins. Co., 895 F.2d 830, 837-38 (1st Cir. 1990) (holding that the trial court did not abuse its discretion in allowing an expert to testify as to proximate cause in a case where the insurer was accused of bad faith); Nielson v. Armstrong Rubber Co., 570 F.2d 272, 277 (8th Cir. 1978) (holding that the trial court acted within its discretion and pursuant to

Offering a suicide causation expert at trial to testify to the cause of a teenager's suicide, which would include the unique psychological and neurological characteristics of teenagers, would almost certainly assist the trier of fact in determining whether a defendant caused a teenage decedent to commit suicide.[192] Such information would not only provide the jurors with information they are not likely to know, but it would also allow the jurors to make more reasoned and knowledgeable decisions. As such, suicide causation experts testifying in teenage suicide wrongful death cases should have no problem testifying to "ultimate opinions," i.e., whether the teenager's suicide was caused by the defendant. Such testimony would assist the trier of fact and does not arise within the context of criminal cases and, therefore, is admissible under Rule 704.[193]

2. *The Underlying Facts and Data: 703*

In almost every case in which an expert testifies it is likely that the expert relied on some underlying facts and data in coming to his or her ultimate conclusion. Quite frequently, especially in the case of suicide, these underlying facts and data are not admissible in evidence on their own.[194] For example, suicide experts might rely on statements made by others in order to

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Rule 704 in allowing expert testimony that the vulcanizing process at defendant's plant caused defect in the tire that was alleged to have injured the plaintiff while he was mounting it).

192. *See supra* notes 119-81 and accompanying text.

193. While not within the scope of this Article, some have discussed the reasonableness of bringing criminal charges against those who have caused a teenager to commit suicide, specifically when suicide has been brought about by bullying.

> Bullying is outrageous and inexcusable, and those responsible should be held accountable, both civilly and criminally, to the extent that the harm suffered to the victim can be definitely traced to the conduct of the bullies. So, holding bullies criminally responsible for any physical injuries they cause, as well as conduct itself, is perfectly reasonable.

John Richards, *Bullying Drives a Teen to Suicide: Are the Bullies Legally Responsible for the Death?*, LEGALMATCH LAW BLOG (Apr. 10, 2010), http://lawblog.legalmatch.com/2010/04/01/bullying-drives-a-teen-to-suicide-are-the-bullies-legally-responsible-for-the-death/. In fact, in the case of Phoebe Prince, mentioned earlier, criminal charges were brought against the students who were responsible for the bullying that allegedly lead Phoebe to commit suicide. Erik Exholm & Katie Zezima, *6 Teenagers Are Charged After Classmate's Suicide*, N.Y. TIMES, Mar. 29, 2010, http://www.nytimes.com/2010/03/30/us/30bully.html?pagewanted=all. Ultimately, the criminal charges were dropped by Phoebe's Mother.

194. ILL. R. EVID. 703; FED. R. EVID. 703:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

determine whether a person committed suicide.[195] Most of these third party statements would be considered hearsay and, therefore, would not be admissible on their own if they complied with Rule 703 and were "reasonably relied on." The question becomes, when an expert relies on inadmissible facts and data in formulating his or her opinions, can that information be disclosed to the jury? Federal Rule of Evidence 703 attempts to solve this issue. It states:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.[196]

Rule 703 expands the sources that experts may rely on when testifying from facts and data admissible at trial to "those 'reasonably relied' upon by 'experts in the particular field.'"[197] The reasoning behind this expansion was to "broaden the basis for expert opinions beyond that current in many jurisdictions and to bring the judicial practice into line with the practice of the experts themselves when not in court."[198] However, although the rule expands reliance on underlying facts and data, it also limits their use to when the expert reasonably relies upon the underlying facts, data, and opinions as is done by others in the field of his or her practice.[199] The reasonable reliance requirement "contemplates that experts often rely upon third party reports when making a decision and that this customary reliance is itself an extraneous indicia of trustworthiness sufficient to justify the dispensing of cross-examination."[200] Rule 703 assumes "that the expert, having met the expert qualification test of rule 702, has the skill to properly evaluate the hearsay and assign it appropriate probative value."[201]

In determining whether the expert's reliance on otherwise

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195. *See, e.g.*, People v. Munoz, 810 N.E.2d 65, 72-73 (Ill. App. Ct. 2004) (describing how defense expert sought to testify to conversations the decedent had with third parties regarding suicidal statements, which he relied on in reaching his conclusion that she had committed suicide).

196. FED. R. EVID. 703.

197. Emigh v. Consolidated Rail Corp., 710 F. Supp. 608, 611 (W.D. Pa. 1989) (citing Seese v. Volkswagenwerk A.G., 648 F.2d 833, 844 (3d Cir. 1981)).

198. FED. R. EVID. 703 advisory committee's note.

199. *Id.*

200. *Emigh*, 710 F. Supp. at 611-12.

201. *Id.* at 612.

inadmissible evidence was reasonable, federal courts have taken two approaches. The first approach is considered a "limited gatekeeping power" and it allows the court to determine that evidence was reasonably relied on so long as the expert testifies that it was.[202] Thus, once the expert testifies that experts in his field rely on the type of facts and data that he relied on in coming to his conclusion, the court will make no further inquiry into the reasonableness of such reliance and will find that the "testimony is conclusive."[203] The second approach involves a bit more inquiry into the reasonableness of the expert's reliance on such inadmissible facts and data and is seen as giving "the trial judge more power as a gatekeeper."[204] Under the second approach, the admissibility of the expert's opinion depends on two factors: (1) the expert's testimony was based upon facts and data that an expert in his or her field typically relies on: and (2) reliance on those facts and data must be reasonable.[205] Thus, under this approach, the court "exercises independent judgment as to reliability."[206]

Once the court finds that facts, data, and/or opinions were reasonably relied on by the expert, the court must then determine whether such facts, data, or opinions can be revealed to the jury and/or used as substantive evidence. "[R]easonably relied on facts, data or opinions constitute substantive evidence only if otherwise admitted [into] evidence."[207] If not otherwise admissible, "[t]he facts, data, or opinions may be disclosed to the jury by the proponent of the opinion or inference, only if the trial court finds that the probative value of the facts, data, or opinions in assisting the jury to evaluate the expert's opinion substantially outweighs its prejudicial effect."[208] If such evidence passes this balancing test and is, therefore, to be disclosed to the jury, the trial court must, upon request, "give a limiting instruction . . . informing the jury that the underlying facts, data, or opinions must not be used for substantive purposes."[209]

Of note, Federal Rule of Evidence 703 was amended in 2000. Before 2000, Rule 703 only consisted of the first two sentences that are now present in the Rule. In 2000, the rule was amended to include the last sentence, which states, "[f]acts or data that are

202. *See* WRIGHT, *supra* note 99 (discussing that some courts allow judges "limited gatekeeper" roles when the offering party's expert testimony shows that other experts in that field rely on the same type of facts or data that is in dispute).
203. *Id.*
204. *Id.*
205. *Id.*
206. *Id.*
207. 3 MICHAEL H. GRAHAM, HANDBOOK FEDERAL EVIDENCE § 703:1 (6th ed. 2010).
208. *Id.*
209. *Id.*

otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect."[210] This last sentence reversed the balancing standard provided in Federal Rule of Evidence 403, creating in Rule 703 "a presumption against disclosure to the jury of information used as the basis of an expert's opinion and not admissible for any substantive purpose, when the information is offered by the proponent of the expert."[211] The difference in the current Rule 703, which uses the reverse 403 analysis, and the old Rule 703, which relies on the normal 403 analysis in determining whether underlying facts or data can be testified to at trial, could make a substantial difference in what an expert may testify to at trial, especially in suicide cases where there is a great chance that the evidence relied on by the expert would be considered inadmissible.

Illinois, for example, has not yet adopted the last sentence in Federal Rule 703, and therefore, relies on the 403 analysis when determining the whether the underlying facts or data may be testified to at trial.[212] In *People v. Munoz*, where the defendant was charged with homicide but claimed that the victim committed suicide, the court discussed the difference between the Illinois rule (which was the same at the pre-2000 Federal Rule) and the new Federal Rule. The court stated:

> [E]ven if the Federal Rule 703, as amended in 2000, is applicable under our state practice, such discretion may not be exercised arbitrarily to blanketly characterize such data as unduly prejudicial where the data would otherwise assist the jury in its evaluation of the expert's opinion, particularly where the data could have been independently admitted through the affiant.[213]

Thus, although the Illinois appellate court recognizes the difference between the reverse 403 analysis in Rule 703 and the usual 403 analysis, the court expresses wariness in making too much of a difference and using it improperly to bar too much evidence. Although "[t]he 2000 amendments to Rule 703 were intended to protect against the danger of 'Rule 703 becoming a 'backdoor' hearsay exception,'"[214] this does not mean that such evidence is never admissible. Underlying facts, data, and opinions may be disclosed if the trial court judge finds that "the probative

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210. FED. R. EVID. 703.

211. FED. R. EVID. 703 advisory committee's note.

212. GINO L. DIVITO, THE ILLINOIS RULES OF EVIDENCE: A COLOR-CODED GUIDE (last revised Jan. 31, 2011), *available at* http://www.tdrlawfirm.com/downloads/Illinois_Rules_of_Evidence_Color-Coded_Guide.pdf.

213. *Munoz*, 810 N.E.2d at 82.

214. Royale Green Condo. Ass'n, Inc. v. Aspen Spec. Ins. Co., No. 07-CIV-21404, 2009 WL 2208166, at *2 (S.D. Fla. 2009).

value of the information in assisting the jury to evaluate the expert's opinion substantially outweighs its prejudicial effect."[215] Therefore, as suggested by the Advisory Committee Notes and the Illinois Appellate Court, although there is a presumption against allowing an expert to testify to the facts, data, and opinions underlying his opinion, that presumption can be overcome if the probative value of that information would assist the jury and is greater than any prejudicial value that might arise. That presumption is also overcome if the evidence is found to be independently admissible for reasons other than those found in Rule 703. If allowed for the former reason, such evidence would not be considered as substantive evidence, but if allowed for the latter, such evidence could be admitted as substantive evidence.

Suicide causation experts will very frequently rely on potentially inadmissible evidence when formulating their opinions as to the cause of suicide.[216] However, in order to get underlying facts, data, and opinions into evidence as substantive evidence, that evidence will have to be admitted independent of Rule 703. If that cannot be done, the expert can still testify to and about the underlying facts, data, and opinions, if the party offering the expert can show: (1) that the facts, data, and opinions are of the type reasonably relied on by people in the expert's field; and (2) that the probative value of such evidence substantially outweighs any prejudicial value.[217] Even if a party offering a teenage suicide expert cannot get the underlying facts, data, and opinions admitted as substantive evidence, the party should have little trouble convincing the court to allow the expert to testify to and about those underlying facts, data, and opinions.

Due to the fact that there are often no "visible signs of how death occurred" and there may be no "history of ill health to fall back on as a means of diagnosis," when determining a cause of suicide, experts will often look to "medical records, psychiatric reports, and statements from the next of kin . . . ."[218] This is done so that "a detailed picture of the individual's life can be built up" to determine what was going on in that individual's life at the time of suicide.[219] Since some of these facts, data, and opinions relied on by the expert would likely include inadmissible evidence, such as hearsay, a court should allow an expert to testify to such evidence as it would be reasonably relied on in the field of the expert. In addition, if the experts were not allowed to testify that they

215. FED. R. EVID. 703 advisory committee's note.

216. *See* ILL. R. EVID. 703; FED. R. EVID. 703 (stating that the expert may rely on inadmissible evidence in basing his opinion).

217. *Id.*

218. Jack Claridge, *Determining Cause of Death*, EXPLORE FORENSICS (May 17, 2010), http://www.exploreforensics.co.uk/determining-cause-of-death.html.

219. *Id.*

based their opinion on such inadmissible evidence and then discuss that evidence, there would be large gaps in the expert's testimony. These gaps would likely lead a jury to become suspicious of the expert's overall opinion or lead jurors to try and fill the gaps on their own. For these reasons, the probative value of such inadmissible evidence would be substantial.[220]

Further, the prejudicial effect would be very small considering the jurors are free to decide what weight they want to give the underlying facts, data, and opinions relied upon by the expert. In addition, at the request of the opposing party, the jury would also be instructed as to the limited purpose of the underlying facts, data, and opinion testimony. Overall, while a party offering a suicide causation expert may have some difficulty getting underlying facts, data, and opinions admitted as substantive evidence, it is likely that the expert would still be able to testify to and about the underlying facts, data, and opinions that he reasonably relied on in determining what caused a teenager to commit suicide.

V. IMPACT

A. Fairer Trials and More Reasoned Jury Verdicts

The more knowledge the jury has of the unique aspects of a teenager's physical and psychological functioning, the better reasoned its decision will be and the less likely it will be to fill gaps with potentially improper inferences. In the case of teenage suicide wrongful death claims, if a jury does not know about the unique psychological and neurological features of teenagers, it is unclear how the jury would analyze the teenager's decision to commit suicide. Would a juror, who is over the age of eighteen, try and put himself or herself in the shoes of the teenager and decide whether the defendant's action would cause him or her personally to commit suicide? And, if so, would a juror know to consider the fact that, because he or she is older than a teenager, he or she is able to make more reasoned and rational decisions than a teenager? Without being told of the unique psychological and neurological characteristics of teenagers, it is unclear how the jury would fill these gaps. Thus, the more knowledge the jury has, the less likely they will be to rely on faulty or misguided information and ultimately the jury's decision will be more reasoned.

220. Either way, if there is a prejudicial value to any of the inadmissible underlying facts or data, the jurors would likely take note of that and give the evidence less weight. In addition, a jury instruction, at the request of the opposing party, would likely be issued in order to inform the jury of the limited purpose of such testimony.

B. Potential for "Battle of the Experts" and a Trial Within a Trial

Any time an expert is retained on one side of a lawsuit, it is almost automatic that the other side will retain its own expert to rebut that expert's testimony. When you have both sides arguing over whose expert is correct, this can lead to a "battle of the experts." While often it is thought that this takes away from the ultimate issues of the case (because the cause of suicide is such an important and essential element), in a wrongful death case, a "battle of the experts" draws more attention to an extremely important issue. The element of causation is necessary in deciding the ultimate issue of whether to hold the defendant liable in a wrongful death action.[221] Having both sides present expert testimony on the issue will allow the jurors to decide which expert they find to be more reliable and which expert testimony they wish to give more weight to. If there was no expert testimony offered regarding the cause of a teenager's suicide by either side, the jurors would likely fall back on their own experiences in determining the cause of suicide, which can be dangerous due to the fact that teenagers act and react to situations differently than adults or the average juror. As such, the jurors will be able to reach more reasoned and sound determinations as to the cause of the teenager's suicide when they are informed by experts of that cause, and especially when experts are offered on both sides. Thus, any "battle of the experts" concern would hold little weight in the case of suicide causation experts and wrongful death lawsuits, since the issue of causation is not only necessary, but is one that makes or breaks a wrongful death claim.

C. The Jury Could Be Swayed by an Expert's Testimony

It is often thought that when an expert testifies, a juror automatically believes that testimony and relies on it in making his or her decision.[222] Studies have indicated that jurors often give expert testimony a great deal of weight merely because it was allowed in the courtroom by a judge.[223] One study found that "[w]hen the judge excluded the proffered scientific evidence, jurors found that evidence to be of lower quality (and less persuasive) than when the evidence had been admitted."[224] The study concluded that this was in large part because "jurors operate

221. *Majitech*, 906 N.E.2d at 717-18.

222. Shari Seidman Diamond, *Beyond Fantasy and Nightmare: A Portrait of the Jury*, 54 BUFF. L. REV. 717, 719 (2006).

223. *See generally* N.J. Schweitzer & Michael J. Saks, *The Gatekeeper Effect: The Impact of Judges' Admissibility Decisions on the Persuasiveness of Expert Testimony*, 15 PSYCHOLOGY, PUB. POL. & LAW 1 (2009), *available at* http://www.iapsych.com/iqmr/schweitzer2009.pdf (explaining that jurors may not be critical of scientific evidence used at trial).

224. *Id.* at 11.

under the assumption that judges review scientific evidence (perhaps all evidence) before its presentation at the trial."[225] Because of this assumption, "jurors seem to be less critical of scientific evidence used in trials and are more persuaded by it."[226]

While this can be dangerous, assuming the trial court judge does his job properly and allows only expert testimony where that testimony has met all the rigorous requirements of the Federal Rules of Evidence and case law, this should not pose a problem. If the expert is testifying to legitimate scientific and psychological information and studies, the juror will not be affording undue weight to that testimony as it is reliable on its own. Moreover, in most cases where one party presents an expert, the other side will present an expert as well. In such a situation, the juror will ultimately have to decide which expert's reasoning and theory is more reliable, even if they find both experts to be reliable and give both undue weight. In addition, if both sides do not present expert testimony, the expert who does testify will be subject to cross-examination. As such, even if the other side does not bring its own expert, it can cross-examine the expert in order to point out any weaknesses, faulty assumptions, or misguided opinions that the expert offers. Therefore, due to the necessity of suicide causation experts in wrongful death cases involving teenage suicide, any potential undue weight that a juror might give an expert is overcome by the fact that the expert was properly allowed to testify, the other side will likely offer its own expert, and, in the event that the other side does not, the expert is always subject to rigorous cross-examination.

D. Increase in Wrongful Death Cases

If expert testimony is increasingly offered in wrongful death cases where a teenager commits suicide, and if the plaintiffs bringing such cases are successful, it is extremely likely that more of these cases will be filed. In the past, suicide wrongful death cases have not been prevalent due to the legal community's perception of suicide. Suicide was historically viewed as a felony, later as a superseding cause, and only in recent years have courts allowed a defendant to be held liable for actions or inactions that cause another to commit suicide.[227] Today, such a willingness to impose liability has only expanded to some jurisdictions and is not the majority view yet. However, as the legal trend seems to be moving away from never allowing liability in suicide cases to allowing liability where causation can be proven with reasonable certainty, it is possible and likely that other jurisdictions will

225. *Id.* at 12.
226. *Id.*
227. *See supra* notes 32-40 and accompanying text.

continue to move in this direction. As these two factors occur—an increased acceptance of jurisdictions to impose liability on defendants for causing another person's suicide and the success of suicide causation experts in proving or disproving a cause of suicide—it is inevitable that more attorneys will be willing to litigate such cases and, therefore, more teenage suicide wrongful death cases will be filed. In addition, as the number of teenage suicides unfortunately seems to be increasing—which some have attributed to the expansion of the media and internet—there will be more of these cases to litigate.[228]

VI. CONCLUSION

Suicide causation experts in teenage suicide wrongful death actions will not only assist the trier of fact, but they are necessary in assisting the trier of fact. Due to the complexities regarding a teenager's psychological and neurological characteristics, which heavily affect the teen's decision-making process, a jury composed of jurors all over the age of eighteen and with an average education level of high school would not be able to appreciate these unique complexities. In order to ensure a fairer trial and avoid jurors making decisions based on their own experiences that are not in line with the experience of the teenage decedent, suicide causation experts will be a necessity in teenage suicide wrongful death cases. In order for a jury to fully understand the process a teenager goes through in making a decision, in this case making a decision to take his or her own life, jurors must understand the unique psychological issues that face teenagers and the unique neurological issues that cause teenagers to be more impulsive than adults. Without suicide causation experts assisting the trier of facts in deciding whether a defendant's actions or inactions caused the teenager to commit suicide, a grave injustice will be done to the defendant, the plaintiff, or both.

228. As these types of cases become more prevalent, it is also likely that attorneys will become more creative in who they sue. In any case where someone dies as a result of another's actions, especially a teenager, there is a lot of money at stake for the person pursing that case. However, an individual has relatively little money to give in the event he or she loses a case, compared to the much deeper pockets of a business or a public entity. For that reason, attorneys might be reluctant to take cases unless they can figure out a way to hold a "deeper pocket" liable for the suicide of the teenager.