CUSTODY OUTCOMES FOR PROTECTIVE PARENTS

IN CASES WITH CHILD SEXUAL ABUSE

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A Thesis

Presented to the

Faculty of

California State University,

San Bernardino

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In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

in

Psychology:

General-Experimental

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by

Nancy Marie Stuebner

September 2011

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ABSTRACT

Examination of the child custody process reveals numerous ways in which custody outcomes put children at risk for abuse. While it is expected that custody will be granted to the parent best able to care for and protect the child, some literature suggests that mothers may be penalized for their attempts to protect their children from fathers' abuse during a custody proceeding. The purpose of this study was to examine unreasonable factors that may lead to an unexpected maternal custody loss and result in a non-protective custody outcome including labeling mother with a mental health condition, Parental Alienation Syndrome (PAS) or Alienator, and presence of child sexual abuse. The study is part of a larger ongoing study using a 101-item self-report questionnaire completed by self-identified *protective parents* contacting California Protective Parent Association, California Now and Mothers of Lost Children websites. Sequential logistic regression was employed to examine the relationship between custody outcome and eleven predictor variables. Several hypotheses were posed including the expectation that the presence of child sexual abuse would result in custody outcomes that were not protective of the child. Results revealed

inappropriate labeling of mothers as PAS or Alienator. In

addition, a pattern suggesting court professionals may

minimize mothers' stress reactions likely to be associated

with mothers' current situation, and instead assign more

serious mental illness labels during the custody process

was revealed. Based on the findings of the study, there

appears to be a need for guidelines for improving the

custody process and outcomes for victims of abuse, making

further research in this area imperative.

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CHAPTER ONE

LITERATURE REVIEW

Every year, over 58,000 children of divorce in the
United States are forced into unsupervised contact with
parents who are physically or sexually abusive, according
to some estimates (The Leadership Council, 2008). Because
unsupervised contact continues to occur until the child
turns 18, an estimated 500,000 children may be affected by
parental violence and abuse at any given point in time.
This is not only a crisis in our family court system, but
is also contributing to a public health crises (The
Leadership Council, 2008). It seems unfathomable that the
judicial system would place children in the hands of their
abusers; however, a close look at the child custody
decision process reveals numerous ways in which these cases
can go wrong. The family courts are responsible for
considering a number of factors when deciding child custody
and it is expected that the family courts will grant
custody to the parent that is better able to care for and
protect the child. There are reasonable factors that can
lead to a loss of custody. For example, mental illness,
lack of resources or homelessness and substance or alcohol

abuse are important factors that influence child custody

(Hollingsworth, 2007; Larrieu, Heller, Smyke, & Zeanah,

2008; Sagatun-Edwards & Saylor, 2000; Sagatun-Edwards,

Saylor, & Shifflett, 1995). These factors can impair

parenting ability and should be considered for the safety

of the child. However, the literature has suggested some

counter-intuitive, unreasonable factors that may also lead

to loss of custody, for mothers in particular, and also put

children at risk for harm. For example, participation in

custody mediation should not be a factor that leads to

maternal custody loss for mothers attempting to protect

their children from abuse, nor should being a victim of

domestic violence; however, these factors can work against

mothers and can lead to their losing custody and result in

outcomes that do not protect children (Bancroft &

Silverman, 2002; Johnson, Saccuzzo, & Koen, 2005; Meier,

2002).

<div align="center">Reasonable Factors Leading to
Maternal Custody Loss</div>

Overall, a number of factors can lead to loss of

custody and low likelihood of reunification of mothers with

their children, including the mothers own maltreatment of

the child, the amount of resources available to the mother, homelessness, mental illness, substance abuse and the presence of domestic violence (Hollingsworth, 2007; Larrieu, Heller, Smyke, & Zeanah, 2008).

Larrieu et al (2008) examined seven maternal risk factors shown to be important in determining custody in their study of custody loss for maltreating mothers whose children were placed in foster care. These risk factors included substance abuse, psychiatric history, conviction history, education, child abuse history (maltreatment of mother when a child), depressive symptomology and degree of partner violence. The aim of the study was to examine whether specific risk factors are predictive of custody loss or if it is the sheer number of risk factors present. Specific risk factors were examined comparing reunited mothers to those who lost custody. Only depressive symptomology was significantly different for these groups with mothers who lost custody scoring higher in depression at the intake assessment. When the authors analyzed the number of risk factors associated with custody loss, the loss of custody group had more risk factors than reunited mothers but the authors noted the mean difference between groups was, on average, less than one risk factor. The

authors suggested that in extreme cases where the child has been removed from the mother, specific risk factors may not be as important as the overall number of risk factors present when predicting loss of custody.

Maternal psychiatric history can be an important factor in custody decisions (Larrieu et al., 2008). A study by Hollingsworth (2004) examined individual and environmental factors in loss of custody for women with severe, persistent mental illness. A comparison of mothers who never lost custody to those who had revealed that woman with longer durations of mental illness and more hospitalizations were more likely to lose custody. In addition, custody loss was more likely for women who were unmarried, had income at or below the poverty level, had large numbers of children and less social support in terms of both material aid and child care (Hollingsworth, 2004).

The type of mental illness can also be an important factor in the placement of a child. In their examination of custody decisions for infants with mothers in a psychiatric hospital, Seneviratne, Conroy and Marks (2003) found that the discharge outcome, whether mother and infant were discharged together or separately, was associated with the type of diagnosis. Mothers with depression or substance

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abuse were more likely to be discharged with their infants than mothers with schizophrenia, affective psychosis, and personality disorders. In addition, first-time mothers were more likely to be discharged with their infants compared to mothers who had other children (Seneviratne et al., 2003).

Although the Senevirante et al. study found mothers with substance abuse more likely to maintain custody when compared to mothers with more serious mental health issues, substance abuse itself can lead to custody loss (Sagatun-Edwards & Saylor, 2000). Hospitals conduct neonatal toxicology screens when there is suspected maternal drug use with positive results reported to child protective services. Court intervention may be requested by the child protective agency to prevent release of the child to the parent while an investigation is conducted (Sagatun-Edwards & Saylor, 2000). Temporary custody may be given to the court in cases where the investigation indicates risk to the child if reunited with the parent and serious cases may result in termination of parental rights (Sagatun-Edwards, Saylor, & Shifflett, 1995). In cases where the child is removed, courts are required to make efforts for reunification. During this period various programs are court ordered for the parent to complete in order to

address problems that led to removal of the child. Court review hearings occur every six months to evaluate parent participation in these programs. Parents successfully completing these programs are reunited with their children while parents who do not comply face possible termination of parental rights (Sagatun-Edwards & Saylor, 2000). In their study of factors that determine reunification during this period, Sagatun-Edwards & Saylor reported that mothers who did not have a criminal history, attended court hearings, completed parenting classes, and had clean drug tests resulted in favorable outcomes.

Although these are reasonable factors that may lead to maternal custody loss, the focus of this study was to examine counter-intuitive, unreasonable, factors that are not expected to lead to the loss of custody for mothers.

Domestic Violence in Family Court

As noted by Larrieu et al (2008) the presence of domestic violence is also a factor that can lead to maternal custody loss, however; this factor is one that is particularly complex. The way in which family courts process cases involving domestic violence has undergone many changes over the years. A recent review of how each

state handles such cases reveals that 46 out of 50 states, and Washington D.C., take one of two approaches including a "rebuttable presumption standard" or a "factor test" approach, with the remaining four states not including domestic violence in their custody decisions (Levin & Mills, 2003). Ten states use the *rebuttable presumption* standard whereby the best interest of the child is assumed to be served by giving custody to the nonviolent parent but allows for the abusive parent to rebut this presumption (Levin & Mills, 2003). There are varying degrees of proof needed to rebut the presumption of giving custody to the nonabusive parent, but typically it includes showing proof of having completed a treatment program for batterers, proving there is no drug or alcohol abuse as well as proving it is in the best interest of the child to allow custody to the parent found to be abusive because of a greater defect in the nonviolent parent (Levin & Mills, 2003). Thirty-four states use the *factor test* approach that requires judges to consider the history of domestic violence as a factor when determining custody. How much weight this factor has in the decision varies from state to state (Levin & Mills, 2003). Although the goal of these standards may be to to aid in a more protective process and

outcome for women and children in violent families, these goals are not always achieved. The complex dynamic of these cases can create unique challenges throughout the custody process.

For example, in the courtroom, the contrasting behavior between the victim, who is usually experiencing negative symptoms due to the violence, and the abuser, who is typically self assured and confident, may put the victim at a disadvantage in custody proceedings (Bancroft, 2002; Meier, 2002). The behaviors associated with being a victim of abuse work to undermine the credibility of the victim in the context of the courtroom (Meier, 2002). The use of a Posttraumatic Stress Disorder (PTSD) diagnosis for battered women is a fairly recent event but has been used in courts to better understand the victims' response to the violence, as well as associated behaviors that would otherwise seem abnormal (Dutton & Goodman, 1994; Meier, 2002). For example, Meier explains a case in which the racing speech, inappropriate giggling and plastic demeanor of her client was noted by a forensic psychiatrist and an expert witness on battering, but only the expert witness on battering attributed these behaviors to her traumatization. Professionals involved in the case who did not have

expertise in domestic violence had difficulty finding the client credible, but putting the client's demeanor within the context of PTSD was helpful in better understanding her behavior (Meier, 2002).

In contrast to the behaviors of the victim, the ability for the abusers to present themselves well can lead to inaccurate decisions in the courtroom (Bancroft, 2002; Meier, 2002). For example, a judge who refused to issue a protective order for a woman who was later killed by her abuser, noted that the man did not seem like the type of person who perpetrated the violence the victim had alleged (Meier, 2002). Batterers typically use a variety of tactics during the custody and mediation process including presenting a calm demeanor, directing attention to the victim's anger to discredit her, presenting themselves as the more cooperative and communicative parent as well as utilizing common misconceptions about fathers in family court such as the misconception that there is a bias against fathers receiving custody (Bancroft, 2002; Bancroft & Silverman, 2002). The contrast in behaviors exhibited by the victim and the abuser while in court can make the custody process all the more challenging for the victim of abuse.

Another factor putting abused women at a disadvantage in family courts is the "friendly parent" provision. Under this provision, family courts favor custody for the parent who is most likely to encourage contact and to share parenting (Mathews, 1999). In the context of domestic violence, this is a problem. Abused parents may have good reason to minimize or avoid contact with the abusive parent, including concerns for their own safety (Lemon, 1999; Meier, 2003). The friendly parent provision, as well as statutes favoring joint custody, have been found to undermine the effectiveness of state statutes that prohibited custody being given to an abusive parent (Morrill, Dai, Dunn, Sung, & Smith, 2005). When states had these competing statutes – those that are intentionally designed to protect victims and those that unintentionally harm them - sole physical custody was awarded to fathers more often than to mothers. The friendly parent provision can effectively penalize an abused parent who, out of concern for the safety of herself or her children, asks that visitation be denied or curtailed for an abusing parent (Morrill et al., 2005).

Mediation in Family Court

One component in deciding child custody is through the use of mediation for cases where there is a child custody dispute. Mediation is a method whereby an impartial third party works with the parents to come to an agreement regarding custody arrangements for their children (Dillon & Emery, 1994). Parents involved in mediation show higher rates of satisfaction with child custody arrangements and lower re-litigation rates compared to those without mediation, while children involved in mediation show reduced levels of child-reported psychological distress (Pearson & Thoennes, 1986; Walton, Oliver & Griffin, 1999). While this may be beneficial in cases with cooperative parents, in cases where there is domestic violence this standard can be detrimental. There is a need for a batterer to exert power and control over his or her victim (Rosenbaum & Leisring, 2003). The separation period is also a time where the abuser may be most dangerous (Jaffe, Crooks, & Poisson, 2003). Women leaving abusive relationships are at increased risk of injury and death during the initial separation period (Campbell et al., 2003; Jordan, Nietzel, Walker & Logan, 2004). This need for control coupled with the increased risk for harm during

this time makes mediation problematic. An abuser's access to the victim allows opportunity for abuse to continue. Indeed, during visitation exchanges with abusive ex-partners, women reported continued threats, abuse and noted this as an opportunity used by the batterer to continue to manipulate and control them (Jaffe, Crooks, & Poisson, 2003, Shalansky, Erickson, & Henderson, 1999). All 50 states use mediation, but they differ in whether it is optional for the parties involved, or mandatory - with or without an exclusion for those cases with domestic violence (Johnson, Saccuzzo, & Koen, 2005). A review by Johnson et al. of the state statutes found that 12 states mandate mediation and 33 allow the family court judge to decide if the divorcing couple should attend mediation. Of the states that require the judge to mandate mediation, several made special provisions for cases with domestic violence. These states allow victims to opt out or be exempt from this requirement or may prohibit mediation for all domestic violence cases (Johnson et al., 2005). In their study of mandatory mediation in 400 cases in California, Johnston et al. found problems in the detection of domestic violence (DV). California family courts mandate screening for DV and one way cases are screened is through use of a one-page

screening form (Johnston et al., 2005). Of the 400 cases studied, 252 had a screening form that did not indicate DV. However, the mediator documented DV in 37 of these cases, indicating a failure of the screening form to identify DV in 14.7% of cases. The sample for this study included 200 cases without DV (non-DV) and 200 with DV. The presence of DV was determined by either documentation in the file, or detection by the mediator. The 200 DV cases included 123 cases with a "yes" response to DV allegations on the screening form (70 of which had a temporary restraining order(TRO)), 13 cases with a "no" response to DV but a "yes" response to TRO, and 27 cases with a prior TRO or actual restraining order(RO) in the file. The 37 cases previously mentioned that did not have indicators of DV on the screening form but were documented by the mediator were also included. Of the 123 cases where a clear DV allegation was found on the screening form, the mediators acknowledged DV in only 53 of these cases. In 83 cases where DV was indicated with a TRO on the form, mediators reported DV in only 41 of these cases. And in 70 cases where the screening form included both a clear allegation of DV and a TRO, the mediator reported DV in only 34 cases. The authors concluded that mediation is not effective in cases where

there is a custody dispute and domestic violence. Mediators often fail to acknowledge or report domestic violence even when clear indicators are present. When domestic violence is acknowledged, mediation recommendations do not ensure adequate protection for the victims (Johnson et al., 2005).

It seems reasonable that differences would be found when comparing custody recommendations between cases with domestic violence and those without; however, this does not seem to be the case. In the Johnson et al. study, joint legal custody was recommended in 91.4% of domestic violence cases and in 90% of cases without violence. Sole legal custody recommendations were rare and occurred less often in domestic violence cases (4.9%) than non-violent cases (6.9%). Primary physical custody, which was defined as one parent having more that 75% physical custody, was recommended for the mother in 48.8% of cases with domestic violence compared to 47.8% of case without violence. Mediators recommended primary physical custody for fathers with domestic violence more often than for fathers without domestic violence (9.7% vs. 8.9%). When recommending joint physical custody, there were no differences in recommendations when comparing the two groups. In 63 cases where the father was clearly the perpetrator of abuse, 61

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of these cases allowed at least some physical custody ranging from 10% or less time in 18 of these cases to 40% or more time for 8 cases.

Mediator recommendations that did not provide protection for mothers or children were also found when the Arizona Coalition Against Domestic Violence conducted the Battered Mothers' Testimony Project (BMTP) in 2003. This project collected data from 57 mothers who had contested custody hearings that also included domestic violence or child abuse. Results of the BMTP revealed that mediators asked mothers to attend mediation 69% of the time, even when the mediators knew abuse was present, a request that is contrary to an Arizona state statute. Although documentation of abuse history was given to mediators in 48% of cases, this documentation made it more likely for the abuser to receive custody. For those cases with a documented history of violence, sole custody was given to fathers in 27% of cases versus 9% of cases for mothers. In terms of legal custody, no mothers received sole legal custody compared to fathers receiving it 28% of the time. Documentation of child abuse or negative effects of the father's behavior on the children also did little to influence mediators. In every case that was awarded joint

physical custody, documentation of child abuse was provided to the mediator, but did not have an impact on the mediator's decision (Arizona Coalition Against Domestic Violence, 2003).

Not surprisingly, children continued to experience abuse after separation. Fathers continued to physically abuse their children in 63% of cases post-separation. In addition, child sexual abuse also occurred post-separation with 12% of cases reporting continuing sexual harm against the child (Arizona Coalition Against Domestic Violence, 2003). Although mediators have the opportunity and responsibility to provide recommendations that are protective for both adult and child victims of abuse, in these cases they clearly did not play a protective role in the custody process. Even when mothers attempted to protect their child from future harm by the abuser by providing documentation of child abuse, mediators did not give the necessary attention to this vital information and children continued to be both physically and sexually abused.

Custody Evaluations in Family Court

Examination of the recommendations of custody evaluators during custody arrangements were conducted by

Logan, Walker, Jordan & Horvath (2002). Extending beyond just the custody evaluator recommendations, this study also investigated the custody outcomes for these cases per the judges' rulings. Surprisingly, custody evaluators recommended joint custody with equal visitation at a higher rate for cases with domestic violence (15%) versus non-violent cases (11%). More reasonable recommendations occurred when considering sole and primary custody. Mothers were recommended sole or primary custody at a higher rate in cases with domestic violence than without (68% versus 53%), and evaluators recommended fathers receive sole or primary custody less often in cases with domestic violence than without (13% versus 32%). Other custody recommendations (e.g. living with other relatives) were recommended in 4% of non-violent cases and in 5% of violent cases.

As with custody recommendations, some visitation recommendations were also surprising. For example, weekly visitation for the nonresidential parent was recommended at a higher rate for cases with domestic violence than without (26 % versus 23%), while reasonable/liberal visitation occurred at similar rates for the violent versus non-violent cases (9% vs. 13%). Visitation orders seemed more

reasonable in light of the family DV history, with every other weekend and limited visitation for 24% of non-violent cases and 30% of violent cases and equal residential visitation only occurring for the non-violent cases.

The judges' rulings in the award of custody also seemed sometimes questionable. For example, whereas evaluators recommended joint custody with equal visitation at a higher rate for violent cases (15% vs 11%), the judges followed this counter-intuitive recommendation but with an even greater disparity between the two groups. Joint custody with equal visitation occurred for 13% of violent cases and 3% of non-violent cases. More reasonable rulings occurred for sole and primary custody with mothers receiving such rulings in 65% of violent and 44% of non-violent cases. Sole and primary custody for fathers was ruled in 20% of violent and 47% of non-violent cases.

In terms of visitation rulings, weekly visitation for the nonresidential parent was given at a higher rate for violent (45%) versus non-violent cases (31%). Liberal visitation was similar for the violent versus non-violent cases (18% and 19%) as were orders for visits every other weekend (9% violent and 10% non-violent). Limited visitation was ordered in only 3% of violent cases, versus

10% in non-violent cases. Supervised visitation was ordered at a very low rate, and was 3% for both groups (Logan et al., 2002).

Despite some of the surprising recommendations by custody evaluators in domestic violence cases in the Logan et al. study, overall, these recommendations may sometimes be reasonable in light of other factors that were taken into consideration during the evaluation. For example, the authors noted other factors evaluators considered included substance abuse, mental illness, parenting ability, and child maltreatment, among other things (Logan et al., 2002). However, the process by which custody evaluators gather and interpret information to make recommendations can be an area of concern, particularly in cases of child sexual abuse. For example, Bow (2006) noted "significant concerns" that were raised when investigating the evaluation procedures used by custody evaluators in cases involving child sexual abuse. Using a national survey of 84 psychologists, Bow, Quinnell, Zaroff, & Assemany (2002) found infrequent use of formal and standardized protocols or guidelines used for alleged victims and perpetrators. In addition, instruments used with alleged perpetrators were used inappropriately and infrequently. Only 36% of

practitioners reported using an established protocol, model or guideline during evaluations and of that, 37% developed their own. Given the serious nature of the abuse and the profound influence custody evaluators have in custody decisions, it is surprising and unsettling that such a low number of evaluators adhere to the established procedures and protocols for these cases.

As with mediators, evaluators have the opportunity and responsibility to provide recommendations that are protective of adult and child victims of abuse. However, as made evident in the Bow, Quinnell, Zaroff, & Assemany (2002) study, it is likely that children are not being protected and are at continued risk of child sexual abuse even after evaluations have been conducted. This problem coupled with the findings from the Logan et al. study may lead to outcomes that fail to protect the child victims. For example, joint custody and weekly visitations with the non-custodial parent were recommended at a higher rate in cases where domestic violence was present, although these are cases where child abuse is more likely to occur (Appel & Holden, 1998; Kellogg & Menard, 2003).

Misconceptions and False Beliefs
in Family Court

Additional problems that add to the complexity of custody cases are the many misconceptions associated with them. In a study by Jaffe, Crooks, & Poisson (2003), the experience of 62 women and 95 children exposed to domestic violence and involved in a custody dispute were directly compared to common misconceptions surrounding child custody proceedings when violence is an issue. Participants included women who had utilized family court services after leaving an abusive relationship or were recruited through domestic violence service providers.

One misconception is that domestic violence is a rare issue in child custody disputes, when, in fact, Jaffe et al. (2003) found that a majority of the women in their study suffered many types of abuse including physical, psychological, emotional as well as financial. Sixty percent of the women reported verbal abuse that also involved emotional or psychological abuse with about half of them reporting an event that was physically abusive. Several women also reported high levels of sexual abuse and noted marital rape as a common occurrence.

The related misconception that violence ends after the victim leaves the relationship is also addressed in the Jaffe et al. study. Most women in the study experienced abuse following separation and reported the abuse to be comparable to that experienced during the marriage. In addition, women reported abuse through custody conflict whereby abusive partners, some who had little interest in the children prior to separation, filed for custody perhaps as a means to continue to control their ex-partner. Many women also reported access to the children as a way in which the former spouse was able to continue the abuse of the mother, with 22% reporting their former partners as verbally abusive and harassing during the visitation exchanges (Jaffe et al., 2003).

An in depth analysis of the experience of battered women forced into visitation arrangements with abusive ex-partners was conducted by Shalansky, Ericksen, & Henderson (1999). The authors report that after separation, all of the women continued to fear for their safety and the safety of their children to the point of experiencing high levels of physical and psychological distress. In addition, all women reported they felt that their abusers used the visitation times as an opportunity to continue to

manipulate and control them (Shalansky et al., 1999).

Hotton (2003) also found that separation does not end the

violence; 40% of women who left a violent relationship

continued to experience violence after separation with 24%

reporting an increase in severity. Even more serious are

the findings that women who are separated from abusers are

at increased risk for homicide (Campbell et al., 2003;

Hotton, 2003; Johnson & Hotton, 2003). The false belief

that separation ends the violence still persists in spite

of these extensive findings to the contrary.

Two false beliefs that appear to bias court decisions

in custody cases is the notion that abuse allegations that

arise during custody litigation are often false allegations

made in an attempt to influence the decision to favor one

parent over another for custody, and further, that mothers

are more likely to make such false allegations (Brown et

al., 2001; Dallam & Silberg, 2006; Jaffe et al., 2003).

Thoennes and Tjaden (1990) examined data from eight courts

located throughout the United States to provide information

about the incidence and validity of child sexual abuse

allegations that arise during custody and visitation

disputes. They reported that in the over 9,000 families

with a custody dispute, less than 2% involved allegations

of sexual abuse. The authors noted that the likelihood of an abuse allegation being false was the same for contested cases as it was for the general population. In addition, the authors found that mothers were not more likely than fathers to make false allegations of abuse. In a smaller study, McIntosh and Prinz (1993) had similar findings. Using data from 603 family court cases with divorcing and post-divorce families with children, allegations of any type of abuse were found in 3% of both contested and non-contested cases with less than 1% of these cases having allegations of child sexual abuse. Evaluation of 200 family court records in Australia, which included allegations of child abuse in the context of marital breakdown revealed only 9% of the cases to have false allegations. In addition, allegations were not made only by mothers, but rather were made by mothers and fathers as well as others (Brown et al., 2001). A subsequent study again found false allegations to be very low with 11% of cases having false allegations with fathers making false allegations 55% of the time and mothers 45% (Brown, 2003). In line with findings from the Brown studies, Johnston, Lee, Olesen, & Walters (2005) found that allegations made by mothers and fathers were nearly equal in their study of 120 divorced

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families, further dispelling the false belief that mothers are more likely to make allegations of abuse against fathers. Although Trocme & Bala (2005) did find the rate of intentionally fabricated allegations to be somewhat higher in cases where a custody dispute was present (4% versus 12%), this study found noncustodial parents, usually fathers, most frequently made reports that were intentionally false and were responsible for 43% of these false reports. In addition, custodial parents, usually mothers, and children were the least likely to fabricate reports of abuse (Trocme & Bala, 2005).

Parental Alienation Syndrome in Family Courts

Parental Alienation Syndrome (PAS) is a concept that has contributed to biases in the courts handling of abuse allegations in custody disputes (Dallam, 1998; Hoult, 2006; Meier,2009) Richard Gardner introduced the concept of PAS to family courts in the 1980's in a series of self-published books without peer review (Dallam, 1998; Hoult, 2006). He claimed that PAS was a psychological disturbance resulting from child custody litigation that induced delusional accusations by one parent (usually the mother), who then undertook a variety of tactics to "program" the

child to "hate" the other parent (usually the father) (Gardner, 1985). Gardner further claimed that the "programming" parent and the "alienated" child would make false claims of child sexual abuse and he warned professionals working with children to be particularly suspicious of mother's and children's abuse accusations when parents were involved in a custody dispute. Gardner's recommended treatment for PAS included immediate removal of the child from the alienating parent (the mother), and placement with the alienated parent (the father). No contact with the mother was recommended for the first two months, and when contact was allowed, it was to be closely monitored so as not to allow the "disorder" to recur (Gardner, 1985). Use of PAS in the courtroom has created considerable obstacles for those attempting to protect children from child sexual abuse. The harder a parent tries to protect their child from abuse, the more their efforts are taken as evidence against them as having PAS. As Attorney Richard Ducote (2002) opines, ". . . 'PAS' is the criminal defense attorney's dream, since the greater the proof of the crime, the greater the proof of the defense" (p. 141). Case in point for this statement can be found in the results from a study by Faller & Devoe (1995) which

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found parents attempting to protect their children from child sexual abuse more likely to suffer sanctions from the court. Furthermore, both the existence of medical evidence of abuse and frequency and severity of sexual abuse were significantly positively related to court sanctions against the protective parent.

Although Parental Alienation Syndrome has been supported by some professionals who have attempted to expand or reformulate the syndrome (Cartwright, 1993; Kelley & Johnston, 2001) PAS has been contested by a large and wide range of researchers and other professionals. In a well researched critique of PAS, Faller (1998) contends that PAS is not supported by research. For example, in formulating PAS, Gardner claimed that a large number of false allegations of child sexual abuse occur during custody litigation, however, research does not support this as the findings by Thoennes, Pearson, and Tjaden (1988) and Thoennes and Tjaden (1990)(discussed above) directly opposed this assertion. Recent research continues to directly refute assertions Gardner made in creating PAS. For example, Trocme and Bala (2005) found higher rates of intentionally fabricated allegations in cases where custody disputes were present, but false allegations were made most

frequently by fathers, not mothers or children. In addition, of the 109 cases involving custody disputes, which also had intentional false allegations of abuse, there were only two cases in which false allegations were made against the noncustodial father and even in these cases it was unclear as to who made the false allegation (Trocme & Bala, 2005). Importantly, no children in this study made a false allegation of sexual abuse. These findings appear to question Gardner's hypothesis that false allegations of child sexual abuse primarily made by mothers or children against noncustodial fathers are some tactic for the mother to gain custody.

The consensus among the scientific community appear to be that PAS lacks scientific evidence (Meier, 2009), and the National Council of Juvenile and Family Court Judges (NCJFCJ) have given specific guidelines regarding the use of PAS in family court proceeding opining that it is unproven and should not be used (NCJFCJ, 2008). PAS has been ruled inadmissible in court due to its failure to meet tests of admissibility under both the Frye and Daubert standards (Hoult, 2006; NCJFCJ, 2008; Zirogiannis, 2001). Unfortunately, despite this widespread rejection, PAS has found its way into the family court system by influencing

the thinking of evaluators, mediators, attorney and judges
and has played a central role in decisions that fail to
protect abused children in a number of custody cases
(Hoult, 2006).

Protective Parents in Family Court

A protective parent is one who enters the judicial and
child protection service systems to protect their child
from continuing abuse from their current or former spouse
or former partner (Neustein & Goetting, 1999). Bias against
parents attempting to protect their children in family
courts is a serious problem, including cases where child
sexual abuse is an issue. Faller and Devoe (1995) found
that many parents in their study attempting to protect
their child from sexual abuse were punished by the courts.
This was done through various sanctions by the court
including: changing custody from the accusing to the
accused parent; reducing or requiring supervised visitation
of the accusing parent; prohibiting the accusing parent
from seeking either medical or mental care for the child
victim or from making referrals to protective services or
police; and placing the accusing parent in jail (Faller &
Devoe, 1995). The court applied sanctions in 18.6% of cases

with 6% of cases having multiple sanctions. Frequency and severity of sexual abuse were significantly positively related to sanctions against protective parents with the more severe abuse cases more likely to involve sanctions against the protective parent. Cases with medical evidence were also more likely to involve sanctions against the parent attempting to protect their child (Faller & Devoe, 1995). These actions by the court provide strong evidence that PAS may, indeed, be influencing child custody decisions.

Court bias against protective parents has been found in other studies. In their investigation of 300 cases involving protective parents, Neustein & Goetting (1999) found that in 20% of cases an allegedly sexually abusive parent was given primary physical and legal custody of the child, in 70% of cases unsupervised visitation with the allegedly sexually abusive parent was allowed or joint custody was ordered between the allegedly abusive and protective parent, and in 10% of cases primary physical and legal custody was given to the protective parent with supervised visitation to the abusive parent (Neustein & Goetting, 1999).

According to these studies, mothers who attempt to protect their children from child sexual abuse not only fail to do so, but are sometimes punished by the courts for even raising the issue of abuse. The purpose of this study is to examine such cases and answer some important questions. While controlling for reasonable factors expected to lead to maternal custody loss, the aim of the current study is to examine unreasonable factors that are not expected to lead to maternal custody loss but results in a custody outcome that does not protect the child from continued abuse. The hypotheses are outlined as follows:

First, we expect that the higher the number of children, the more likely a custody outcome that does not protect the child will result. Second, we expect that little financial resources will more likely result in a non-protective outcome. Third, the presence of domestic violence is expected to lead to a non-protective outcome. Although domestic violence is an unreasonable factor leading to custody loss, this circumstance puts the mother at a great disadvantage and has shown to lead to custody loss. Fourth, we expect that mothers with mental health condition labels will more likely result in a non-protective outcome. Fifth, the presence of maternal

substance/alcohol abuse is expected to result in a non-protective outcome. Sixth, we expect that a maternal criminal history will more likely lead to a non-protective outcome. Seventh, it is expected that participation in custody mediation will lead to a custody outcome that does not protect the child. Eighth, participation in custody evaluations will also more likely lead to a non-protective outcome. Ninth, we expect that mothers labeled with mental health conditions by court-related professionals will result in a non-protective outcome. Tenth, labeling mothers as PAS or as an Alienator by court-related professionals will also lead to a non-protective outcome. Finally, we expect that the presence of child sexual abuse (CSA) will lead to a non-protective outcome; that cases with CSA will be more likely than cases without CSA to result in a custody outcome that does not protect the child.

CHAPTER TWO

METHOD

This study is part of a larger ongoing study investigating the experiences of the protective mother. The study utilized a 101-item self-report questionnaire which included questions about allegations of abuse and types of abuse alleged, mental illness, substance abuse, criminal conduct, occurrence and results of psychological evaluations, court mediation, custody evaluations, labeling by court-professionals, the custody process and custody outcome. The questionnaire was distributed to a sample of convenience of individuals self-identified as *protective parents* who contacted the California Protective Parents Association (CPPA), California NOW, and The Mothers of Lost Children (MOLC). These organizations are designed to provide resources, information and assistance for mothers in family court who are struggling to protect their children. Questionnaires were also distributed at annual conferences regarding child abuse and domestic violence including the Battered Mothers Conference in New York, the Northern California Child Sexual Abuse Awareness Conference, and the International Conference on Violence,

Abuse and Trauma in San Diego. The current study included

159 mothers. Twenty-eight percent (N = 44) of mothers

reported having to file for bankruptcy as a result of

litigation costs. There were a total of 262 children, 162

girls and 100 boys with a large percentage of relatively

young children. Sixty-four percent of girls (N = 103) and

62% (N = 62) of boys were 5 years old or younger (see

Table 1).

Table 1

Number, Ages, and Gender of Children

	Boys		Girls	
	N	(%)	N	(%)
Five and younger	62	(62)	103	(64)
Six to ten	28	(28)	38	(23)
Eleven to fifteen	8	(8)	19	(12)
Sixteen and older	2	(2)	2	(1)
Total	100		162	

The survey asked participants to indicate whether any

of five types of child abuse were present in their case:

physical abuse, sexual abuse, verbal/emotional abuse, child

neglect and other abuse. All types of abuse except "other"

were included in the current study. Table 2 shows the
frequencies for each type of abuse.

Table 2

Frequencies for Child Abuse

Type of Abuse	Yes		No	
	N	(%)	N	(%)
Sexual	119	(75)	40	(25)
Physical	122	(77)	37	(23)
Verbal/Emotional	137	(86)	22	(14)
Neglect	100	(63)	59	(37)

Note. The percent of abuse reported is greater than 100
because many cases include more than one type of abuse.

Participants also indicated specific factors related
to abuse including who first made allegations of abuse and
who the alleged abuser was. In addition, participants
indicated whether their child identified the other parent
as the perpetrator and whether medical/physical evidence or
other corroborating evidence was present. For the purpose
of this study, only cases where mother was the respondent
and answered "yes" to "Did the child positively identify
the other parent as the perpetrator?", "Was there
medical/physical evidence of abuse?", and/or "Was there
other corroborating evidence of abuse?" were included. The

child abuse variable was represented by the question about child sexual abuse. This variable was a dichotomized variable such that cases with CSA also contain physical, verbal/emotional abuse and neglect. Cases that did not have CSA included cases with physical abuse, verbal/emotional abuse and neglect.

Participants could respond "yes" or "no" to a number of questions. For the current study, "Have you ever had to file bankruptcy as a result of litigation costs?" was used for the "bankruptcy" variable and was used to indicate a measure of financial resources. "Were you the victim of domestic violence perpetrated upon you by the other parent?" was the "domestic violence" question. "Do you have a history of alcohol/drug abuse?" was the "alcohol/drug abuse" question. If mothers responded "yes" to the alcohol/drug abuse question, two follow up questions were evaluated, "If so, are you clean/sober?" and "How long?" The "criminal history" question was "Do you have a criminal history?" "Did you participate in court-connected mediation regarding custody?" was the "mediation" question and "Did you participate in court-connected evaluations regarding custody?" was the "evaluation" question. Participants were also asked "What were the ages of the child(ren) of this

relationship at the time of separation?" and could indicate the ages under "Girls ages" and "Boys ages." For mental illness, participants were asked "Please mark all labels you received from mental health professionals prior to separation" and filled in a bubble on the survey to indicate schizophrenia, bi-polar disorder, borderline personality, depression, anxiety, post-traumatic stress disorder and other. For the purpose of this study, all labels were evaluated except "other." For the logistic regression, all six types of mental health conditions were collapsed to represent an "any mental health condition label" variable. For chi square analyses, mental health conditions were divided into two variables, "severe mental health condition label" which included schizophrenia, bi-polar and borderline and "moderate mental health condition label" which included depression, anxiety, and PTSD. Participants were also asked to fill in a bubble in response to "Did any court-related professional label you with any of the following": Parental Alienation Syndrome, Alienator, Folie a deux, Munchhausen's Syndrome by Proxy, delusional, schizophrenia, bi-polar disorder, borderline personality, depression, anxiety, post-traumatic stress disorder or other rare/unscientific label. Only Parental

Alienation Syndrome, Alienator, schizophrenia, bi-polar disorder, borderline personality, depression, anxiety, and post-traumatic stress disorder were included for evaluation in the current study. For the logistic regression analysis, PAS and Alienator were collapsed into one variable, "PAS/Alienator" and all six types of mental health conditions were collapsed into one variable "any mental health condition label." For chi square analyses, mental health conditions were divided into two variables, "severe mental health condition labels" which included schizophrenia, bi-polar and borderline and "moderate mental health condition labels" which included depression, anxiety, and PTSD.

For custody outcome, participants indicated one of seven custody outcomes; Primary custody with me and supervised visitation with other parent, primary custody with me and unsupervised visitation with other parent, joint custody, full custody to the other parent, I am on supervised visitation, I have no contact with my child(ren), and other. Because of the high rate of overlap for custody outcomes, this variable was collapsed and divided into three categories. Cases where mother was awarded primary custody and father had either supervised or

unsupervised visitation was coded as "mother custody" category. Cases where full custody was awarded to father, mother was on supervised visitation or where mother had no contact were coded as the "father custody" category. All cases indicating joint custody were included in the "joint custody" category. In addition, "other" custody was included and evaluated and coded into the appropriate category based on participants' comments explaining "other". Cases that could not be clearly classified into an appropriate category were not included in the analysis. Also, if the participant indicated multiple outcomes that crossed over categories, these cases were not included in the analysis. Table 3 shows the frequency for each type of custody outcome as well as the total number for each custody category.

To evaluate the change in custody from mother to father prior to and after court proceedings, the question "Estimate the percentage of caretaking time by each caretaker before the separation" was included as a "prior caretaker" variable. For this question, participants indicated a percentage of time for mother, father, relative and other. The percentage of time for mother was divided into three categories. Mothers with 90% to 100% caretaking

time were classified as "mother prior caretaker", mothers with 26% to 89% caretaking time were classified as "joint caretaker time" and mothers with less than 25% caretaker time were classified as "father prior caretaker". Three levels of caretaker time were created to roughly match the three levels for the custody outcome variable in order to conduct a 3 X 3 McNemar Test. Table 4 shows the frequencies for three categories for both the full sample as well as the current subsample.

Table 3

Frequency for Each Type of Custody Outcome

Custody Outcome	Number of cases
Mother primary Father supervised visitation	11
Mother primary Father unsupervised visitation	25
Total for mother custody	36
Joint Custody	24
Total for joint custody	24
Father full custody	68
Mother supervised visitation	36
Mother has no contact	45
Total for father custody	99

Note. The father custody category includes cases where mother is on supervised visitation or has no contact. The number of outcomes is greater than the total because some cases have more than one custody outcome within this category (e.g. father has full custody and mother is on supervised visitation).

Table 4

Frequencies for Prior Caretaker Categories

Prior Caretaker Category	Full Sample N = 319	Subsample N = 155
Mother prior caretaker	248 (78%)	123 (79%)
Joint caretaker time	66 (21%)	31 (20%)
Father prior caretaker	5 (2%)	1 (1%)

Note. The subsample is less than 159 because 4 cases were missing prior caretaker percentage information. The full sample is less that 391 because 72 cases were missing prior caretaker percentage information and/or custody outcome information, or outcome could not be clearly classified.

Statistical Analysis

A logistic sequential regression was performed to examine the relationship between custody outcomes and eleven predictor variables: number of children, bankruptcy, presence of domestic violence, alcohol/drug abuse, criminal history, any mental health condition label prior to separation, any mental health condition label by court-related professionals, label of PAS/Alienator, custody mediation, custody evaluations, and child sexual abuse. Predictors were divided into four groups. The first group entered represented household variables (number of children, bankruptcy, and domestic violence). The second group represented maternal history variables (mental health

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condition labels prior to separation, alcohol/drug abuse, and criminal history). The third group entered were court professional variables (custody mediation, custody evaluation, mental health condition labeling, PAS/Alienator labeling). The fourth group was the child sexual abuse variable.

Correlations were conducted to examine the relationship between all mental health condition labels prior to separation and by court-related professionals for both severe and moderate mental health conditions. A McNemar test was conducted between severe mental health condition labels prior to separation and by court-related professionals to evaluate the change in the number of mothers labeled prior to separation and by court-related professionals. A separate McNemar test was also conducted for moderate mental health condition labels to evaluate the change in the number of mothers labeled prior to separation and by court-related professionals. Chi-square analyses were conducted between child sexual abuse and physical abuse, verbal/emotional abuse, and neglect. In addition, chi-square analyses were conducted between child sexual abuse and Parental Alienation Syndrome and Alienator labels. A 3 X 3 McNemar test was conducted between prior

caretaker time and custody outcome to evaluate the change in custody from mother to father for both the full sample and the current study subsample. Prior to data analysis, frequencies were run to identify missing values and data entry errors. After examination of number of cases missing values or data entry errors, the ratio of number of participants to number of predictors was evaluated. All analyses were performed using SPSS 17.0.

CHAPTER THREE

RESULTS

Data Screening

Prior to data analysis the following variables were examined using SPSS to identify missing values and data entry errors; bankruptcy, domestic violence, number of children, child physical abuse, sexual abuse, verbal/emotional abuse, neglect, schizophrenia, bipolar, borderline, depression, anxiety, PTSD, substance abuse, criminal history, mediation, custody evaluation, label of PAS, alienator, schizophrenia, bipolar, borderline, depression, anxiety, and PTSD, as well as primary custody with supervised visitation to father, primary custody with unsupervised visitation to father, joint custody, full custody to father, supervised visitation of mother, no contact and other custody.

The full data set contained 391 surveys. After selecting only cases where father was the perpetrator, the child positively identified the father and where mother reported supporting evidence of the abuse, 204 cases were left for analysis. Two cases had missing data for the outcome variable, 6 cases had multiple custody outcomes

that crossed over categories, three cases had missing data across several variables, and in an additional 14 cases, a custody determination could not be made. One case each had missing data for domestic violence, participation in mediation and participation in evaluations, 5 cases had missing data on bankruptcy, 5 cases for substance/alcohol abuse, and 7 cases had missing data for criminal history. After deleting these cases, complete data for 159 mothers were available for analysis resulting in a 14:1 ratio of cases to predictor variables. There was no evidence of multicollinearity. Using z scores and a criterion of $p <$ .001, one predictor variable, number of children revealed 4 outliers ($z = 3.66$) with these cases reporting having 5 children. These outliers were corrected by recoding as having 4 children each ($z = 2.86$) and were included in the analysis.

Predictor Variable Frequencies

Frequencies for the household and maternal history predictor variables are found in Table 5. For the household predictors, bankruptcy and domestic violence, 28% filed for bankruptcy as a result of litigation costs. A large number of mothers reported domestic violence with 93% reporting

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being a victim of violence. For the maternal history variables, a small number of mothers reported having a criminal history, with even fewer reporting a history of alcohol/drug abuse. For mothers who did report a history of alcohol/drug abuse, all report being clean or sober from a range of 1 to 29 years, except one case that was missing data for this question. Mothers were clean or sober for an average of 13 years. Table 5 also shows the frequency of each mental health condition label mothers received prior to separation.

Table 5

Frequencies for Household and Maternal History Variables

| | Yes | | No | |
Predictor Variable	N	(%)	N	(%)
Bankruptcy	44	(28)	115	(72)
Domestic Violence	148	(93)	11	(7)
Alcohol/Drug abuse	18	(11)	141	(89)
Clean/Sober	17	(94)	0	(0)
Criminal history	32	(20)	127	(80)

Mental health condition labels

Total Mothers labeled prior to separation	72	(45%)	87	(55%)
Schizophrenia	0	(0)	100	(100)
Bipolar	5	(3)	154	(97)
Borderline	2	(1)	157	(99)
Depression	53	(33)	106	(67)
Anxiety	28	(18)	131	(82)
PTSD	34	(21)	125	(79)

Note. Total Mothers labeled is less than the sum of all labels because some mothers received more than one label prior to separation.

Table 6 shows frequencies for all court-related predictor variables. A large number of mothers reported having participated in mediation and custody evaluations

and over half reported being labeled as PAS. A total of 44

mothers reported being labeled with at least one mental

health condition by court-related professionals.

Table 6

Frequencies for Court-related Predictor Variables

	Yes		No	
Predictor Variable	N	(%)	N	(%)
Participated in Mediation	118	(74)	41	(26)
Participated in Custody Evaluations	135	(85)	24	(15)
Labeling by court related professionals				
PAS	84	(53)	75	(47)
Alienator	63	(40)	96	(60)
Mental health conditions				
Total mothers labeled	44	(28%)	115	(72%)
Schizophrenia	4	(3)	155	(97)
Bipolar	10	(6)	149	(94)
Borderline	11	(7)	148	(93)
Depression	22	(14)	137	(86)
Anxiety	20	(13)	139	(87)
PTSD	10	(6)	149	(94)

Note. PAS represents Parental Alienation Syndrome. The total number of mothers labeled with a mental health condition is less than the sum of all labels because some mothers received more than one label by a court-related professional.

Predictor Interrelationships

Significant positive correlations were found between several of the mental health condition labels mothers received prior to separation. The label of borderline was significantly positively correlated with depression ($r = .16$, $p < .05$) and anxiety ($r = .24$, $p < .05$), meaning that women who reported being labeled as borderline were also more likely to report being labeled as depressed or as borderline and anxious. Significant positive correlations were also found between depression and anxiety ($r = .48$, $p < .05$) and depression and PTSD ($r = .28$, $p < .05$). Women who reported being labeled depressed were also more likely to report being labeled with anxiety or reported being labeled depressed with PTSD. In addition, mothers reporting being labeled with anxiety prior to separation were also more likely to report being labeled with PTSD prior to separation ($r = .32$, $p < .05$).

Several significant positive correlations were also found between mental health condition labels prior to separation and labels by court-related professionals. Mothers who reported being labeled bipolar prior to separation were more likely to also report being labeled bipolar by a court professional ($r = .40$, $p < .05$). This

was also found for prior depression and court labeled depression (r = .41, p < .05) and prior and court labeled PTSD (r = .24, p < .05). Mothers who reported being labeled depressed prior to separation were also more likely to report being labeled with anxiety by a court professional (r = .17, p < .05) and mothers who reported being labeled borderline prior to separation were more likely to also report being labeled PTSD by a court professional (r = .20, p < .05). In addition, mothers who reported being labeled PTSD prior to separation were also more likely to report being labeled depressed by a court professional (r = .19, p < .05).

In terms of mental health condition labeling of mothers by court professionals, mothers who reported being labeled with schizophrenia were also likely to report being labeled bipolar (r = .62, p < .05) or more likely to report being labeled schizophrenia and borderline (r = .27, p < .05). Mothers labeled bipolar were also likely to report being labeled as borderline (r = .24, p < .05). In addition, mothers who reported being labeled as depressed were also likely to report being labeled anxious (r = .45, p < .05) and PTSD (r = .27, p < .05). And mothers who reported being labeled anxious by court professionals were

also more likely to report being labeled PTSD (r = .37, p <
.05).

The McNemar test between severe mental health
condition labeling prior to separation and by court-related
professionals was significant, indicating a significant
change in the number of mothers labeled with a severe
mental health condition prior to separation and by court-
related professionals (see Table 7). In addition, the
McNemar test was also significant for moderate mental
health conditions, indicating a significant change in the
number of mothers who were labeled with moderate mental
health conditions prior to separation and by court-related
professionals. The frequencies at which mothers received
both severe and moderate mental health labels prior to
separation and by court-related professionals during the
custody process can be seen in Table 7.

Chi Square crosstabs were performed between CSA and
child physical abuse, verbal/emotional abuse, and neglect.
There were no significant associations between cases with
child sexual abuse and cases with physical abuse, χ^2= 3.47
(df = 1, N = 159), p > .05, or child sexual abuse and
verbal/emotional abuse, χ^2= 1.80 (df = 1, N = 159),

p > .05. And no significant associations were found between

child sexual abuse and neglect, χ²= .102

(df = 1, N = 159), p > .05.

Table 7

Number of Labels by Mental Health Professionals Prior to Separation and by Court-related Professionals

Mental Health Condition Label	Prior to Separation	Court Labeling
SCHIZO	0	4
BIPOL	5	10
BORDER	2	11
Total severe	7	25*
DEP	53	22
ANX	28	20
PTSD	34	10
Total moderate	115	52*
PAS	N/A	84
ALIENATOR	N/A	63

Note. PAS represents Parental Alienation Syndrome.
*Significant at p < .05.

Table 8 shows the number of Parental Alienation

Syndrome and Alienator labels that were given to mothers

with and without CSA. Court-related professionals labeled

84 mothers with PAS, with a large number of labels being given to mothers who reported CSA. A Chi Square analysis revealed an association between CSA and PAS labeling that neared significance, χ^2 = 3.53 (df = 1, N = 159), p = .06, but no association was found between CSA and the label of Alienator.

Table 8

Number of Parental Alienation Syndrome and Alienator Labels in Cases With and Without Child Sexual Abuse

Label	CSA N = 119	No CSA N = 40	χ^2	*p*
PAS	68 (57%)	16 (40%)	3.53	.06
ALIENATOR	48 (40%)	15 (38%)	.10	.75

Note. PAS represents Parental Alienation Syndrome.

McNemar Tests of Custody Prior to Separation
and After Court Proceedings

The McNemar test between prior caretaker time and custody outcome for the full sample was significant, indicating a significant change from parents with a certain amount of caretaker time prior to separation to the custody outcome after court proceedings. Prior to separation, 248 mothers had 90% or more of primary caretaker time. Of this

248, 56 mothers maintained primary custody after court proceedings, 42 mothers had joint custody, and in 150 cases, fathers received primary custody. Joint caretaker time occurred in 66 cases prior to separation. After court proceedings, mothers were awarded primary custody in 12 cases, joint custody occurred in 8 cases and in 46 cases, fathers had primary custody. Five fathers had primary caretaker time prior to separation and 4 fathers maintained primary custody after court proceedings and 1 mother received primary custody.

The McNemar test between prior caretaker time and custody outcome for the subsample was also significant, indicating a significant change from parents with a certain amount of caretaker time prior to separation to the custody outcome after court proceedings. In the subsample, prior to separation, 123 mothers had 90% or more of primary caretaker time. Twenty-nine of these mothers maintained custody after court proceedings while 21 resulted in joint custody and 73 resulted in father being awarded primary custody. Joint caretaker time occurred in 31 cases prior to separation. In 6 cases, mother was awarded primary custody, 2 cases remained joint custody, and in 23 cases father was awarded primary custody. And in 1 case, father had primary

caretaker time prior to separation and maintained primary custody after court proceedings.

Sequential Logistic Regression Analyses

Table 9 shows results for the full model of the sequential logistic regression when comparing mother custody relative to father custody and Table 11 shows the Chi Squares for each model at each step. The model containing the intercept only was significant $\chi^2 = 27.02$ (df = 1, N = 159), $p < .05$. Addition of the household predictors bankruptcy, domestic violence, and number of children to a model that contained the intercept significantly improved the model $\chi^2 = 9.29$ (df = 3, N = 159), $p < .05$, Nagelkerke $R^2 = .10$, although no individual predictor was able to reliably distinguish between mother custody and father custody. When maternal history predictors (any mental health condition label, substance/alcohol abuse, criminal history) were added to a model that also contained the household predictors, the model was significantly improved, $\chi^2 = 15.31$ (df = 3, N = 159), $p < .05$, Nagelkerke $R^2 = .24$. Two individual predictors that significantly enhanced prediction were bankruptcy and substance/alcohol abuse. Bankruptcy

significantly added to the prediction of custody outcome, reliably separating mother custody from father custody. When mother reported bankruptcy, the probability that father received custody was higher χ^2 = 4.50 (df = 1, N = 159), p < .05. Substance abuse also significantly added to the prediction of custody outcome χ^2 = 10.60 (df = 1, N = 159), p < .05. When mothers reported having a history of substance/alcohol abuse, the probability of father getting custody was lower. It should be noted that all mothers (except one missing data for clean/sober question) who reported a history of substance/alcohol abuse also reported being clean or sober for at least one year.

Addition of court professional predictors (participation in mediation, custody evaluations, labeling of any mental health condition, labeling of PAS/Alienator) to a model that also contained household predictors and maternal history variables did not improve prediction, χ^2 = 3.41 (df = 4, N = 159), p = .49, Nagelkerke R^2 = .27. Also, addition of the Child Sexual Abuse variable to a model that contained household, maternal history and court professional predictors did not improve prediction χ^2 = 2.16 (df = 1, N = 159, p = .14, Nagelkerke R^2 = .29. Although prediction was not improved, the model remained

significant with the addition of the court professional

variables Model χ^2 = 28.04 (df = 10, N = 159), p < .05, as

well as with addition of the Child Sexual Abuse variable,

Model χ^2 = 30.17 (df = 11, N = 159), p < .05. The full

model showed three individual predictors that were able to

reliably distinguish between mother custody and father

custody. Bankruptcy significantly predicted custody outcome

χ^2 = 3.79 (df = 1, N = 159), p < .05. When mothers reported

bankruptcy, the probability that fathers received custody

was higher. The odds ratio indicated that when mothers did

not report bankruptcy, the odds that father received

custody decreased by 72%. Substance/alcohol abuse also

significantly predicted custody outcome χ^2 = 11.98 (df = 1,

N = 159), p < .05. The probability that father received

custody was lower when mothers reported a history of

substance/alcohol abuse with the odds ratio indicating that

mothers were 14 times more likely to be awarded custody. In

addition, domestic violence also significantly

distinguished between mother custody and father custody,

with mothers less likely to receive custody when they

reported being a victim of domestic violence χ^2 = 4.01 (df

= 1, N = 159), p < .05. The odds ratio indicated when

mothers did not report being a victim of domestic violence, the odds that father received custody decreased by 83%.

In the full model, three individual predictors that neared significance at the .05 level were number of children χ^2 = 3.18 (df = 1, N = 159), p = .07, criminal history χ^2 = 2.96 (df = 1, N = 159), p = .09, and participation in custody evaluations χ^2 = 3.29 (df = 1, N = 159), p = .07. The lower the number of children, the more likely father would receive custody. When mothers reported having a criminal history or participating in custody evaluations, father was more likely to get custody.

Overall, support was found for the second and third hypotheses, that little financial resources and the presence of domestic violence would result in a non-protective outcome. In addition, the fifth hypothesis was also a significant finding, but was not in the hypothesized direction as mothers who reported a history of substance/alcohol abuse were more likely to receive custody.

Table 9

Sequential Logistic Regression: Full Model for Mother Custody Relative to Father Custody

Household Variables	B	Wald χ²-test	OR	95% CI	p
Number of children	-0.47	3.18	0.63	[0.37, 1.05]	0.07
Bankruptcy	-1.29	3.79	0.28	[0.08, 1.01]	0.05*
Domestic Violence	-1.80	4.01	0.17	[0.03, 0.96]	0.05*
Maternal History					
Any mental health condition label prior to separation	-0.22	0.18	0.81	[0.29, 2.22]	0.67
Substance/Alcohol	2.66	11.98	14.33	[3.17, 64.69]	0.00*
Criminal history	-1.25	2.96	0.29	[0.07, 1.19]	0.09
Court Professional					
Mediator Participation	-0.05	0.01	0.96	[0.34, 2.71]	0.93
Evaluator participation	-1.17	3.29	0.31	[0.09, 1.10]	0.07
Any mental health condition label	0.47	0.75	1.61	[0.55, 4.70]	0.57
PAS/Alienator label	0.28	0.33	1.33	[0.50, 3.50]	0.39
Child Abuse					
Child Sexual Abuse	-0.81	2.19	0.45	[0.15, 1.31]	0.14

Note. B represents the unstandardized coefficient. OR represents odds ratio. CI represents confidence interval. *p < .05.

Table 10 shows results for the full model of the sequential logistic regression when comparing joint custody to father custody and Table 11 shows the Chi Squares for each model at each step. The model containing only the intercept was significant χ^2 = 38.79 (df = 1, N = 159), p < .05. Addition of the household predictors, bankruptcy, domestic violence, and number of children to a model containing the intercept did not significantly improve prediction χ^2 = 3.18 (df = 3, N = 159), p = .36, Nagelkerke R^2 = .04. Addition of the maternal history variables (any mental health condition label, substance/alcohol abuse and criminal history) to a model containing household predictors also did not significantly improve prediction χ^2 = 7.11 (df = 3, N = 159), p = .07, Nagelkerke R^2 = .13. However, at this step, domestic violence did significantly distinguish between joint and father custody χ^2 = 4.51 (df = 1, N = 159), p < .05. When mothers reported being victims of domestic violence, the probability of father getting custody was higher.

Addition of court professional predictors (participation in mediation, custody evaluations, labeling of any mental health condition, PAS or alienator) to a model that contained household and maternal history

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variables did not improve prediction of the model $\chi^2 = 5.33$ (df = 4, N = 159), p = .26, Nagelkerke R^2 = .19. Two individual predictor variables that significantly distinguished between joint and father custody were domestic violence $\chi^2 = 4.00$ (df = 1, N = 159), p < .05 and criminal history $\chi^2 = 4.32$ (df = 1, N = 159), p < .05. When mothers reported being victims of domestic violence or having a criminal history, the probability that father received custody was higher.

Finally, although addition of Child Sexual Abuse to a model that contained household, maternal history and court professional variables did not significantly improve prediction $\chi^2 = 3.32$ (df = 1, N = 159), p = .07, Nagelkerke R^2 = .23, it did approach significance at the .05 level (see Table 10). Three individual predictor variables that significantly distinguished between joint and father custody were domestic violence $\chi^2 = 4.87$ (df = 1, N = 159), p < .05, criminal history $\chi^2 = 4.83$ (df = 1, N = 159), p < .05, and participation in custody evaluations $\chi^2 = 4.22$ (df = 1, N = 159), p < .05. When mothers reported being a victim of domestic violence, had a criminal history or reported having participated in custody evaluations, the probability that father got custody was higher. The odds

ratio indicate that when mothers did not report being a victim of domestic violence, the odds that father received custody was decreased by 90%. When mother did not report a criminal history, fathers' odds of getting custody were decreased by 87% and when mothers did not participate in custody evaluations, the odds that father received custody was decreased by 81%.

Overall, support was found for the third hypothesis that the presence of domestic violence would lead to a non-protective outcome. Support was also found for the sixth hypothesis that a maternal criminal history would also result in a non-protective outcome. Finally, the eighth hypothesis that participation in custody evaluations would lead to a non-protective outcome for the child was also supported.

Table 10

Sequential Logistic Regression: Full Model for Joint Custody Relative to Father Custody

Household Variables	B	Wald χ^2-test	OR	95% CI	p
Number of children	-0.10	0.10	0.91	[0.49, 1.67]	0.75
Bankruptcy	0.53	0.88	1.70	[0.56, 5.12]	0.35
Domestic Violence	-2.27	4.87	0.10	[0.01, 0.78]	0.03*
Maternal History					
Any mental health condition label prior to separation	0.17	0.09	1.19	[0.39, 3.64]	0.76
Substance/Alcohol	0.51	0.26	1.66	[0.23, 11.91]	0.61
Criminal history	-2.02	4.83	0.13	[0.02, 0.80]	0.03*
Court Professional					
Mediator Participation	1.09	2.28	2.96	[0.73, 12.11]	0.13
Evaluator Participation	-1.64	4.22	0.19	[0.40, 0.93]	0.04*
Any mental health condition label	0.10	0.03	1.10	[0.34, 3.62]	0.87
PAS/Alienator label	-0.00	0.00	1.00	[0.33, 3.02]	0.99
Child Abuse					
Child Sexual Abuse	-1.11	3.33	0.33	[0.10, 1.09]	0.07

Note. B represents the unstandardized coefficient. OR represents odds ratio. CI represents confidence interval.
*p < .05

Table 11

Chi Squares for Model and Each Step in Mother versus Father Custody and Joint versus Father Custody

Mother versus Father Custody

Step	Step χ^2	Model χ^2
Intercept	27.02*	27.02*
Household Variables	9.29*	9.29*
Maternal History	15.31*	24.61*
Court Professional	3.41	28.01*
Child Sexual Abuse	2.16	30.18*

Joint versus Father Custody

Step	Step χ^2	Model χ^2
Intercept	38.79*	38.79*
Household Variables	3.18	3.18
Maternal History	7.11	10.30
Court Professional	5.33	15.63
Child Sexual Abuse	3.32	18.95

Note. Wald Chi Square is reported for the intercepts.
*$p < .05$.

CHAPTER FOUR

DISCUSSION

The purpose of the current study was to examine unreasonable factors that lead to maternal custody loss when mothers appear to be attempting to protect their children from abuse by their fathers. We hypothesized that these unreasonable factors would lead to maternal custody loss in the current study and result in a custody outcome that is not protective of the child. Specifically, we expected domestic violence, participation in mediation, custody evaluations, and labeling of PAS or Alienator by court professionals during the court process to result in a custody outcome where mother would not receive primary custody and would leave the child unprotected from further abuse. In addition, we hypothesized that cases with child sexual abuse (CSA) would more likely lead to a non-protective custody outcome than cases without CSA.

Results of the current study revealed unreasonable factors that significantly enhanced prediction of custody outcome were domestic violence and participation in custody evaluations. Several reasonable factors that might be expected to predict custody outcome, including bankruptcy,

mother's substance/alcohol abuse and criminal history also significantly enhanced prediction of custody outcome, although mother's substance/alcohol abuse did not do so in the expected direction. Domestic violence significantly predicted a custody outcome such that in cases where the mother reported being a victim of domestic violence, the abusive father was more likely to receive custody, which supported our third hypothesis. This finding was in the direction hypothesized and is consistent with the literature. It is an example of an unreasonable factor that is counter-intuitive, that leads to a failure of the courts to protect children in custody proceedings. This finding occurred when predicting mother custody relative to father custody as well as when predicting joint custody relative to father custody.

While such an outcome may seem counter-intuitive, there are several factors that may put mothers who are victims of domestic violence at a disadvantage in child custody proceedings. One is the contrasting behavior between the mother, who may be experiencing negative symptoms as a result of the violence, and the abusive father who may portray himself as cooperative, calm and convincing in his denial that abuse has occurred (Bancroft

& Silverman, 2002; Meier, 2002). The "friendly parent" provision may also work against abused mothers who may be acting in an effort to protect herself or her children from further abuse. The Morrill et al. (2005) study found that when states had a friendly parent provision and a presumption that favored joint custody, abused mothers who attempted to minimize visitation by the abuser were penalized. Mothers in the current study may also have been penalized for their attempts to minimize contact with their abusers. This penalization can be seen in the awarding of custody to fathers, mothers being placed on supervised visitation, or mothers having no contact with their children in sixty-two percent of cases in the current study.

Custody outcome was also predictable from bankruptcy; mothers who reported having filed for bankruptcy were less likely to receive primary custody than fathers, which supported our second hypothesis. We hypothesized that limited financial resources would make it more difficult for mothers to obtain custody as indicated by the literature (Larrieu et al., 2008; McBride & McBride, 2010). The use of bankruptcy as a measure of financial resources was used due to not having information about annual income

for either parent and brings up some interesting points. Specifically, mothers were asked if they had to file bankruptcy as a result of litigation costs. This measure indicates a depletion of financial resources for the mother. The inability of victims of domestic violence to afford appropriate legal counsel in custody cases is an issue of great concern as custody is often lost in such cases (McBride & McBride, 2010). The current study may add to that concern as mothers whose financial resources are depleted and are forced to file bankruptcy as a result of these litigation costs are also likely to lose custody to fathers. However, additional factors may have come into play due to having to file for bankruptcy, such as a change in living arrangements, which may have led to fathers being awarded custody. In any case, additional inquiry is necessary to determine why it is more likely that an abusive father receives custody when a mother has filed for bankruptcy.

Surprisingly, custody outcome was also predictable from substance/alcohol abuse but not in the expected direction, in that mothers who reported a history of substance/alcohol abuse were more likely to receive primary custody than fathers. This finding is in opposition to our

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fifth hypothesis that substance/alcohol abuse would be an unfavorable factor when considering custody and warrants clarification. Although eleven percent of mothers reported a history of substance/alcohol abuse, all had reported being clean or sober for at least one year at the time of filling out the survey. The literature has shown substance/alcohol abuse to be problematic for mothers in terms of maintaining custody of their children but these studies evaluate the effects of a mothers' current substance or alcohol abuse problem (Sagatun-Edwards et al., 1995). However, clean drug tests for mothers working toward reunification with their children have shown favorable custody outcomes for mothers (Sagatun-Edwards & Saylor, 2000). Similar results were found in the current study. These findings are encouraging in that mothers may have a history of alcohol or drug abuse, but when mothers overcome this challenge and are able to report being clean or sober, family courts may view this in a positive manner and allow custody awards to mothers. On the other hand, why a mother with a history of substance abuse should fare better in a custody dispute than a mother with no such history is not clear and requires further study.

Criminal history was also able to predict custody outcome in that mothers who reported having a criminal history were less likely to be awarded joint custody. These findings were congruent with our sixth hypothesis that a criminal history would make it difficult for a mother to maintain custody. Criminal history is a factor in deciding custody with more favorable outcomes occurring for mothers who do not have a history (Sagatun-Edwards & Saylor, 2000). The current finding is in line with the literature, but deserves further investigation. The type of criminal history is an important detail that also needs to be examined. Of the thirty-two mothers who had a criminal history, of those where a clear determination could be made regarding the nature of the criminal history, nearly half were related to custodial interference or child abduction with many of these clearly stating on the survey that the interference or abduction was to protect their child from continued abuse. Mothers who violate child custody terms are often threatened with jail (Gender Bias Study, 1990). In contrast to this, when fathers fail to comply, their behavior is not punished, but merely acknowledged with a dismissive attitude (Gender Bias Study, 1990). Examination of gender bias in child custody determinations revealed

several biases putting mothers at a great disadvantage including holding mothers to higher standards and demanding more of mothers than from fathers (Gender Bias Study, 1990). One way in which this may occur is in ignoring the criminal history of the father. Although the current study did not address this, future research could include looking at the custody outcome when both the mother and father have a criminal history.

Finally, custody outcome was also predictable from participation in custody evaluations; mothers reporting having participated in custody evaluations were less likely to receive custody than fathers. We hypothesized that when mothers participated in custody evaluations, custody outcomes would not protect the child. Our eighth hypothesis was supported when comparing joint custody outcomes to father custody outcomes as mothers who participated in evaluations were less likely to obtain joint custody. There is controversy and concern over the role of custody evaluators due to the lack of clearly defined standards for conducting evaluations, unclear qualifications and training for custody evaluators as well as reliance on measures that are inadequate in answering questions relevant to custody (Emery, Otto, & Donohue, 2005; Haselschwerdt, Hardesty, &

Hans, 2011). Of particular concern is evaluators' lack of knowledge about the dynamics of domestic violence. A recent study investigating custody evaluators' beliefs about domestic violence and custody disputes revealed sixty-one percent had little training in domestic violence with training ranging from attendance at very few seminars to no formal training in domestic violence over the past five years. (Haselschweredt et al., 2011). A large majority of the mothers in the current study were victims of domestic violence and at least one, if not multiple, types of child abuse were also reported by the mothers. That mothers were less likely to be awarded sole or even joint custody over father custody strongly supports the concern that evaluators lack an appropriate level of training and knowledge about cases that include abuse.

Although child sexual abuse did not quite reach statistical significance in predicting custody outcomes when comparing joint custody to father custody, this factor did approach significance in the hypothesized direction. Disturbingly, when mothers reported the presence of child sexual abuse, there was a strong tendency for fathers to be awarded custody. The current finding raises concern and warrants further investigation to determine why the abusing

father may be more likely to be awarded custody than the protective mother.

An interesting result regarding child sexual abuse was the finding that this type of abuse was not significantly associated with any other type of child maltreatment. Although other studies have found associations between CSA and other types of child maltreatment (Herrenkohl & Herrenkohl, 2007; Higgins & McCabe, 2000), the current study did not reveal such an association. One possible explanation may be the way in which the abuse is reported. For example, when Higgins & McCabe (2003) used retrospective reports by adults for types of abuse experience as children, a significant association was found between CSA and physical abuse, psychological maltreatment and neglect; however, in a separate study, when using parental reports of types of abuse their children experienced, CSA was not associated with any of these abuses. The authors point out that the lack of association may have been due to the small number (4%) of parents reporting their children having experienced CSA and noted a possible reluctance to report this type of abuse. What is noteworthy is that a much larger number of mothers in the current study reported CSA (75%), and still no significant

association was found. It could be a factor unique to parental reporting versus other methods, such as retrospective reporting by adults, for obtaining information about CSA.

Although mental health condition labeling did not significantly predict custody outcomes, a significant change in mental health condition labeling prior to separation and by court-related professionals was revealed in a chi-square analysis. Specifically, there was a significant change in severe mental health condition labeling (schizophrenia, bi-polar and borderline), with significantly fewer women receiving such a label prior to separation than were subsequently labeled by court-related professionals. In addition, a significant change was found for moderate mental health condition labeling (depression, anxiety, PTSD) prior to separation versus by court-related professionals, but in the opposite direction. The pattern of change in the number of mothers who were labeled with severe mental health conditions prior to separation versus the number who were labeled by court-related professionals is a concern. Prior to separation, few mothers received any type of severe mental health condition label. Specifically, only seven mothers were labeled bipolar or borderline and

no mothers reported being labeled with schizophrenia. During the custody process, however, nearly three times as many mothers were labeled with severe mental health conditions by court professionals. In contrast to this, the number of moderate mental health condition labels decreased considerably. Prior to separation, sixty-nine mothers were labeled with depression, anxiety, or PTSD. During the custody process, however, less than half were given a moderate mental health condition label. The moderate mental health condition labels are those due to factors that are more situational by nature; a woman who is a victim of domestic violence may very well experience symptoms of depression, anxiety or PTSD. However, the decrease in the number of mothers labeled with mental health conditions that are more likely to be associated with their situation indicates court related professionals may be minimizing the circumstances and resulting conditions of these mothers. In contrast, the increase in severe mental health condition labels lends evidence to the idea that court professionals are giving such labels because they see a protective mothers behavior as "crazy" when, in fact, her behavior is normal given the circumstances, that her child is being abused and her efforts to protect her children are being

undermined by both the perpetrator of abuse and the very system that is responsible for providing protection, the Family Courts. There is no criterion from which mental health or court related professionals can evaluate a baseline measure of behavior that is normal for one whose child's abuse is being ignored and even facilitated by court granted access by the perpetrator (G. B. Stahly, personal communication, March 21, 2011). Until such a measure is created, labels given to mothers in such circumstances are grossly inaccurate at best.

The concern of misdiagnosing abused women with mental illness is a longstanding one. Experts have studied and revealed that battered women may appear schizophrenic or borderline when using such measures as the MMPI and MMPI-2 but note that the results more accurately measure a reactive state, and not a character trait (Khan, Welch, & Zillmer, 1993; Rosewater, 1988). When interpreting such measures, mental health professionals are encouraged to use caution in doing so and must also take into consideration other factors that may explain the results, such as being a victim of domestic violence (Khan, Welch, & Zillmer, 1993; Rhodes, 1992; Rosewater, 1988). Specific concern has been raised over the use of the MMPI-2 by custody evaluators due

to the potential for an evaluator to make an inaccurate recommendation based on this measure (Erickson, 2005). The current study may provide support for this concern. A pattern of mental health condition labeling that is a concern did arise, and the current study did find that participation in custody evaluations was problematic for mothers.

Labeling mothers with Parental Alienation Syndrome (PAS) or as an Alienator did not significantly predict a custody outcome as we hypothesized, but the current study does provide evidence that these labels are being used inappropriately. The National Council of Juvenile and Family Court Judges (NCJFCJ) has given clear guidelines about not accepting testimony about PAS and also has warned about the use of parental alienation (NCJFCJ, 2008). PAS has been ruled inadmissible in court because of the failure to meet the appropriate tests of admissibility (Hoult, 2006; NCJFCJ, 2008; Zirogiannis, 2001). Despite these factors, PAS and Parental Alienation (PA) were quite prevalent in the current study. Family court professionals labeled over half of the mothers with PAS and nearly half were labeled as Alienators. Clearly the guidelines set forth by the NCJFCJ are being ignored in these cases and

may be having a serious impact on custody outcomes. Although other research found PAS to play a central role in a number of custody cases (Hoult, 2006); the current study did not find PAS to play as strong a role in custody outcomes. It does, however, provide evidence that PAS and PA are being used to label mothers during the child custody process.

Additional evidence for the inappropriate use of PAS is found in the current study in the fact that every case in the current study had some form of child abuse present. The author of PAS, Richard Gardner, stated that in cases where child abuse is present, PAS is not applicable (Gardner, 1985; Gardner, 2002). Clearly, PAS should not have been applicable to any case in the current study if, as the respondents asserted, every case had supporting evidence of the child abuse. In terms of labeling mothers PAS in cases where CSA was present, examination of the relationship between being labeled PAS and the presence of CSA neared significance, indicating a serious concern regarding labeling mothers who report CSA as having PAS.

In addition, concern has recently been raised that the application of PAS has generalized beyond the original cases of child sexual abuse allegations – (a relatively

rare phenomenon) to a wider range of child maltreatment and domestic violence cases or where a mother, for other credible reasons, attempts to restrict visitation – a very common and thus vastly larger number of cases (Meier, 2009; Stahly, 2007). Well over half of the mothers in the current study were labeled PAS in cases where CSA was present. In cases where CSA was not present, mothers were labeled PAS in nearly half of these cases, indicating that mothers are being labeled PAS regardless of the type of abuse that is present. The women whose cases did not have CSA but were labeled as PAS gives evidence that the application of this label may, indeed, be occurring in a wider range of child abuse and domestic violence cases.

Although the current model only found a small number of predictors that were able to significantly predict custody outcomes, some important points about these types of cases should be noted. The current study lends support to the fact that there are a certain number of mothers who are struggling to maintain custody and protect their children from abuse and that these types of cases may have certain characteristics. One is that a majority of these cases involve child sexual abuse. Seventy-five percent of the mothers in the current study reported the presence of

child sexual abuse and claimed to have corroborating or other evidence that supported the occurrence of the abuse. A desirable finding would have been for this factor to reliably predict a custody outcome where the child was placed with the mother and protected from harm, however, it was unable to predict among the three categories of outcome. What does remain, however, is the fact that a majority of the children in our study were not protected. There were one-hundred nineteen cases where mothers reported child sexual abuse, yet only eleven cases resulted in the most protective of custody outcomes – the outcome that the protective mother maintained custody with supervised visitation to the father. The other two custody outcomes – joint custody or primary custody to the father – leave the abused child vulnerable to continued abuse. This is discouraging for a number of reasons, most notably because these are cases where mothers entered the family court system fighting to protect their children from abuse, yet only a very small number were successful.

Additional research in this area is imperative. Although the current study did reveal some variables that were predictive of custody outcomes that did not protect the child, given the magnitude of the shift in custody from

mothers prior to separation to fathers after court

proceedings, additional variables seem to be influencing

these outcomes. These additional variables need to be

identified and evaluated as to their unique contribution to

outcomes that put children at risk for continued abuse.

Future research could include closer examination of the

current variables shown to lead to non-protective outcomes,

such as involvement of custody evaluators, as well as

specific paternal factors that are present that lead to

abusing fathers gaining custody. For example, when

evaluating criminal history, this variable is problematic

for mothers, but when fathers also have such a history, is

it being overlooked by the courts? In addition, examination

of the court process may reveal factors that lead to non-

protective outcomes. It is also important to explore the

effects of the labeling of mothers as alienators using a

larger and/or more representative sample, since the

literature suggests this variable has contributed to the

loss of custody by protective mothers.

Limitations of the current study include the use of

self-report surveys. In addition, the sample used for the

current study is highly self-selective and probably

represent the more problematic cases of mothers who have

contacted agencies for assistance because of their extreme circumstances. As such, generalization to a larger population of custody decisions that do not have such circumstances is not appropriate given the extreme nature of these cases.

As long as there are cases in which children are put in harm's way by order of the Family Courts, the research in this area should take priority. It must be the goal that every family who enters the Family Court system is provided protection throughout every step in the process and that the best interest of the child is truly met while keeping all involved in the process safe.

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