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Decision-Making in Custody Cases Involving Domestic Violence: A Review of the Literature

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Many families involved in custody matters have experienced domestic violence. Precise estimates are difficult to obtain, but research suggests that domestic violence is an issue in between 25-50% of custody cases (Morrill, Dai, Dunn, Sung, & Smith, 2005). Domestic violence may in fact be more common among families involved in custody matters than these estimates suggest. Further, abusive fathers are more than twice as likely to seek sole custody of their children than non-abusive fathers, and fathers are awarded joint or sole custody approximately 70% of the time (Smith & Coukos, 1997). Many survivors do not report abuse, and domestic violence screening tools and procedures used in custody cases may fail (see Johnson, Saccuzzo & Koen, 2005).

It is commonly assumed that domestic violence will stop once the survivor leaves her abusive partner.[1] This assumption is not only false but also can lead to decisions that put survivors and families in great danger. The risk of serious injury or death of survivors at the hands of their abuser is the highest in the days and weeks following a separation (Campbell et al., 2003). Separation often marks a change in batterers' tactics, escalating to more severe violence, stalking, and using the children as a tool to punish the victim. Custody hearings and visitation exchanges become the new settings for abusers to continue their violence and control (Jaffe, Lemon & Poisson, 2003). Moreover, separation does not always protect the children in the relationship. Children may witness more violence in their parents' relationship after separation than before, and they often become the abusers' target when the adult victim is no longer available (Hardesty & Chung, 2006).

It should be noted that the outcomes described above are most likely to occur in coercive controlling violent relationships, which are characterized by an ongoing pattern of using threats, emotional abuse, force, and isolation so that survivors lose not only their freedom but also their sense of self (Stark, 2007). Domestic violence can have long-lasting impacts on children and families, and it is critical that decision-makers seriously consider all allegations of domestic violence in child custody matters, regardless of the type and nature of the violence alleged. However, experts do identify coercive controlling violence as a "red flag" for decision-makers and acknowledge that cases involving coercive control typically require substantial protections for survivors and children (Jaffe, Crooks & Bala, 2009; Stark, 2007; Ver Steegh, 2005). This may mean that survivors of coercive controlling violence should be awarded primary physical and legal custody, and/or that abusers should only have supervised visitation with their children or visitation with secure exchange procedures. Allegations of situational or "conflict-based" violence, characterized by more discrete incidents of abuse (often precipitated by a major argument or event such as announcing a desire to separate), should be considered but may not warrant the restrictions imposed on

[1] It is recognized that fathers involved in custody cases also may be survivors of domestic violence. However, mothers are more likely to be survivors of domestic violence overall and of coercive controlling violence in particular, and the consequences of domestic violence are generally more severe for women than for men (Beck, Anderson, O'Hara & Benjamin, 2009; Johnston & Steegh, 2013). Thus, this review primarily focuses on decisions involving custody cases in which mothers are survivors.

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perpetrators of coercive controlling violence (Jaffe et al., 2003; Ver Steegh, 2005).

It is clear that the decisions made in custody cases have critical implications for survivors' and children's safety and well-being. Yet, there is a dearth of empirical research about the factors that may affect decision-making in custody cases with co-occurring domestic violence. Typically, a variety of laypersons and professionals have the potential to influence judgements in custody cases involving domestic violence. This includes but is not limited to the parents themselves (as the majority of custody cases are resolved via mediation or another form of consent between parents), parents' attorneys, guardians ad litem (GALs), custody evaluators, and mediators. Since most custody cases are resolved though consent or mediated agreements between parents, it could be argued that parents are the primary decision-makers in custody cases. However, even consent or mediated agreements are susceptible to outside influences, and most custody agreements are typically reviewed and ultimately enforced by a judicial officer.

There are many social, legal, and psychological factors that may affect the outcomes of custody cases with co-occurring domestic violence. This brief focuses on the existing empirical social science research that has examined various potential influences on decisions in custody cases, which tend to fall into two broader categories. First, research has shown that numerous *case-related factors* may affect decision-making in custody cases involving domestic violence. Second, research has explored the relationship between characteristics of key *decision-makers* in custody case decisions and outcomes. Characteristics of decision-makers may encompass numerous individual differences, such as general belief systems, knowledge and beliefs about domestic violence specifically, personal experiences, and demographic information such as occupation and gender. With regard to custody matters, the literature has almost exclusively focused on the decision-making of three key professional groups: judicial officers, custody evaluators, and mediators. Thus, this empirical literature review is structured around these three groups, although other individuals can and do influence decisions in custody cases. Before reading about the research findings, it may be helpful to learn more about the roles of these decision-makers in custody cases with co-occurring domestic violence (Box A).

Box A: Who makes decisions in custody cases, and what are the implications?

Many different individuals may affect the outcomes of custody cases with co-occurring domestic violence. However, researchers have specifically focused on understanding the decision-making of judicial officers, custody evaluators, and mediators.

Judicial Officers

Judicial officers are responsible for approving and issuing custody orders and/or parenting plans. They actively make decisions in contested custody matters (including divorce cases in which custody is an issue) that go to trial, and typically must approve any custody agreement that has been reached through mediation or otherwise. Research suggests that judicial officers often follow the recommendations of custody evaluators or mediators who have been involved in the case. For instance, studies have found that judges agree with custody evaluators' recommendations at least 75% of the time (Davis, O'Sullivan, Susser & Fields, 2011). An earlier study of nearly 300 mediated custody cases in California revealed that judges followed mediators' recommendations approximately 60% of the time (Kunin, Ebbesen & Kone, 1992), although (to the authors' knowledge) there are no recent published studies on this topic.

Numerous organizations, such as the Honoring Families Initiative, the Association of Family and Conciliation Courts (AFCC), and the National Council of Juvenile and Family Court Judges (NCJFCJ) acknowledge that family court judges must acquire a range of interdisciplinary knowledge and skills to effectively handle the complex cases that come before them. In addition to expertise in family law, family court judges should have a solid understanding of child development and family dynamics; they also need to be knowledgeable about the issues the families they serve commonly face, such as substance abuse, trauma, and domestic violence (Knowlton, 2014). The extent of training and knowledge on such topics can vary dramatically across family court judges (Burke, 2005; Kreeger, 2003).

Custody Evaluators

Custody evaluators are individuals who are either hired by parents or appointed by the court to provide a formal recommendation to the court concerning custody arrangements, which is supposed to reflect the best interests of the children involved in the dispute. According to the Association of Family and Conciliation Courts (AFCC, 2006), custody evaluators should have extensive training,

knowledge, and experience regarding a broad range of topics including (but not limited to): family dynamics, child and adult psychopathology, child development, interview and assessment techniques, and the effects of separation/divorce, substance abuse, and domestic violence on children. The AFCC (2006) also recommends that all custody evaluators earn *at least* a masters' degree in a related field such as psychology, social work, or human development/family studies. In their investigations, custody evaluators interview the parents and the children, observe parent/child interactions, and often administer psychological tests to both parents and children. They also may interview other family members, neighbors, and friends of the family, as well as children's teachers and service providers (Ackerman & Pritzl, 2011).

Because hiring or appointing highly educated, professional custody evaluators can be costly, they are not involved in most litigated custody cases. However, the majority of the existing literature on decision-making in custody cases focuses on the decisions of professional custody evaluators. In some states, volunteer court appointed special advocates (CASAs) or guardians ad litem (GAL) may be charged with providing recommendations in contested custody cases (Peterson, 2006). Yet, there is no available published empirical research examining CASA or GAL decision-making in the context of custody cases involving domestic violence.

Mediators

Mediation is an increasingly common means of resolving custody disputes. Mediation can be an efficient, cost-effective alternative to drawn-out litigation requiring extensive use of court resources; it also may help promote client satisfaction and positive outcomes for children in some custody cases (Kelly, 2004). The training and educational standards for mediators vary across states; typically, mediators must have some specific training in conflict resolution, and some states (such as California) require specific training on domestic violence (Kelly, 2004). However, the precise extent to which family court mediators understand the dynamics of domestic violence and are able to effectively screen for and detect domestic violence issues in the couples they serve is unknown.

Whereas some scholars and practitioners in the domestic violence field generally advise against mediation in custody cases involving domestic violence (see Jaffe, Crooks & Bala, 2009; Salem & Dunsford-Jackson, 2008), others believe that mediation in some cases involving domestic violence is appropriate depending on the type of domestic violence alleged and survivors' preferences and choices about participating in mediation (see Murphy & Rubinson, 2005). Mandatory mediation is often ineffective in the context of domestic violence because it assumes that parties are equally

able to negotiate. In fact, survivors often agree to the terms of mediation out of fear or coercion, and mediators often fail to recognize the tactics abusers use to exert control over their victims during the mediation process. In an effort to increase fairness and protect children and victims, many states have enacted laws that either prohibit mediation in custody cases with co-occurring domestic violence or allow parties to "opt-out" of mandatory mediation (NCJFCJ, 2014). However, some states have not adopted such provisions, and custody cases involving domestic violence may still be mediated in states with the provisions for a variety of reasons (e.g., domestic violence exists but is not identified, cases may not merit a mediation "bypass" without a protection order in place).

Although mediation is supposed to be an unbiased process leading to fair outcomes, this is often not the case in custody matters. This is primarily because mediators are asked to provide a recommendation to the court in many jurisdictions; however, it should be noted that judges have no obligation to follow such recommendations . Due process concerns are also apparent with this practice since mediators are not restricted by the rules of evidence in speaking with the parties or considering information the parties may provide, without opportunity for the other side to review and oppose the information's consideration.

Influence of Case-Related Factors on Decision-Making

Decision-makers clearly must incorporate several case-related factors into their legal judgments. However, legal decision-makers can sometimes be susceptible to bias even when considering relevant case-related factors such as evidence and testimony (Feigenson, 2010), or these factors may not be considered within the appropriate context.[2] The available literature indicates that numerous case-related factors can influence decisions in custody cases involving domestic violence, and that these influences are not always consistent with best practices for handling such cases. These specific case-related factors include the type and nature of domestic violence, evidence that domestic violence has occurred, characteristics and demeanor of survivors, legal representation for mothers, and state statues relevant to custody cases involving domestic violence.

Type and nature of domestic violence

Judicial officers. Although judicial officers are typically charged with making the final decisions in custody cases (whether deciding a litigated case or approving a mediated agreement), there are only a handful of studies examining if and how judicial officers consider the type and nature of domestic violence in these judgments. In a recent experimental study (Knoche, Sicafuse & Summers, 2016), 162 judicial officers were randomly assigned to review either a case scenario vignette (adapted from a vignette used by Saunders, Faller & Toman, 2011) that described physical violence or a vignette that described coercive controlling violence. Findings indicated that judicial officers who were exposed to the scenarios describing physical abuse were significantly more likely to award sole physical and legal custody to the mother than those exposed to the scenario describing emotional abuse and coercive control. Those in the coercive control condition were significantly more likely to award "true" or shared joint custody, with physical custody split evenly among parents.

To the authors' knowledge, there are no published studies exploring direct relationships between the type of abuse alleged and evidence of the abuse on judges' decisions in actual custody cases. A recent NCJFCJ research project examining a small sample (n = 27) of custody cases with co-occurring domestic violence did reveal some interesting trends. Data collected as part of a baseline assessment of a legal advocacy program revealed that an increase in the types of abuse women reported (e.g., aggregate number of abuse tactics such as physical, sexual, emotional, coercive control) was related to an increased likelihood of the mother obtaining sole legal and physical custody of their children (Summers, 2015).

Custody evaluators. Findings of studies focusing on custody evaluators are mixed with regard to the effects of the type and nature of domestic violence on evaluators' recommendations. In a recent experimental study, over 600 custody evaluators were presented with either a custody case vignette revealing a history of coercive control of the mother or a vignette revealing a history of

[2]For instance, a judicial officer may consider a lack of evidence of abuse in a custody case to mean that allegations of abuse are untrue, without also considering the fear or shame that often prevents survivors from reporting the abuse to healthcare providers or law enforcement.

physical violence against the mother (Hans, Haselschwerdt, Hardesty, & Frey, 2014). Evaluators who read about a history of physical violence were significantly more likely to recommend sole physical custody to the mother than those who read about a history of the father's coercive controlling behavior.

Other studies, however, revealed that violence type and nature did not significantly impact evaluators' recommendations or case outcomes. One study examined the relationships between various case characteristics, custody evaluator recommendations, and final custody decisions in 69 New York custody cases involving domestic violence in which litigants were represented by New York legal services organizations. There were no relationships between the type (e.g., physical abuse, emotional abuse) of abuse and severity (e.g., mild, moderate, severe) on evaluators' recommendations (Davis, O'Sullivan, Susser & Fields, 2010). The presence of abuse and lethality *risk factors* did not predict actual custody awards, but they did predict parenting plan provisions such that parenting plans incorporated more safety precautions, including public exchanges and supervised visitation, as risk assessment scores increased. This New York study also revealed that judges generally followed custody evaluators' recommendations (Davis et al., 2010). Another experimental study that presented over 600 custody evaluators with vignettes describing differing circumstances surrounding hypothetical custody cases with allegations of domestic violence found that evaluators' recommendations did not significantly differ between vignettes that described situational or "conflict-based" violence (Hardesty, Hans, Haselschwerdt, Khaw & Crossman, 2015).

Mediators. Few studies have explored how variations in violence type and nature may influence outcomes in mediated cases. Instead, research has compared actual mediated cases with and without allegations of domestic violence. A comparison of mediation outcomes between approximately 70 cases with identified domestic violence and 140 cases without domestic violence revealed no significant differences in legal or physical custody arrangements between the two groups (Putz, Ballard, Arany, Applegate & Holtzworth-Monroe, 2012). Moreover, there were no differences between groups in the extent to which supervised visitation was incorporated into agreements, although agreements in cases with identified domestic violence were more likely to include safety restrictions (e.g., no physical discipline of children, no substance abuse) than cases without domestic violence (Putz et al., 2012). An examination of the relationships between the reported level of domestic violence in the marriage and mediation outcomes in 105 cases indicated that mothers' reports of domestic violence were not significantly related to physical custody or parenting time agreements (Rossi, Holtzworth-Monore & Applegate, 2015). Unexpectedly, increased reports of victimization among mothers were associated with an increased likelihood of joint or shared legal custody as well as increased waivers of child support (Rossi et al., 2015).

It should be noted that the above studies and most studies on mediated cases involving domestic violence typically examine the case outcomes that resulted from mediated agreements and/or judicial orders. One published empirical study has examined mediators' actual recommendations in custody cases with and without domestic violence, with discouraging findings. Specifically, this study found no significant differences in mediators' legal and physical custody recommendations

between a sample of 200 cases with domestic violence and 200 cases with no indication of domestic violence (Johnson, Saccuzzo, & Koen 2005).

Evidence of domestic violence

Numerous studies indicate that key decision-makers often do incorporate evidence that domestic violence has occurred (e.g., witness testimony or evidence in the form of legal, police, or medical records) into their recommendations and judgements regarding custody cases. Findings that legal decision-makers often consider evidence of domestic violence is in part encouraging, but the existing literature also highlights two main concerns about how decision makers consider (or fail to consider) evidence of domestic violence. First, although some key decision-makers do incorporate evidence of domestic violence into their custody-related recommendations and judgements, others ignore or discount such evidence. Second, domestic violence survivors can encounter many challenges in documenting and presenting evidence of their abuse. Not only may survivors be too fearful or ashamed to report abuse, it can be very difficult to provide evidence of emotional abuse and/or patterns coercive controlling behavior (Rivera et al., 2012).

Judicial officers. A study comparing four groups of marriage dissolution cases in Washington State (Kernic, Monary-Ernsdorff, Koepsell & Holt, 2005) sheds some light on the extent to which judicial officers may or may not incorporate such evidence into their decisions. The first group served as a comparison sample and was comprised of about 500 cases that did not involve domestic violence. The remaining groups contained approximately 100 cases each. In one of these groups, cases had a documented history of domestic violence (in the form of court or police records) which was known to the court. In another group, evidence of a history of domestic violence existed, but this evidence was not known or presented to the court. The final group included cases with allegations of domestic violence in the case files, but no evidence to support these allegations.

Kernic and colleagues (2005) noted that some of the cases in their sample were contested and resolved through litigation and judicial orders, whereas others were resolved through stipulations and agreements. The frequencies of case resolution types were not reported; thus, it is difficult to determine the extent to which judicial officers heard and examined case-related information. It is likely, however, that many cases in this sample at the very least required approval from a judicial officer to be finalized. Results revealed no significant differences in custody outcomes across all of the case groups. However, cases in which domestic violence was documented and known to the court were more likely to result in orders that denied visitation to abusers compared to other cases. In addition, cases with a documented history of domestic violence- whether known to the court or not- were more likely to involve restrictions placed on the abuser's visitation and decision-making power for the children.

Other studies suggest that judicial officers are more likely to make orders that protect survivors if evidence that domestic violence has occurred is available. A recent study of outcomes in a small sample of custody cases in which a prior protection order was filed revealed that judicial officers

were more likely to award primary physical custody to mothers if a protection order had been issued against the father in the past. This relationship emerged regardless of whether the order was still valid and whether the order was issued by consent or by judicial order after a hearing (Sicafuse & Summers, 2015). The experimental case scenario study that manipulated abuse type (physical vs. coercive control; Knoche et al., 2016) also manipulated the extent to which evidence was available to support allegations in the physical violence conditions. Among participants who read about allegations of physical abuse, those who were informed that the mother called the police and went to the hospital were significantly more likely to award sole legal and physical custody to the mother than their counterparts. Further, approximately 45% of participants said that documentation (compared to just an allegation) of domestic violence affected their decisions in custody cases a "great deal," and 53% said such documentation affected their decisions "a fair amount."

Custody evaluators. Experimental studies as well as studies of actual cases suggest that custody evaluators are similarly influenced by evidence of domestic violence. Davis and colleagues' (2010) examination of New York custody cases revealed that evaluators were more likely to find that fathers had abused mothers when there was evidence to support the allegations of domestic violence. In turn, evaluators who found that the father had abused the mother were more likely than their counterparts to recommend primary physical custody to the mother. In Hardesty et al.'s (2015) experimental study, participants who were led to believe that the mother in the vignette had *not* sought a protection order viewed her allegations as significantly less credible that those who were told that the mother had obtained a protection order. Further, evaluators were twice as likely to recommend custody to the father in cases with no prior protection order than in cases with a protection order. However, even when the mother in the vignette had a protection order, evaluators still recommended joint custody over half of the time.

The literature on custody evaluators' decisions also has examined the effects of counter-allegations on recommendations in custody cases involving domestic violence. These counter-allegations were not presented in the form of "hard" evidence such as medical records or police reports, but rather in the form of the parties' testimony or witness accounts. Studies suggest that making counter-allegations may be an effective tactic for fathers accused of perpetrating domestic violence. For instance, after evaluators in Hans and colleagues' (2014) vignette read about the mother's allegations of violence perpetrated by the father, they were presented with one of three counter-allegation scenarios. They were either told that the father admitted that he had been physically aggressive (or controlling, depending on which vignette evaluators were initially assigned to read), admitted to physical aggression/controlling behavior but alleged that the mother also was abusive, or admitted to physical aggression/controlling behavior, but alleged that father was the primary aggressor and that he was defending himself. All participants who were led to believe that the father made counter-allegations of either mutual or female-perpetrated abuse were significantly less likely than those exposed to no counter-allegation to recommend physical custody to the mother, and this was true regardless of alleged abuse type. A national survey also found that custody evaluators were more likely to recommend joint custody in cases involving

allegations of mutual violence than in cases involving male perpetrated violence only (Bow & Boxer, 2003).

Mediators. Few studies have explored how evidence of domestic violence may impact mediator's recommendations or the outcomes of mediated cases. Johnson and collegues' (2005) comparison of mediated cases with and without alleged domestic violence revealed that many mediators failed to acknowledge the domestic violence altogether. Specifically, in a sample of over 100 cases in which domestic violence was explicitly identified as an issue on the court screening form, less than half of the mediators mentioned domestic violence in their reports to the court. Mediators were more likely to reference domestic violence in their reports when protection orders had been issued and when provided evidence of property destruction. Yet, such acknowledgement was largely unrelated to mediators' recommendations, with one exception. Mediators were slightly more likely to recommend supervised visitation when they documented domestic violence in the report than when they failed to document the domestic violence (Johnson et al., 2005).

Another study took a qualitative approach to exploring mediators' decision-making in custody cases involving DV). Interviews conducted with a small (n = 19) sample of domestic violence survivors who had participated in mediation revealed that all described the abuse in their divorce complaint and/or directly told their mediator about the abuse, but that mediators made appropriate responses in only a handful of cases (Rivera, Zeoli & Sullivan, 2012). Survivors reported that mediators sometimes discounted the domestic violence altogether or only acknowledged it when there was clear evidence that abuse had occurred in the form of photographs, restraining orders, or police reports. A little more than half (53%) of the women with a custody preference were granted the custody arrangements that they sought. As Rivera and colleagues (2012) note, this is an important finding, as it refutes the common assumption that custody arrangements are made or awarded based only on the mother's preferences and concerns.

Legal representation

Both scholars and on-the-ground practitioners in the domestic violence field have strongly advocated for legal assistance for survivors involved in custody cases for some time, and numerous legal assistance programs serving survivors have been established throughout the U.S. Yet, only one available study to date has focused on how legal representation affects outcomes in custody cases involving domestic violence. This study used a statistical technique known as propensity score matching to compare custody and visitation outcomes across a variety of case groups (Kernic, 2015). Propensity score matching involves statistically "matching" comparison groups on key characteristics that may otherwise affect case outcomes. For instance, custody cases in which female survivors retained private representation may differ from custody cases in which female survivors had no legal representation in terms of the nature and extent of the domestic violence, the duration of the marriage or partnership, and survivor demographic such as age, socio-

characteristics to help ensure that any differences in case outcomes are related to the factors of interest (i.e., legal representation) and not to other differences between case groups. In this particular study, researchers only examined custody cases in which a history of domestic violence could be confirmed either through police or court records. A total of 91 cases in which survivors were represented by attorneys local legal aid programs were matched with 168 cases in which survivors were unrepresented, and approximately 500 cases in which survivors were represented by private attorneys were matched with approximately 500 cases in which survivors had no representation. Data regarding case outcomes were obtained from the finalized parenting plan and the researchers did not indicate how these outcomes were achieved (i.e., through agreement, litigation, mediation, etc.). Because judicial officers typically need to approve final custody orders, it is assumed that that this population is largely responsible for the final decisions in these cases. Unlike the other findings presented in this review, the following findings pertaining to the effects of legal representation are not presented as the result of the decisions of any particular professional group.

Kernic's (2015) study revealed that cases in which the survivor was represented by a legal aid attorney resulted in significantly more protective provisions included in final custody orders than cases in which the survivor had no representation or was represented by a private attorney. Specifically, with respect to the matched comparison case group with no representation, cases with legal aid attorneys were more likely to result in orders that 1) specified the mother as the sole legal decision-maker for the child(ren); 2) denied visitation to the abusive parent; 3) imposed restrictions/conditions on visitation when it was awarded; and 4) required treatment or program completion for the abusing parent. With respect to the matched comparison case group with no representation, cases with private attorneys were more likely to have supervised visitation ordered by the court, as well as to have court orders mandating treatment or program completion by the abuser. In sum, survivors represented by legal aid attorneys received the most protections, followed by those represented by private counsel. The authors propose that legal aid attorneys may have more knowledge and skills related to handling custody cases involving domestic violence, which may have turn resulted in safer decisions for their clients. In addition, legal aid attorneys may have simply provided more information regarding the domestic violence for judges to consider than private attorneys or pro-se survivors themselves provided. These findings highlight the importance of providing representation for survivor's who cannot afford to hire private attorneys, as domestic violence is especially common among women with lower socio-economic status (Breiding, Black & Ryan, 2008). It should be noted that only 2.5% of survivors involved in this study had access to legal aid representation (Kernic, 2015).

State statutes

Numerous state statues have been enacted regarding the appropriate considerations in custody cases. Some applicable statues include "friendly parent" statutes, which emphasize co-parenting and create a presumption for joint custody; "rebuttable presumption" statutes, which presume it

is in the child's best interest to reside with the parent who did not perpetrate family violence and not to award joint custody to the perpetrator; and "domestic violence" statutes, which include domestic violence in the list of best interest factors with regard to the child(ren), to be given extra weight in the judicial officers' determination (NCJFCJ, 2015). Although such statutes may guide the decisions of other key decision-makers in these cases, the statutes are most relevant to judicial officers.

Judicial officers. Only one study has examined how state statutes pertaining to domestic violence may affect judicial orders in actual custody cases. Researchers compared 393 judicial orders issued in custody cases across six states with differing statutes (Morrill, Dai, Dunn, Sung & Smith, 2005). Findings revealed that judges in states with rebuttable presumption statutes and no competing statutes (i.e., no "friendly parent" statutes or another presumption in favor of joint custody) were less likely to grant joint legal custody and more likely to grant sole legal custody to the mother in cases involving domestic violence than their counterparts. In addition, judges in states with rebuttable presumption statues more frequently imposed conditions on fathers' visitation in cases involving domestic violence than judges in states without the presumption. However, judges in the states with competing provisions were less likely to award sole physical custody to the mother than judges in states with the presumption only as well as judges in states without the presumption (Morrill et al., 2005).

The case scenario study described earlier that manipulated abuse type and evidence also asked judicial officers whether any statues applicable in their state influenced their decisions. Participants were most likely to award shared legal and physical custody if they presided in a jurisdiction with "friendly parent" provisions. Conversely, judges in states with domestic violence or rebuttable presumptions statues were significantly more likely to award sole legal and physical custody to the mother (Knoche et al., 2016).

Since Morrill and colleagues' (2005) study, the number of states adopting rebuttable presumption and domestic violence statutes has increased . The above findings indicate that judicial officers often do adhere to the appropriate statutes when presiding over custody cases involving domestic violence. However, judicial officers' decisions in custody cases involving domestic violence may continue to be complicated by conflicting statues and lack of clear standards. More than 20 states have both friendly parent and rebuttable presumption or domestic violence statutes (NCJFCJ, 2015). Although rebuttable presumption or domestic violence statutes should supersede friendly parent statutes if domestic violence is a factor, Morril et al.'s (2005) results suggest that this does not always occur. This may be because many rebuttable presumption statutes are not clear on what facts appropriately rebut the presumption, leaving the determination within the judge's sole discretion. In such instances, more specific guidelines aimed at protecting survivors and children may be needed to help judges determine which statute should take precedence.

Survivor Demeanor

There are numerous stereotypes about how survivors of domestic violence are supposed to behave. For instance, many expect survivors to present as passive, helpless, and fearful (Randall, 2004). At the same time, both laypersons and legal professionals often expect domestic violence survivors to immediately report any incidences of abuse and take swift, often dramatic actions to leave their partner. As previously discussed, survivors tend to experience worse outcomes in custody cases when no documentation of the domestic violence is provided. It is reasonable to assume that key decision-makers also may find survivors less credible when they act in a way that is inconsistent with the anecdotal "sad, passive, helpless" stereotype.

Custody evaluators. There is currently one published study that systematically explores the effects of survivors' demeanor on decision-making in custody cases, which is the previously described experimental vignette study focused on custody evaluators (Hardesty et al., 2015). In this study, over 600 custody evaluators were presented with a vignette describing allegations of domestic violence within the context of a custody case. The researchers then manipulated several aspects of this case scenario (e.g., severity of violence, evidence of violence), including the mother's demeanor. In one condition, the mother's demeanor was described as pleasant and agreeable; in another, the mother was described as hostile with a negative attitude toward co-parenting. Out of all of the variables examined, the mother's demeanor was the most consistent predictor of custody evaluator's recommendations. Evaluators who read about a mother who was pleasant were approximately four times more likely to believe her allegations of domestic violence than evaluators who read about a hostile mother. Further, those in the hostile mother condition were over five times more likely to recommend father custody over joint custody than were those in the pleasant mother condition.

Influence of Individual Factors on Decision-Making

All legal decision makers are influenced by individual differences to some extent, and key decision-makers in custody cases are no exception. These key decision-makers often have different personal, educational, and occupational backgrounds, as well as different experiences with domestic violence in their own lives. These backgrounds, as well as demographic variables such as gender, further shape decision makers' experiences as well as their attitudes and beliefs about domestic violence.

Compared to case-related factors, researchers have paid less attention to how individual differences may influence decisions in custody cases with co-occurring domestic violence. Moreover, the available studies to date have only examined how characteristics of judicial officers and

their recommendations. This section summarizes what is known about how individual differences between judicial officers and custody evaluators may impact outcomes of custody cases involving domestic violence.

Attitudes and beliefs

Research examining the impacts of individual difference variables on legal decision-making across decision-makers (e.g., judges, law enforcement, jurors) has shown that attitudes and beliefs are the strongest, most consistent predictors of case-related decisions. The significance of the impact of individual attitudes and beliefs increases when they are highly relevant to the case being considered (Feigenson, 2010; Levine, Wallach & Levine, 2007). For instance, decision-makers' specific beliefs about domestic violence should have a greater effect on their judgements or recommendations than more general beliefs about the justice system.

Judicial officers. As part of the experimental "case scenario" NCJFCJ study, Knoche et al. (2016) asked judicial officers to complete a measure of domestic violence-related beliefs based on the measures developed by Saunders (2011) as part of his seminal study of custody evaluators (described in more detail under the "Custody evaluators" sub-heading). Higher scores on the belief scale indicated stronger beliefs that mothers frequently fabricate allegations of domestic violence in custody cases and try to alienate[3] the father, and that domestic violence should not be a factor in custody decisions if the child has not been physically harmed. Those judges scoring higher on the belief scale were significantly more likely to order true joint "shared" custody in response to the case scenario, whereas those scoring lower were significantly more likely to order sole legal and physical custody to the mother.

Morrill and colleagues' (2005) study on the influence of state statutes also examined individual factors that may affect judges' decisions in custody cases, including their beliefs about domestic violence. Participants were specifically asked about their beliefs about the likelihood of continued abuse if a protection order were to expire and whether they felt that a variety of protections (such as denying visitation or ensuring safe exchanges) were sometimes appropriate in custody cases involving domestic violence. Those who expressed attitudes and beliefs more consistent with protecting survivors' and children's safety were more likely to award sole legal and physical custody to the mother in actual cases than those who had weaker or more ambivalent attitudes. In addition, these judges also imposed conditions on father's visitation rights more frequently than their counterparts (Morril et al., 2005).

Custody evaluators. Sanders and colleagues (2011) conducted a comprehensive investigation of

[3]The scale item referencing alienation specifically reads, "During the divorce process, victims of domestic violence are likely to try to alienate the child from the other parent."

the individual factors that may influence custody evaluators' recommendations in cases involving allegations of domestic violence. Over 450 custody evaluators were presented with the same case scenario that was adapted for use in Knoche et al.'s later study on judicial officers, and they were asked to make custody recommendations based in the information they had read. Participants also completed a variety of measures to assess beliefs specific to domestic violence, broader beliefs such as sexism and belief in a just world, education, experience, and other demographic variables. Key findings from this larger study were later reported in a peer-reviewed journal article (Saunders, Tolman, & Faller, 2013). These researchers found that beliefs more strongly and consistently predicted participants' recommendations than any other of the individual differences assessed. Specifically, those with more sexist beliefs and beliefs that tended to favor the father in custody cases involving domestic violence (e.g., stronger beliefs in parental alienation and that mothers fabricate allegations of domestic violence) were significantly more likely to recommend sole or joint custody to the perpetrator than their counterparts. In addition, those with stronger beliefs in a just world – that the world is fair and just, and that people get what they deserve – were more inclined to recommend sole or joint custody to the perpetrator than those with weaker beliefs in a just world.

Another study specifically focused on how two overarching perspectives on family violence may relate to custody evaluators' decisions (Haselschwerdt, Hardesty, & Hans, 2011). These perspectives emerged from semi-structured interviews with 23 evaluators. Those holding what the authors defined as a "feminist perspective" (39%) perceived power and control as central to dynamics of domestic violence, believed that mothers rarely made false allegations, and tended to look for evidence of coercive control in their cases. Most had received a significant amount of domestic violence-related training. The feminist evaluators reported basing their decisions on concerns for survivors' and children's safety, and highlighted the importance of supervised visitation and safe exchanges. Those holding what the authors defined as the "family violence perspective" (61%) tended to believe that domestic violence is a normal part of the separation and divorce process, and that parents' relationship with their children should be considered outside of the context of domestic violence occurring between parents. Haselschwerdt and colleagues' (2011) study did not analyze the actual decisions of the custody evaluators in their sample; it was assumed that those with a "feminist perspective" included greater restrictions with respect to custody and visitation for abusers than those approaching cases with a "family violence perspective." Similarly, Davis and colleagues (2010) found that, in comparison to other theoretical approaches such as family systems theory, evaluators' application of the "power and control model" was significantly and positively related to the safety of finalized parenting plans.

Gender

Surprisingly little is known about how decision-makers' gender may influence the way that they process information and make judgements in custody cases involving domestic violence. One might expect that female professionals would be more likely to incorporate allegations of domestic violence into their decision making than males, as the majority of domestic violence survivors

are female. However, existing research suggests that gender may impact decisions more indirectly - for example, through first influencing attitudes and beliefs.

Judicial officers. The two studies that examined the relationships between judicial officers' gender and their decisions revealed no direct effect of judges' gender on their decisions in both hypothetical (Knoche et al., 2016) and actual (Morrill et al., 2005) cases. However, female participants in Morrill and colleagues' (2005) study had stronger attitudes towards protecting survivors' and children's safety than did male participants; these attitudes in turn may have led to more positive case outcomes for survivors. Gender was not related to judicial officers' beliefs in Knoche and colleagues' study.

Custody evaluators. In Hardesty et al.'s (2015) vignette study, male evaluators were significantly more likely to recommend custody to the father than were female evaluators. Saunders and colleagues (2011; 2013) found no direct effects of participants' gender on their recommendations. Instead, gender had a direct impact on custody evaluators' beliefs specific to domestic violence, whereby females were less likely than males to believe that mothers fabricated domestic violence allegations and tried to alienate fathers from their children; females also were less likely to believe that domestic violence should have no impact on custody decisions unless the children had themselves been physically abused. These beliefs, in turn, led to an increased likelihood of recommendations favoring the mother in response to the case scenario.

Knowledge and personal experience

A few studies have found that decision-makers' knowledge about domestic violence, as well as their personal experiences with survivors of domestic violence, can have an impact on their decision-making. Yet, knowledge has been measured differently across studies, and more research is needed to understand the influences of specific experiences with domestic violence (e.g., being a survivor of domestic violence vs. exposure to domestic violence in the family of origin vs. having an neighbor or co-worker who is a survivor).

Judicial officers. Domestic violence-related knowledge was positively associated with custody and visitation decisions favoring the mother in Morrill and colleagues' (2005) study, but not in Knoche and colleagues' (2016) study. This may be due to differences in how knowledge was assessed. In the earlier study, judges were actually tested on their DV-related knowledge; in the more recent study, judges' knowledge levels were self-reported. Knoche et al. (2016) asked judicial officers a series of questions regarding their personal experiences with domestic violence and contacts with domestic violence survivors; these also were adapted from the original study on custody evaluators conducted by Saunders et al. (2011). For instance, participants were asked questions about the extent to which they knew people who had been survivors of domestic violence (e.g., close friend, relative, neighbor, co-worker), whether they had been exposed to family violence as a child, and whether they themselves were survivors of domestic violence. There was a linear, positive relationship between the number of self-reported experiences with domestic violence and case decisions, such that participants who had more personal experiences with domestic violence

and personally knew more survivors with domestic violence were significantly more likely than their counterparts to render custody decisions favoring the abused parent.

Custody evaluators. Although Saunders and colleagues (2011; 2013) found beliefs to be the strongest predictor of custody evaluators' recommendations, they also found that self-reported knowledge of domestic violence-related topics such as screening and post-separation violence was positively associated with custody recommendations awarding primary physical custody to the mother-survivor and mandating supervised visitation for the father. Davis and colleagues (2010) analyzed custody evaluators' actual reports, and found that an increased demonstration of domestic violence knowledge in these reports was significantly and positively predicted the extent of safety provisions included in the final parenting plans.

Saunders and colleagues (2011; 2013) also found that knowing survivors of domestic violence was positively associated with custody recommendations favoring the mother and supervised visitation for the father, with some exceptions. Interestingly, being a survivor or having been exposed to domestic violence in the family as a child did not significantly impact custody recommendations. Rather, custody evaluators tended to provide recommendations favoring the mother when they had more peripheral contacts who had survived domestic violence, such as neighbors, friends, or co-workers.

Limitations and Future Research

There are many limitations to the studies reviewed above. The experimental studies in particular lack verisimilitude; participants are given a limited amount of information in a case scenario and asked to render a decision, which may not translate to their decisions in complex cases with real-world implications. Studies examining actual case outcomes have helped build a foundation for understanding decision-making in custody matters with co-occurring domestic violence. Yet, it is challenging to determine if and how information regarding domestic violence was considered in these cases. Much of the research exploring decision-making in custody cases with co-occurring domestic violence has been conducted using small samples and in specific jurisdictions; thus, findings may not be generalizable to other populations or jurisdictions.

Despite its limitations, the small body of available research on decision-making in custody cases involving domestic violence highlights important considerations and concerns relevant to professionals and researchers in the domestic violence field. Several studies suggest that decision-makers often fail to fully incorporate domestic violence into their recommendations and orders (e.g., Hans et al., 2014; Rivera et al., 2012; Sicafuse & Summers, 2015), which can have grave implications for the safety and well-being of survivors and their children. Some of the failure to fully consider the risks that typical custody arrangements (e.g., joint custody, liberal visitation, no exchange provisions) pose to domestic violence survivors and children may be attributable to a lack of knowledge and understanding, as well as to particular belief systems (e.g., patriarchal beliefs and belief in a just world; Saunders et al., 2013). Studies have shown that increased training and education on domestic violence and custody-related topics is associated with decisions and

recommendations that are more focused on keeping survivors and children safe and together (Haselschwerdt et al., 2011; Saunders et al., 2011; Saunders et al., 2013). Research also indicates that having a social relationship with someone who has been victimized, even at the "acquaintance" level (e.g., a neighbor or coworker) is associated with an increase in both beliefs and decisions supportive of survivors' and children's well-being and safety (Saunders et al., 2011; Saunders et al., 2013; Knoche, Sicafuse, & Summers, 2016).

It is critical for judicial officers, custody evaluators, and other decision-makers to have a solid understanding of the dynamics of domestic violence, how domestic violence affects survivors and children, and the risks of post-separation violence. As noted earlier, some studies have found that decision makers who report having substantial knowledge and education regarding domestic violence are particularly inclined to make decisions focused on protecting survivor and child safety (see Morrill et al., 2005; Saunders et al., 2011; 2013). However, there are few published research or evaluation studies that examine the effectiveness of specific trainings or educational opportunities and curricula on decision makers' knowledge and understanding of domestic violence in the context of custody cases. One available evaluation of the processes and impacts of a specific multi-day, interactive training for judicial officers, *Enhancing Judicial Skills in Domestic Violence Cases* (EJS), has yielded promising results. Results from a survey administered after each day of the training indicated that that the majority of over 400 participants intended to use what they had learned at the training in a variety of ways (e.g., to better address the needs of the children and families they serve, to conduct valid and reliable risk assessments, and to share information with colleagues; Jaffe, 2010). Findings from follow-up surveys completed by over 100 judicial officers six months following EJS revealed that most of these participants were able to describe specific practice changes they had made as a result of the training. Some of the specific practice changes included holding batterers accountable, rendering judgments aimed at ensuring survivor safety, and enforcing relevant federal and state firearm statutes (Jaffe, 2010).

Though Jaffe's (2010) evaluation findings are promising, additional published results of training evaluations are needed to identify effective approaches in educating judicial officers, custody evaluators, mediators, and other key decision-makers who work with custody cases or other types of legal matters (e.g., criminal, child welfare) that involve domestic violence. Considering the promising effects of personal experience with survivors on decision-making in custody cases, interactive trainings that aim to "put participants in survivors' shoes" may be particularly effective in targeting misconceptions about domestic violence and changing participants' attitudes and beliefs. The EJS incorporates activities designed to help judicial officers better understand the experiences of survivors, but more research on the longer-term impacts of participation in such activities is needed. There is also a need for more follow-up research to assess any changes in participants' behaviors from pre-training to several months following the training.

Triangulation, or using multiple methods to explore a research question, may help provide a more holistic understanding of how decisions are made in custody cases involving domestic violence.

Surveys, interviews, and case file review are all means of gathering valuable information; yet, data obtained from these methods often cannot tell "the whole story" on their own. A study involving observation of court hearings in addition to case file review can help researchers determine which pieces of information judicial officers and other decision-makers are actually exposed to and incorporate into their judgments. Qualitative interviews and focus groups could shed light on decision-makers' personal experiences and thought processes when absorbing information and making judgments and recommendations in custody cases involving domestic violence. There also is a critical need to study and understand influences on other key decision-makers in custody cases- such as attorneys, CASAs, and GALs (who may or may not be attorneys).

Practitioners in the domestic violence field- advocates, attorneys, service providers- and all other professionals who work to help promote safety and well-being among survivors and their children - are well-positioned to identify information and research gaps and needs. Open and frequent communication and collaboration between researchers and practitioners is needed to ensure that this research yields findings that are useful and meaningful to practitioners and the children and families that they serve. The NCJFCJ and partners are currently soliciting input from practitioners in the domestic violence field in an effort to identify the most pressing research needs and develop strategies and methods for addressing these needs. Please feel free to contact the author at lsicafuse@ncjfcj.org with any suggestions in this regard.

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