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Catalina Herrerías  
*University of Oklahoma, cherrerias@ou.edu*

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## **Inequities Faced By Noncustodial Mothers**

*Catalina Herrerías*

*Catalina Herrerías*, Department of Human Relations, University of Oklahoma, 601 Elm Avenue, PHSC 702, Norman, Oklahoma 73019. Phone: (405) 325-1852; Email: [cherrerias@ou.edu](mailto:cherrerias@ou.edu)

Historically, maternal custody has been the preferred norm since the 1920s. Prior to the 1900s, death accounted for more marital disruptions than divorce (Herrerías, 1984). During that time, dispositions of custody mirrored remnants of English Common Law which stated that men had a supreme right to their children. Women had no rights and were considered to be nonentities. In the rare event that fathers were denied custody, they were not held responsible for financially supporting their children (Depner, 1993).

With the advent of the *tender years doctrine* in the 1920s, it was believed that children's best interests were served if they remained with their mothers in the event of a marital dissolution (Depner, 1993; Derdeyn, 1976; Dusky, 1996; Herrerías, 1984; Mason, 1994). This held true unless a mother was proven unfit or otherwise incompetent (Mason, 1994). Since the late 1970s to early 1980s, the pendulum swung in the direction of shared parenting and increased father-only custody (Depner, 1993; Herrerías, 1984). This was largely brought about by the advocacy of the women's movement for equality in the workplace and the push for shared parenting from groups promoting fathers' rights (Mason, 1999).

In most families, custody decisions are made by the parents (Strauss, 1998). When that is not possible, a judge is relied upon to make that decision (Depner, 1993). Approximately 150,000 seek court intervention to determine child custody annually (Hunter & Monte, 2001). Custody can take two to three years to settle, and is almost always a highly conflictual process (Hopper, 2001).

A study by Mason (1997) for the American Bar Association found that custody decisions mentioned economic stability 46.5%. Custody decisions also mentioned the primary disciplinarian (33.3%). Both of these traits are usually associated with fathers. In this context, Mason indicated that motherhood was seen as relatively insignificant in 10.6% of cases. According to Mason (1999), most states have a list of recommendations that the judge refers to for consideration in child custody cases. Factors include both economic and emotional ones.

The law has struggled to develop fair and equitable standards to determine the most appropriate custodian of dependent children after divorce (Kelly & Ward, 2002). The American Law Institute's (ALI) approximation rule is a term used to help determine the physical custody of a child by identifying the proportion of time each parent has spent performing direct caretaking functions for their children *prior to separation*. The rationale for the approximation rule draws from attachment theory, and its use is recommended when both parents were engaged in pre-divorce caretaking and desire to engage in post-divorce shared parenting.

There have been indications of inequities in the legal process for women. Often women do not obtain primary physical custody despite having provided the primary parenting for their children. There is no question that mothers continue to be the primary parents of their children (Aldous, Muligan, & Bjarnason, 1998; Coltrane, 1996; Cowdery & Knudson-Martin, 2005; Herrerías, 1995; Zimmerman, Haddock, Ziemba, & Rust, 2001), and are regarded as *experts* in the care of their offspring (Cowdery & Knudson-Martin, 2005; Glenn, 1994). However, while early attachment affects emotional and social understanding in later years as it relates to secure attachment (Kelly & Ward, 2002), it appears that this information is not considered in the court's decision-making.

Child support is another issue faced by noncustodial mothers where there appears to be little equity. Awards for child support vary tremendously and some create a substantial burden on females, many whom are regarded as working poor (Chesler, 1987). There is also a connection between child support payment and regular contact with nonresidential children (Smock & Manning, 1997; Stewart, 1999). If support is not paid, the noncustodial parent-child relationship tends to become a distant one that negatively impacts the child.

A study by Bemiller (2006) found that women cited unequal access to lawyers, little to no information regarding court processes, and gender bias as common problems during custody proceedings. Mothers reported that judges disregarded allegations of abuse as well as other criminal activities when rendering their custody decisions. Mothers believed this was exacerbated by the lack of money for legal representation and their lack of knowledge about the court process.

Winner (1996) indicated that an individual could not gain access to the legal system if he or she did not have sufficient funds to hire an attorney. She stated that justice was “for sale” and since women did not usually control the resources in the family, they generally were unable to secure representation. Winner (1996) furthermore said that lawyers used children as bargaining chips in divorce negotiations as a way to coerce mothers into giving up financial interests so they can obtain physical custody of their children. She also discussed lawyers’ fee gouging, misrepresentation, and undue influence by women’s husbands or husbands’ lawyers.

The purpose of this article is to present data on noncustodial mothers who perceive they have faced a number of social inequities. Moreover, this paper identifies the reasons for maternal noncustody, the current living arrangements of the children, the amount of child support awards, level of child support payment, and the rate of compliance with child support.

## **Method**

This descriptive-exploratory study utilized both qualitative and quantitative methodologies. The qualitative component elicited responses to a series of open-ended questions such that participants were able to give voice to the process of their becoming a noncustodial mother; the quantitative portion utilized a series of clinical measurement tools and forced-choice questions. All participants received a cover letter and a stamped self-addressed envelope to facilitate the return of the questionnaire. Completion of the questionnaire satisfied the requirement for informed consent. .

Because conventional methods of sampling were ineffective in accessing noncustodial mothers in a previous study by this researcher (Herrerías, 1993), the print media and Internet-based on-line support groups were utilized to generate the study sample. Criteria for study inclusion was that a woman had (a) given birth to a child, (b) provided the primary parenting for a child for a minimum of six months, and (c) lives or lived apart from at least one of her children for a period of at least one year.

More than 500 women expressed interest in the research and 285 participated in the study. Of those who did not participate, many said that in retrospect they felt it would be too painful to discuss their cases. Others were afraid that somehow their former spouses would find out they had participated and it would in some way affect their visitation with their children.

The survey consisted of 11 sections assessing emotional (Herrerías, 1984) and social health, sociodemographics, family history, and factors relating to being a noncustodial parent. This article focuses primarily on the custody arrangements, legal costs, child support aspects, and some social characteristics of females' noncustodial status. The survey questions were derived

from the author's experience in having conducted the most comprehensive study on noncustodial mothers in the U.S. (Herrerías, 1984), the literature, and ongoing work with noncustodial mothers through support groups and correspondence. The author's clinical work with families influenced the development of a family social problem index used as well. Overall, the survey consisted of 308 items.

Descriptive statistics were calculated for all variables relevant to this paper. Open-ended questions were categorically analyzed for similar themes and contexts. Inter-rater reliabilities were conducted by the author and two graduate research assistants who double scored every open-ended response. Reliability scores of 95.2 and 94.3 were calculated.

## **Results**

A total of 285 women who had lived or currently live apart from one of more of their children participated in this study. The average age of noncustodial mothers was 37.6 (SD=8.0) years, ranging from 19.5 to 76 years old. Most noncustodial mothers were married, Caucasian, college-educated females who were gainfully employed. Table No. 1 provides a summary of the demographic characteristics of the participants.

Table No. 1  
Sociodemographics of Noncustodial Mothers  
N=285

	<u>N</u>	<u>%</u>
<i>Marital Status</i>		
Married	126	44.2
Divorced	78	27.4
Separated	33	11.5
Not Married/Cohabiting	38	13.3
Single, Never Married	11	3.9
<i>Race/Ethnicity</i>		
African American/Black	15	5.3
Asian American	11	4.0
Caucasian	239	83.8
Hispanic/Latina	14	4.8
Native American	9	3.2
Other	8	2.8
<i>Education</i>		
Less than High School	13	4.6
High School or GED	34	11.9
Some College	126	44.2
Baccalaureate Degree	63	22.1
Master's Degree	19	6.7
Doctoral-Level Degree	30	10.4
<i>Employment</i>		
Clerical and Kindred Workers	38	13.5
Managers and Administrators	50	17.4
Operatives (e.g., Assemblers, etc.)	8	2.8
Professional, Technical and Kindred Workers	63	22.7
Salesworkers	25	8.8
Service Workers	37	13.9
Homemakers	33	11.7
Full-Time College Students	10	3.5
Unemployed	17	6.0

### *Reasons for Maternal Noncustody*

There are many reasons that the participants gave for no longer living with their children. Eighty-four percent of the noncustodial mothers reported being involuntarily separated from their children. Seventy-three percent of the participants were survivors of domestic violence, a number

of whom possessed active restraining orders. Despite evidence of spousal abuse, the court awarded the children to their fathers. There were women whose children had been physically abused and/or molested by their fathers who lost custody to the alleged perpetrators. Many mothers were threatened by court custody fights and faltered beneath the financial costs, while others barely met daily living expenses. Some children were kidnapped by their fathers and taken to another state or country. A small number of women voluntarily relinquished custody in their child's best interest or because their children expressed a preference to live with their father.

Table No. 2 shows the reasons for noncustody.

Table No. 2  
Reasons for Maternal Noncustody  
N=285

	N	%
Court ordered maternal noncustody as a result of custody litigation.	197	69.2
Destructive relationship with spouse/partner.	110	38.6
Financial reasons.	99	34.8
Best interests of the child.	40	14.1
Psychological/emotional reasons.	32	11.2
Children's preference to live with biological father.	29	10.2
Threatened by spouse/former spouse/partner.	26	9.2
Children were kidnapped by father.	21	7.4
Child Protective Services' assumed custody.	18	6.3
Participant hid children from their father, and they were eventually located.	17	6.0
Drug and/or alcohol abuse by the participant.	14	4.9
Job relocation/court denied child be moved from state.	11	3.9
Child's behavior.	10	3.5
Participant's parents filed for child custody and won.	10	3.5
Participant's incarceration.	6	2.1
Other	19	6.7
	661*	

\*Participants were able to give multiple reasons.

### *Custody Arrangements*

Most of the respondents initially had custody of their children either as a partner in or as a single parent following the marriage. There were a small number of mothers who went into



hiding with their children only to be found later. Pursuant to custody decisions, fathers received primary physical custody in 87.7% of the cases. Ten of the participants (3.5%) reported their children to be in Child Protective Services' foster homes. Table No. 3 provides a list of the custody arrangements of which more than 90% have been formalized.

Table No. 3  
Child Custodial Arrangements

	N	%
Father has sole legal and physical custody	145	50.9
Mother and father have joint legal custody, with father having physical custody	93	32.6
Children live with father as an informal arrangement.	10	3.5
Protective services/child welfare has custody.	10	3.5
Someone other than the children's father has been appointed as guardian or caretaker.	8	2.8
Children live with one of mother's family members as an informal arrangement.	6	2.1
Someone known to mother has adopted the children.	2	.7
Someone unknown to mother has adopted the children.	2	.7
Other	9	3.2
Total	285	100

### *Cost of Changing Custody*

Noncustodial mothers reported that a change in custody cost \$100 to \$200,000 for a mean of \$21,980 (SD=36365.9). The median cost was \$9,250 with an interquartile range of \$18,375. Participants paid \$15,138 (SD=29,041.9) or 78.9% of the costs incurred, and received assistance from parents, retirement accounts or loans to make up the difference. The median of incurred

costs was \$5,000 with an interquartile range of \$13,500. Almost 62% of the respondents reported that the custody change resulted from a court custody battle that languished for an average of 3 (SD=2.6) years with a range of four months to 15 years. For those not involved in a custody battle (n=108), the struggles with custody issues continued for an average of 5.2 (SD=4.1) years ranging from 1 to 18 years. For those engaged in a custody battle (n=177), the struggles with custody issues lingered before or after the battle for a mean of 2.9 (SD=2.6) years. The cost of litigation ranged from \$3,000 to \$250,000 for a mean cost of \$25,480 (SD=39,476.9) per participant. The median cost for litigation was \$10,000 with an interquartile range of \$22,250. Since there was such variance in the responses, both the means and medians were reported.

### *Child Support*

Sixty-nine percent (n=177) of participants were ordered to pay child support. Ten percent (n=29) elected not to respond to the question and are not accounted for in the preceding percentage. Child support orders ranged from \$37 to \$3,500 per month for 1.7 (SD=0.8) children. The mean child support order was \$375.25 (SD=507.3, n=256) and the median was \$300. A close look at the history of child support payment of respondents found that more than one-third paid the amount ordered in full each month, while another 16.8% paid more than the amount required. Most participants paid something toward their children's support. Table 4 provides information regarding compliance with child support orders.

Table No. 4  
Child Support Payment Compliance

	N	%
Paid child support as court ordered.	93	36.3
Paid more child support than court ordered.	43	16.8
Paid less child support than court ordered.	15	5.85
Paid some child support though not court ordered.	15	5.85
Paid no child support though court ordered to pay.	25	9.8
Not court ordered to pay child support.	65	25.4
Total	256*	100

\*n=29 did not respond to this question.

Of those paying child support, just slightly more than 32% of noncustodial mothers paid child support through wage garnishment with another 40% preferring to pay with personal check. Twenty-two percent paid by bank check or money order and 6% relied on cash payments. Most participants (n=202) also reported spending an additional \$262.87 (SD=279.9) on their children each month. These additional expenditures were reportedly for clothing, recreational activities, food, special trips, and school-related activities.

Noncustodial mothers lived from less than one mile to 4,400 miles from their children for a mean distance of 506 (SD=800.8) miles. In 59.3% (n=273) of the cases, the respondents were responsible for paying the travel costs in connection with their mother-child visitations. These costs are not accounted for in the non-cash support expenses. The costs were shared with former partners 22.7% of the time, while former partners paid for visitation-related travel in 2.6% of the

instances. Grandparents or other relatives assisted with financial costs for travel in 7.7% of the cases. Almost 8% (n=12) of the noncustodial mothers had no contact with their children.

## **Discussion**

The researcher sought to describe the reasons that noncustodial mothers were living or had lived apart from one or more of their biological children. The researcher also sought to identify the sociodemographic characteristics of the participants, their custody arrangements, information about child support awards and payments, and their rate of compliance with child support.

### *Demographics*

The social characteristics of the study participants are not relatively different than those found by other researchers of noncustodial mothers. The mean age of participants fell within the mean ages of other studies that ranged from 34.7 to 38.9 years (Fischer & Cardea, 1981; Greif & Pabst, 1988; Herrerías, 1995; Pagano, 2000; Paskowicz, 1982). The marital status of the participants in the present study is consistent with Herrerías' (1995) study with the exception of the differences in the percentages of married and divorced, which were inverted. Pagano's (2000) sample was 100% married, whereas Greif and Pabst's (1988) was 96% single.

The current sample of noncustodial mothers is the most racially and ethnically diverse to date with 16.2% comprising women of color. An earlier study by this researcher included 12.3% women of color (Herrerías, 1995). Alternately, Chesler's (1987) study was 94% Caucasian, while Greif and Pabst's (1988) sample was 97% Caucasian. Race was not mentioned in other studies (Fischer & Cardea, 1981; Pagano, 2000; Paskowicz, 1982). Women of color, in particular African American and Hispanic females, may not share the same perspective of being a

*noncustodial* mother as Caucasian mothers. Historically, it has been an accepted practice for a child to live with a relative other than the biological mother whether on a temporary or permanent basis (Garcia-Preto, 2005; Hines & Boyd-Franklin, 2005). The ritual kinship network is an integral part of the culture where physical custody of a child is not viewed in a formal manner.

Educational achievement of noncustodial mothers was relatively indistinguishable from Herrerías (1995) and Paskowicz (1982). Greif and Pabst (1988) collapsed their categories in a way that made it difficult to compare. Gainful employment in the current study was 82.3% as compared with Paskowicz (1982) and Herrerías (1995) who indicated that 77% and 88.5% of participants were gainfully employed, respectively. Participants holding professional and managerial positions tended to be the same across studies (Chesler, 1987; Herrerías, 1995; Paskowicz, 1982). Income information is not provided given the difference in years of the studies.

### *Maternal Noncustody*

Participants cited 661 reasons or a mean of 2.3 reasons each for living or having lived apart from their children. Previous studies have reported from 1.4 to 3.3 reasons for becoming a noncustodial mother (Greif & Pabst, 1988; Herrerías, 1995; Paskowicz, 1982; Pagano, 2000). This researcher identified the primary reasons for maternal noncustody as: court-imposed custody order, destructive relationship with spouse, and financial reasons. Other studies reported reasons for maternal noncustody as: finances (Pagano, 2000; Herrerías, 1995; Greif & Pabst, 1988; Paskowicz, 1982), emotional reasons (Greif & Pabst, 1988; Herrerías, 1995; Pagano, 2000; Paskowicz, 1982), spousal intimidation/pressure (Fischer, 1983; Paskowicz, 1982), threat of a custody battle (Greif & Pabst, 1988; Herrerías, 1995), child's best interests (Fischer &

Cardea, 1981; Pagano, 2000), children's preference (Fischer, 1983; Greif & Pabst, 1988; Herrerías, 1995; Paskowicz, 1988), drug/alcohol abuse (Herrerías, 1995; Pagano, 2000); and self-actualization (Fischer, 1983; Herrerías, 1995; Paskowicz, 1988).

None of the reasons given by participants for becoming a noncustodial mother are clear cut. Within the category of court-imposed custody orders were women with poor legal representation, women who lost their children due to failed custody battles, women who the court-appointed custody evaluator and/or psychologist said would not be the 'best parent' to have the children, women who could not afford protracted custody litigation, women whose divorce was being contested, and women ruled against by biased judges. For example, in the case of poor legal representation, some attorneys were not prepared to try the case, had not filed necessary papers in a timely manner, and/or had dropped the case suddenly and been replaced just prior to the trial and were not knowledgeable about the case. Another example were single parent mothers who moved with their jobs and were not allowed to take their children with them and had former spouses who filed for permanent physical custody in their absence, making it very difficult to litigate from a distance.

Participants' destructive relationships with spouses/partners were particularly encompassing. Even so, only 38.6% indicated this as a reason for maternal noncustody despite 73% of participants having experienced physical abuse by a spouse or partner and with a number of others having active restraining orders. Considered as destructive were also threats to kill or otherwise injure participants, their children, and/or family members; nevertheless, the bulk of destructive relationships involved physical abuse (89%). These were untenable situations that had most often endured for years with no hope of resolution. Other studies ranged from 1% (Paskowicz, 1982) to 62% (Chesler, 1987; Greif & Pabst, 1988; Herrerías, 1995) of the women

who said that spousal abuse was the primary reason for noncustody. Many participants felt that they could no longer withstand the abuse and left the home believing they could come back for the children when they were settled in a safe place, at which point the spouse filed for custody by reason of abandonment. Others left with their children to shelters only to find they did not have the resources needed to make it on their own and returned home, leaving for a second time without the children. Again, women felt they could return for their children only to find that legal action had been taken against them.

Financial reasons were another factor relating to becoming a noncustodial mother that was without neat boundaries. Mothers retaining custody following divorce found it nearly impossible to make ends meet because of the sporadic nature of the receipt of child support payments. They did not want their children to be deprived of daily necessities, particularly when many participants were in minimum wage jobs. Those who relinquished custody at the time of divorce were afraid that the children's father would not follow through with providing child support. Many of those participants did not have anywhere to live; they had no money or job. Their primary concern was the welfare of their children and ensuring they were provided for. Still others were left with little to no money after repeated court appearances in attempting to retain custody of one or more of their children. Several had parents that would take in mothers with their children temporarily and others whose parents would only accept the mother. There was a handful that lost jobs and ended up in a homeless shelter. There was also the 4.9% who used their available resources for drugs and/or alcohol. Finally, there were the women that felt if they had more money, they could have fought their custody battle to the end and perhaps won custody of their children. These were vulnerable women with few if any resources and little to no sense of power.

Participants voluntarily relinquishing custody most often cited doing so in the child's best interest, which usually meant leaving them in the home they knew with a caring father who had more resources and would be the best provider. Clearly, most of the participants did not believe that living with their former spouse/partner was in their children's best interests because they had provided the primary parenting for them from birth until the time custody was given to the father. In most cases, participants indicated that the father had had comparatively little involvement in providing the daily care for the children.

Some of the children who expressed a preference to live with their father had a genuine desire to do so and others did so because they were "bought off" or angry with their mothers regarding disciplinary situations. Once in their new living environment, children tended to be alienated against their mother or plied with gifts and other rewards to make it almost impossible for the mother to compete. In several situations, the children were forbidden to refer to their mother as *mom*. They were only to call her by her first name and were to refer to their stepmother as mom instead.

Situations where participants were threatened by their former spouses were cases of "voluntary" relinquishment. These were cases where the mother was either threatened with a court custody fight, alienation of the child or impeding child visitation. The term *voluntary* is obviously debatable under these conditions. Many mothers asked what choice they had given the scenario. They perceived no way out but to give in to the threats.

Admittedly, there were mothers that did not use the best judgment. Those that abused drugs and alcohol, physically maltreated their children or failed to protect their children from maltreatment, or those that committed crimes leading to incarceration made a choice to relinquish the parental role. Some of the children went to live with their father, maternal or



paternal grandparents, or other relatives. For others, the future was less certain as they were placed in foster homes.

### *Custody Arrangements*

Sixty-nine percent of the participants in this study involuntarily lost custody of their children from custody litigation, which is comparable to the findings of Chesler (1987). The percentage of custody loss in other studies ranged from 12% (Greif & Pabst, 1988) to 44% (Dusky, 1996; Mccoby & Mnookin, 1992; Pagano, 2000). Fischer and Cardea (1982) and Herreras' (1995) studies focused on voluntary relinquishers.

Females are at a significant disadvantage when it comes to males in this country. First, females have less education than males do (Grall, 2007). Second, females earn significantly less income than males (DeNavas-Walt, Proctor, & Smith, 2007). In order to mount a successful legal defense, it takes a legal retainer that is most often in the thousands of dollars. Men know that threatening custody litigation when women cannot afford the battle more often than not is a win for them (Chesler, 1987; Herreras, 1995). The requirement for child custody evaluations involve assessments by mental health professionals, which are generally not covered by health insurance. Females simply lack the financial resources to compete against males.

Fathers obtained primary physical custody of their children in 87.7% of the cases. This compares with Greif and Pabst (1988), Herreras (1995) and Pagano (2000) where 94%, 95% and 100% of fathers received primary custody, respectively. Other studies were not specific as to who was awarded custody. Mason (1994) alleges that the law refocused to the parent-child relationship and deferred responsibility to psychiatrists, psychologists and social workers to determine the *best* situation for the child. The judiciary abdicated its responsibility to social

scientists who play “psychological politics” if hired by one of the parents. Who can best afford to hire one of these mental health professionals?

Some believe that gender-neutral custody standards nullify mothers’ primary parenting experience while fathers retain economic leverage (Depner, 1993). Yet in nearly all cases, biological rights dominate over nurture irrespective of who provides the actual parenting (Mason, 1999). Maternal preference was always a discretionary policy that was easily revoked when a mother’s conduct did not conform to the standards set by those of the judiciary (Grossberg, 1983). Mothers have even lost custody if they have been abused—as punishment for something that was not their fault—as well as for when their children *refuse* to visit with their fathers (Dusky, 1996).

Maccoby and Mnookin (1992) state that when mothers show low levels of involvement prior to divorce according to fathers and also report concern for their children’s well-being, it significantly increases the likelihood that fathers will receive child custody. The authors indicate that the father’s lack of prior involvement with the children does not appear to impact the custody decision. This study’s participants, similar to Paskowicz (1982), Chesler (1987), and Herrerías (1995), provided the primary caretaking for their children. Nevertheless, prior involvement with their children was not seen as a sufficiently compelling factor in awarding custody. Women are simply held to a higher standard than men (Chesler, 1987; Winner, 1996). Ultimately, the judge’s personal values influence the custody decisions and justifications for their outcomes are not required (Mason, 1999).

#### *Cost of Changing Custody*

For the most part, the cost of changing custody is expensive. There were no instances where a participant was able to write up the petition and order to change custody on her own,

represent herself, and seek to successfully file the order. Whether the change of custody involves the use of the same attorney or different ones or whether the divorce is amicable or contested, the expense of legal representation is costly. There is seldom an instance of contracting with an attorney without a retainer of less than \$1,000. When there are children involved and a suspicion of a contested divorce, the retainer increases to \$10,000 before the case is accepted. Some more flexible lawyers will accept payment plans, but those are few.

In the cases of custody litigation, the costs escalate to the tens of thousands. Women rarely have the resources to engage in such a protracted process. Participants who found themselves in that situation found themselves in a desperate situation, with too many emptying their savings and/or retirement accounts, selling their homes, borrowing from their parents, emptying their parents' retirement accounts, and taking out loans—ultimately filing for bankruptcy. Most women cannot sustain such a financially and emotionally-draining prospect even at the expense of their children. Then there are others that will stop at nothing until they run into the court order that awards custody to the father despite their best efforts. None of the prior studies pertaining to noncustodial mothers discussed the cost of custody litigation.

### *Child Support*

The Child Support Enforcement amendments of 1984 required each state to establish a standard formula that would assist judges in assigning child support awards (Coleman, Ganong, Killian, & McDaniel, 1999). States vary in how they choose to set child support standards, and child support is tied to public policy. In most states, child support helps to offset or supplement public assistance. Studies have shown that when noncustodial parents perceive child support as being fair, they are more likely to pay it, as well as result in more positive post-divorce relationships (Coleman et al., 1999; Smock & Manning, 1997).

The divorce settlement agreement is an important document, one that may not be approved if the child support award is inadequate (Peters & Strohm, 1994). The state looks at the noncustodial parent's ability to pay by reviewing his or her monthly take home pay. The state also looks at the needs of the child regarding physical, medical, educational, and emotional needs; day care costs; the age of each child; and the number of children involved. The standard of living of the custodial parent and children are taken into consideration in the support determination as well. Another factor taken into account is the amount of time that the children spend in each parent's home (Strauss, 1998).

All noncustodial parents have an obligation to contribute to the support of their children. Unlike popular misconceptions, noncustodial mothers do contribute to their children's financial support. Sixty-two percent of the participants paid at least some to full child support for their children. Almost 6% more paid something though not ordered by the court to do so. The majority of the participants felt it was essential that they contribute to their children's resources even if visitation was not as frequent or satisfactory as they would prefer. Grall (2007) found that 77.2% custodial parents received some child support and 22.8% received none. The proportion of mothers (47.3%) and fathers (43.1%) receiving full payments of child support in 2005 was not statistically significant. These data were reported by custodial parents in a study for the U.S. Census Bureau (Grall, 2007).

Thirty-one percent of participants were not ordered to pay child support. There may be a number of reasons for this. A number of women were told that because they had "voluntarily" relinquished custody, they did not have to pay child support. Others retained children from the marriage so child support did not change hands. Yet others were unemployed or in low paying jobs. Still others earned substantially less than their former spouses and an agreement was

reached where child support would not be paid by the participant. Grall (2007) stated that primary reasons given by fathers for mothers not paying child support included they did not want the other parent to pay (20.6%), the other parent could not afford to pay (24.1%), and the other parent paid what she could afford (27.9%).

Unlike Greif (1997) who claims noncustodial mothers frequently pay child support out of obligation or fear of reprisal, participants wished they could contribute more to their children's support. As a matter of fact, while 25.4% provided no direct child support, 71% spent money on special activities, camps, vacation, recreation, gifts, and clothes that further enhanced their children's well-being.

Noncustodial mothers tend to live further from their children than do noncustodial fathers, yet they keep more regular contact with children (Stewart, 1999). This adds an additional expense that is not accounted for in the cash expenditures mentioned. Mothers paid travel expenses 59.3% of the time and shared expenses 22.7%. This is a direct benefit to the child in maintaining the parent-child relationship—the social attachment that fosters healthy emotional security over the long term.

There is a significant discrepancy in the size of child support orders that is inequitable and creates a tremendous burden on noncustodial mothers. For example, one participant who earned less than \$15,000 annually was court ordered to pay \$900 a month for two children and had to live at home with her parents because she could not afford to live elsewhere. Child support ranged from a low of \$37 to \$900 monthly for those whose income was less than \$15,000 annually. It is understandable how these mothers would find it difficult to pay child support. One participant in the \$25,000-35,000 income bracket was ordered to pay \$1,000 monthly for three children, whereas another one in the same income bracket was ordered to pay

\$543 monthly for two children. One participant earning more than \$75,000 was ordered to pay nothing, while another in the same income bracket was ordered to pay only \$134 a month. There is little equity here where lower income women are paying a significant proportion of their income to their detriment. It appears that the child support guidelines are more reflective of men's economic realities rather than women's (Christensen et al., 1990). Even in the cases where a mother may be unemployed, a set amount of child support is generally established and may be based on a minimum wage full-time job (Peters & Strohm, 1994).

When a mother visits with her child, she would like to engage in fun activities. Granted all activities do not have to cost money but most do. Going to the movies, renting movies, playing video or computer games, swimming, or going to the zoo does involve an expense. Nowadays, children are accustomed to higher levels of stimulation and that takes resources—something that many mothers lack. Unfortunately, mothers face their children's disappointment when they cannot provide for their children as their fathers can.

## **Conclusion**

No one disputes that fathers can be good parents and sole custodians of their children. However, there is a clear injustice when custody is being awarded primarily because the father has comparatively more financial resources at his disposal and therefore he can “purchase” the outcome he desires. Mothers who continue to enact the primary role of parent for their children and are not abusive, chemically addictive, or have an untreated mental illness should be given preference in awards of primary physical custody of their offspring. Women who have been physically abused by their former spouses should not be doubly victimized by having their children removed from their custody and awarded to the alleged perpetrator. Child support

guidelines need to be revised to more equitably allow for women's ability to pay and eliminate the number of existing discrepancies. This will allow a greater number of noncustodial mothers to increase their cash support to their children. Finally, jurists would benefit by professional development in parental separation and loss, family and custody issues, and assessment and evaluation to better prepare for making more informed custody decisions.

## **References**

- Aldous, J., Mulligan, G.M., & Bjarnason, T. (1998). Fathering overtime: What makes the difference? *Journal of Marriage and Family*, 60(4), 809-820.
- Bemiller, M. (2006). "The system S-U-C-K-S"—An examination of noncustodial mothers' experiences in family court. Paper presented at the Annual Meeting of the American Society of Criminology (ASC), Los Angeles, CA. November 1, 2006.
- Chambers, C.A. (1991). *Child support*. New York: Summit Books. Chesler, P. (1987). *Mothers on trial*. Seattle: Seal Press.
- Christensen, D.H., Dahl, C.M., & Rettig, K.D. (1990). Noncustodial mothers and child support: Examining the larger context. *Family Relations*, 39(3), 388-394.
- Coleman, M., Ganong, L.H., Killian, T., & McDaniel, A.K. (1999, January). Child support obligations. *Journal of Family Issues*, 20, 46-68.
- Coltrane, S. (1996). *The family man: Fatherhood, housework, and gender equality*. New York: Oxford University Press.
- Cowdery, R.S., & Knudson-Martin, C. (2005, July). The construction of motherhood: Tasks, relational connection, and gender equality. *Family Relations*, 54(3), 335-345.
- DeNavas-Walt, C., Proctor, B.D., & Smith, J. (2007, August). Income, poverty and health insurance coverage in the United States: 2006. *Current Population Reports Consumer Income P60-233*. U.S. Census Bureau.

- Depner, C.E. (1993). Parental role reversal: Mothers as nonresidential parents. In C.E. Depner & J.H. Bray (Eds.). *Nonresidential parenting* (pp. 37-57). Newbury Park, CA: Sage Publications.
- Derdeyn, A.P. (1976). Child custody contests in historical perspective. *American Journal of Psychiatry*, 133(12), 1369-1376.
- Dusky, L. (1996). *Still unequal*. New York: Random House.
- Fischer, J.L. (1983, July). Mothers living apart from their children. *Family Relations*, 32(3), 351-357.
- Fischer, J.L., & Cardea, J.M. (1981, May). Mothers living apart from their children: A study in stress and coping. *Alternative Lifestyles*, 4(2), 218-227.
- Garcia-Preto, G. (2005). Latino families. In M. McGoldrick, J. Giordano, & N. Garcia-Preto, *Ethnicity & family therapy* (3<sup>rd</sup> ed., pp. 153-165). New York: Guilford Press.
- Glenn, E.N. (1994). Social construction of mothering: A thematic overview. In E.N. Glenn, G. Chang, & L.R. Forcey (Eds.). *Mothering: Ideology, experience, and agency* (pp. 1-29). New York: Routledge.
- Grall, T. (2007, August). Custodial mothers and fathers and their child support: 2005. *Current Population Reports P60-234*. Washington, DC: U.S. Census Bureau.
- Greif, G.L. (1997). *Out of touch*. New York: Oxford University Press.
- Greif, G.L., & Pabst, M.S. (1988). *Mothers without custody*. Lexington, MA: Lexington Books.
- Grossberg, M. (1983, Summer). Who gets the child? Custody, guardianship and the role of a judicial patriarchy in Nineteenth Century America. *Feminist Studies* 9(2), 235-260.
- Herrerías, C. (1984). *Noncustodial mothers: A study of self-concept and social interactions*. Doctoral Dissertation. University of Texas at Austin, August 1984. Ann Arbor, MI: University Microfilms, Inc.
- Herrerías, C. (1993). Use of the print media to access hard-to-reach research participants. *Journal of Social Service Research* 17(3/4), 91-105.



- Herrerías, C. (1995). Noncustodial mothers following divorce. *Marriage and Family Review*, 20(1/2), 233-255.
- Hines, P.M., & Boyd-Franklin, N. (2005). African American families. In M. McGoldrick, J. Giordano, & N. Garcia-Preto, *Ethnicity & Family Therapy* (3<sup>rd</sup> ed., p. 87-100). New York: Guilford Press.
- Hopper, J. (2001, May). The symbolic origins of conflict in divorce. *Journal of Marriage and the Family*, 63(2), 430-445.
- Hunter, D.B., & Monte, T. (2001). *Winning custody*. New York: St. Martin's Press.
- Kelly, R.F., & Ward, S.L. (2002, July). Allocating custodial responsibilities at divorce: Social sciences research and the American Law Institute's Approximation Rule. *Family Court Review*, 40(3), 350-370.
- Maccoby, E., & Mnookin, R.H. (1992). *Dividing the child*. Cambridge, MA: Harvard University Press.
- Mason, M.A. (1994). *From father's property to children's rights: The history of child custody in the United States*. New York: Columbia University Press.
- Mason, M.A. (1997, Summer). Read my lips: Are mothers losing custody? Trends in judicial decision-making in custody disputes. *Family Law Quarterly*, 31(2), 215-237.
- Mason, M.A. (1999). *The custody wars*. New York: Basic Books.
- Meyer, D.R., & Bartfeld, J. (1998, May). Patterns of child support compliance in Wisconsin. *Journal of Marriage and Family*, 60(2), 309-318.
- Office of Child Support Enforcement (2006). *Fact Sheet*. U.S. Health and Human Services, Administration for Children & Families. Retrieved on October 21, 2007 from [http://www.acf.hhs.gov/opa/fact\\_sheets/cse\\_factsheet.html](http://www.acf.hhs.gov/opa/fact_sheets/cse_factsheet.html).
- Pagano, A.M. (2000). *Journeys of women without custody*. Danbury, CT: Rutledge Books, Inc.
- Paskowicz, P. (1982). *Absentee mothers*. New York: Universe Books.
- Peters, D., & Strohm, R.L. (1994). *Divorce and child custody* (2<sup>nd</sup> Ed.). Hawthorne, NJ: Career Press.

- Smock, P.J., & Manning, W.D. (1997, November). Nonresident parents' characteristics and child support. *Journal of Marriage and Family*, 59(4), 798-808.
- Stewart, S.D. (1999, November). Nonresident mothers' and fathers' social contact with children. *Journal of Marriage and Family*, 61(4), 894-907.
- Strauss, S.D. (1998). *Divorce and child custody*. New York: W.W. Norton & Company.
- Warshak, R.A. (1981). Custody disposition and children's personality development. Paper presented at the Annual Meeting of the American Orthopsychiatric Association, New York.
- Winner, K. (1996). *Divorced from justice*. New York: Harper Collins.
- Zimmerman, T.S., Haddock, S.A., Ziemba, S., & Rust, A. (2001). Family organizational labor: Who's calling the plays? *Journal of Feminist Family Therapy*, 13(2/3), 65-90.