



SPECIAL REPORT

Myths of the ABA Commission on Domestic Violence: Detailed Findings

2021 UPDATE: This report was originally published in 2010. As a result of the extensive negative publicity that this report engendered, the American Bar Association removed the information from its website. Unfortunately, the biased flyer was posted on the website of the Leadership Council:

http://leadershipcouncil.org/docs/ABA_custody_myths.pdf

The Coalition to End Domestic Violence urges the Leadership Council to remove this flawed document from its website, and to only publish information that is accurate and unbiased.

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INTRODUCTION

The Commission on Domestic Violence (CODV) of the American Bar Association (ABA) has developed a two-page flyer: *10 Myths about Custody and Domestic Violence and How to Counter Them*. In an effort to validate the CODV flyer, Respecting Accuracy in Domestic Abuse Reporting (RADAR) undertook a detailed review of the statements featured in the flyer.

RADAR’s analysis of these statements is shown in two companion documents. A summary of the analysis is contained in the Special Report “Myths of the ABA Commission on Domestic Violence: Summary Report.”¹ This Special Report—“Myths of the ABA Commission on Domestic Violence: Detailed Findings”—presents an in-depth review of each of the 10 myths, 19 claims, and 20 cited documents.

These are the findings about the 10 purported myths:

- Myths confirmed to be myths: 3
- Myths presented in a misleading manner: 4
- Myths that are, in fact, *not* myths but true statements: 3

These are the findings about the 19 CODV claims:

- Correct claims: 2
- Claims unsupported by the available research: 3
- Claims that are misleading: 3
- Claims that are false: 11

These are the findings about the quality of the 20 cited documents:

- Excellent: 0
- Good: 9
- Acceptable: 3
- Poor: 4
- Very poor: 4

Seven of the 10 purported myths turned out to be either misleading or not myths after all. Seventeen of the 19 claims are unsupported, misleading, or false. Many of the cited documents are outdated, contain serious research flaws, or do not consist of research and thus cannot substantiate the CODV claim.

The detailed analysis is presented below.

Myth 1: “Domestic violence is rare among custody litigants.”

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of one claim:

Claim 1.1: “Studies show that 25–50% of disputed custody cases involve domestic violence.”

Citations:

- Keilitz S, Davis C, Flango C, et al. Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers. Williamsburg, VA: National Center for State Courts, 1997.
- Johnston JR. High-conflict divorce. *Future of Children*, Vol. 4, No. 1, 1994.

Summary of Keilitz Report

Developed by the National Center for State Courts (NCSC), this report summarizes the results of a study of 150 courts across the country that examined how courts identify, process, and resolve disputed child custody cases. The report considers evidence of domestic violence to include “civil protection orders, ... self-reports in questionnaires and interviews, allegations in the pleadings, and other evidence in the case record.”²

In Baltimore and Louisville, the percentage of cases with allegations of partner violence was found to be about 25%, compared to Las Vegas, which had more than twice this number. Overall, the estimated proportion of custody and visitation disputes that “involves” domestic violence is:

- 57% of courts — less than one-quarter of the caseload
- 37% of courts — one-quarter to one-half of the caseload
- 6% of courts — more than one-half of the caseload

Summary of Johnston Article

The Johnston article is a summary of the research on high-conflict divorce and its effects on children.³ She concludes that children of high-conflict divorce, especially boys, are two to four times more likely to be clinically disturbed in terms of their emotions and behaviors.

Analysis

Figure 1 in the NCSC report is titled “Percentage of Courts Reporting a Given *Incidence* of Domestic Violence in Custody Cases,” but in truth the figure is based on soft evidence such as allegations, civil protection orders (often issued with no objective evidence of violence⁴), and self-reports, *not judicial findings*. Hence, the NCSC report blurs a fundamental distinction in the law: an allegation versus a judicial finding. This conflation surfaces repeatedly in the report.

The report is further biased by its claim on page 3 that “extensive research” shows that “in the vast majority of partner abuse cases, men perpetrate violence against women.” The report does not cite any research to support that claim. That misrepresentation is found throughout the report. The report by the National Center for State Courts is legally and scientifically flawed.

In contrast, the research by Janet Johnston was well conducted and her conclusions are based on sound evidence. The research she cites indicates that 65% to 75% of high-conflict divorces involve allegations of domestic violence.

What Other Research Shows

Only one statewide study was located probing the occurrence of domestic violence allegations during divorce proceedings. The analysis was based on a large (n = 3,806) representative sample of all divorces in Oregon from 1995 to 2002. Overall, 24% of divorces had allegations of partner aggression.⁵ Passage of shared parenting legislation in 1997 was found to increase the number of allegations.

Similarly, Chandler found that among couples who sought mediation on a voluntary basis, 23% of cases involved reported domestic violence, based on pre-mediation screening questionnaires.⁶

In disputed divorces, however, allegations of abuse increase substantially. Four studies have examined the extent of allegations of violence made by couples participating in mediation:

- Depner and colleagues studied 1,699 divorce mediation sessions and found that domestic violence was alleged by one or both parents in 65% of families.⁷
- Mathis and Tanner found that among 131 couples, 60% reported some level of violence.⁸
- Saccuzzo and colleagues reported that among 193 California couples, 84% involved an allegation or restraining orders relating to domestic violence.⁹

Two studies surveyed divorcing couples in California for whom mediation had failed or disputes continued even after a legal settlement had been reached:

- Johnston and Campbell reported allegations of physical aggression in 75% of couples separated an average of 30 months.¹⁰
- Johnston reported a 70% aggression rate among couples separated an average of 42 months.¹¹

Finally, one study reveals the importance of distinguishing between *allegations* of abuse versus actual abuse:

- In a study of couples involved in custody disputes, DV allegations were made in 55% of the cases. Of those allegations, 59% could not be substantiated as true.¹²

Finding

Claim 1.1 is **false**. It would be correct to state, “Studies show that one-quarter to three-quarters of disputed custody cases involve an *allegation* of domestic violence.”

Assessment of Myth 1

Based on the finding of about half of DV allegations cannot be substantiated as true, it appears that one-eighth to three-eighths of cases of litigated custody cases involve substantiated partner violence.

The statement “Domestic violence is rare among custody litigants” is **indeed a myth**.

Myth 2: “Any ill effects of domestic violence on children are minimal and short-term.”

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of three claims:

Claim 2.1: “Children who are exposed to domestic violence may show comparable levels of emotional and behavioral problems to children who were the direct victims of physical or sexual abuse.”

Citation:

- Jaffe P, Wolfe D, Wilson S. *Children of Battered Women*. Newbury Park, CA: Sage Publications, 1990.

Summary

This book provides an overview of the problem of domestic violence; describes its cognitive, emotional, and behavioral effects on children; discusses assessment and intervention strategies; and reviews implications for related children’s services. The book cites research and highlights numerous case studies.

At one point, the book acknowledges the high incidence of wives’ abuse of their husbands but dismisses that concern with the assertion that “much of this behavior is in self-defense.”¹³

Analysis

The book’s one-sided depiction of domestic violence is evident from its title. The book is characterized by ideologically rooted claims that family violence is considered “acceptable behavior within a patriarchal society” (a false statement, research shows¹⁴) and is “interwoven with the very fabric of society’s attitudes and values” (a meaningless assertion). Its claim that “much” of women’s violent behavior is done in self-defense is factually incorrect—the actual figure is less than 20%.^{15,16} Its portrayal of fathers is negative.

The tome makes frequent claims about research findings without commenting on the study’s limitations. Its alarmist tone and frequent reliance on anecdotes detracts from the book’s ability to objectively present the impact of partner violence on children. Contrary to the impression left by *Children of Battered Women*, mothers are as likely as fathers to engage in partner violence, even for severe, unilateral violence sometimes referred to as “battering.”¹⁷

What Other Research Shows

More recent and rigorous reviews of the literature have been published by Wolfe¹⁸ and Kitzmann.¹⁹ Wolfe concluded, “Forty of these studies indicated that children’s exposure to domestic violence was related to emotional and behavioral problems, translating to a small overall effect.”

Kitzmann similarly concluded that her analysis “indicates that about 63% of child witnesses were faring more poorly than the average child who had not been exposed to interparental

violence. Notably, however, this result also means that about 37% of the child witnesses showed outcomes that were similar to, or better than, those of nonwitnesses.”

So while it is true that some children from homes characterized by domestic violence are more likely to have emotional and behavioral problems,²⁰ other children from such homes do not experience clinically significant levels of psychopathology.²¹

However, research does *not* support the notion that witnessing adult partner aggression can be compared to being a direct victim of sexual abuse.

Finding

Claim 2.1 is **misleading** with regard to sexual abuse. It would be more accurate for it to state, “Some children who are exposed to domestic violence show comparable levels of emotional and behavioral problems to children who were the direct victims of physical abuse.

Claim 2.2: “Adverse effects to children who witness DV are well-documented, including aggressive behavior, depression, and/or cognitive deficiencies.”

Citations:

- Morrill A, Dai J, Dunn S, Sung I, Smith K. Child custody and visitation decisions when the father has perpetrated violence against the mother. *Violence Against Women*, Vol. 11, No. 8, 2005, pp. 1076–1107.
- Edleson J. Children’s witnessing of adult domestic violence. *Journal of Interpersonal Violence*, Vol. 14, No. 8, 1999.*

Summary of Morrill Article

This study evaluated the impact of state statutes that mandate a presumption against custody by a person who has perpetrated partner violence. The authors examined 393 custody and/or visitation orders entered by 60 judges in six states. They found that in states with a presumption against custody awards to abusers, judges were more likely to award sole legal and physical custody to mothers.

However, the Morrill study analyzed child custody awards, not the effects of witnessing DV on children. This study should have been cited under Claim 5.3.

Summary of the Edleson Paper

This paper reviews 31 rigorous studies that examined the effects of a child witnessing domestic violence. These studies evaluated the childhood problems associated with witnessing partner violence, the factors that moderate the impact of these experiences, and the rigor of the research methods used in these studies.

* The ABA flyer uses this citation: Edleson J. Problems associated with children’s witnessing of domestic violence. 1999. However, this is an incomplete version of the journal article that is referred to above.

Analysis

The Edleson review provides a useful but now outdated summary of the research. Its main deficiency is that it ignores the problem of female-initiated partner aggression.

What Other Research Shows

Claim 2.2 states that witnessing abuse worsens cognitive deficiencies. Although the Kitzmann review concluded that child witnesses were more likely to have academic problems, cognitive deficiencies were not assessed. See also previous discussion under Claim 2.1, *What Other Research Shows*.

Finding

Except for the statement about cognitive deficiencies, Claim 2.2 is **correct**. A fully correct summary of the research would state, “Adverse effects to children who witness DV are well documented, including aggressive behavior, depression, and/or academic problems.”

Claim 2.3: “A continuing study by the CDC has shown a significant relationship between exposure to ‘adverse childhood experiences’ (including witnessing domestic violence) and development of adult health problems, including pulmonary disease, heart disease, hepatitis, fractures, obesity, and diabetes (not to mention IV drug use, alcoholism, sexually transmitted diseases, and depression).”

Citation:

The CODV claim does not cite a specific study. Instead it references a 1998 press release and the website of the Adverse Childhood Experiences Study (ACES). That website lists the following article:

- Felitti V, Anda R, Nordenberg D, Williamson D, Spitz A, Edwards V, Koss M, Marks J. Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults. *American Journal of Preventive Medicine*, Vol. 14, No. 4, 1998.

But that article does not address the specific statement of Claim 2.3. Further extensive searches identified a single article from the Adverse Childhood Experiences Study that addresses the impact of witnessing partner abuse:

- Dube S, Anda R, Felitti V, Edwards V, Williamson D. Exposure to abuse, neglect, and household dysfunction among adults who witnessed intimate partner violence as children: Implications for health and social services. *Violence and Victims*, Vol. 17, No. 1, 2002.

Summary

The Adverse Childhood Experiences Study was a retrospective survey of adults who were members of an HMO in southern California. Persons were asked about a variety of childhood risk factors they had experienced, including violence against the mother. Experiences of witnessing violence against the father were not assessed. The researchers analyzed the association of those factors with subsequent health behaviors and disease conditions.

The researchers conclude in their 2002 article, “There was a positive graded risk for self-reported alcoholism, illicit drug use, and depressed affect as the frequency of witnessing IPV [interpersonal violence] increased.”

Analysis

Retrospective surveys have well-known weaknesses, including selection bias, faulty recall of previous events, and inability to demonstrate causation. The failure of the survey to assess violence against fathers does not require further comment.

The Adverse Childhood Experiences Study identified a link from childhood exposure to partner violence and alcoholism, illicit drug use, and depressed affect, but not a link to pulmonary disease, heart disease, hepatitis, fractures, obesity, diabetes, or sexually transmitted diseases.

What Other Research Shows

No other studies could be found that link childhood witnessing of partner violence to its long effects on physical health, such as pulmonary disease, heart disease, hepatitis, fractures, obesity, diabetes, or sexually transmitted diseases.

Finding

Claim 2.3 misrepresents the findings of the Adverse Childhood Experiences Study. Claim 2.3 is **false**.

Assessment of Myth 2

The statement “Any ill effects of domestic violence on children are minimal and short-term” is **indeed a myth**.

Myth 3: “Mothers frequently invent allegations of child sexual abuse to win custody.”*

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of three claims:

Claim 3.1: “Child sexual abuse allegations in custody cases are rare (about 6%), and the majority of allegations are substantiated (2/3).”

Citation:

- Theonnes N, Tjaden PG. The extent, nature, and validity of sexual abuse allegations in custody and visitation disputes. *Child Abuse and Neglect*, Vol. 14, 1990.

Summary

Thoennes and Tjaden obtained information from over 200 court administrators, judges, custody mediators, and child protection workers throughout the United States, including

* Note: In the interest of impartial inquiry, this analysis examines whether mothers *and fathers* frequently invent allegations of child sexual abuse to win custody.

70 in-depth interviews at five sites. According to records kept by family court workers, less than 2% of disputed child custody or visitation cases involved any allegation of sexual abuse.²²

The authors conclude, “In the 129 cases for which a determination of the validity of the allegation was available, 50% were found to involve abuse, 33% were found to involve no abuse, and 17% resulted in an indeterminate ruling.”

Analysis

The authors’ reliance on data collected in 1986 from a small convenience sample in only 12 venues limits the generalizability of their findings.

What Other Research Shows

One study analyzed data from 7,672 child maltreatment investigations reported in the Canadian Incidence Study of Reported Child Abuse and Neglect. Among the 798 cases of alleged sexual abuse, only 38% were substantiated.²³

Likewise, Wakefield and Underwager reported that out of approximately 200 divorce and custody cases in which they provided expert consultation, in three-fourths of cases there was no determination of sexual abuse by the legal system.²⁴ Allegations of child sexual abuse are indeed rare in divorce actions, but appear to be more likely in the context of custody disputes.²⁵

Finding

Claim 3.1 carelessly misreports the findings of the Thoennes and Tjaden study—the frequency of sexual abuse allegations was 2%, not 6%. Claim 3.1 also ignores the findings from two other larger studies. Claim 3.1 is **false**.

Claim 3.1 should state, “Allegations of child sexual abuse appear to be rare in divorce actions (about 2%), and only in about one-third of cases are allegations of child sexual abuse substantiated.”

Claim 3.2: “False allegations are no more common in divorce or custody disputes than at any other time.”

Citation:

- Brown T, Frederico M, Hewitt L, and Sheehan R. Revealing the existence of child abuse in the context of marital breakdown and custody and access disputes. *Child Abuse and Neglect*, Vol. 24, No. 6, 2000.

Summary

The study by Thea Brown and colleagues analyzed 357 allegations of child abuse made by parents involved in custody and access disputes in Melbourne and Canberra, Australia. Of the 357 claims, 19.6% involved an allegation of solely child sexual abuse.²⁶ However, Brown does not compare the rate of false allegations of child sexual abuse during divorce and custody disputes to the rate at other times.

Analysis

The Brown article consists of a confusing, poorly described study conducted in Australia in the 1990s. It does not provide data that addresses the focus of Claim 3.2, the rate of false allegations of child sexual abuse during divorce and custody disputes compared to other situations. The relevance of data collected in Australia to the United States is unknown.

What Other Research Shows

It is generally believed that allegations of abuse, as well as false allegations of abuse, are more common during divorce and custody disputes.²⁷

One study analyzed data from the Canadian Incidence Study of Reported Child Abuse and Neglect. Ten percent of these cases involved allegations of sexual abuse. The authors conclude, “Rates of false allegations were significantly higher in these cases: 12% of cases involving custody or access disputes compared to only 3% in other cases.”²⁸

Finding

The best available research indicates that rates of false allegations increase fourfold during custody and access disputes. Claim 3.2 is **false**.

Claim 3.3: “Among false allegations, fathers are far more likely than mothers to make intentionally false accusations (21% compared to 1.3%).”

Citation:

- Bala N and Schuman J. Allegations of sexual abuse when parents have separated. *Canadian Family Law Quarterly*, Vol. 17, 2000.

Summary

The Bala and Schuman study consists of a compilation of 196 judicial opinions rendered from 1990 to 1998 in Canada on alleged sexual and physical abuse occurring in the context of parental separation.

The authors note these judicial opinions are unlikely to be representative of all allegations of child abuse, because in cases with strong evidence of abuse, “The perpetrator is likely not to contest the issue of abuse in family law proceedings,” as they explain.

Analysis

The Bala and Schuman article is not the original source of the 21% and 1.3% statistics. The source of those numbers is the 1993 Ontario Incidence Study of Child Abuse.²⁹

What Other Research Shows

The Ontario Incidence Study of Child Abuse relied on the opinions of child protection workers, not judicial findings, to evaluate whether the allegations were intentionally false. Such assessments are notoriously unreliable.

Studies have documented evaluator bias that imputes negative motivations to men, especially in the context of child custody disputes.^{30,31} Several researchers have reached similar conclusions:

- Mark Everson and Barbara Boat explain, “A false allegation is in the eye of the beholder.”³²
- University of Michigan researcher Kathleen Faller has highlighted the difficulty of determining whether a false allegation is intentional.³³
- One Canadian blue ribbon panel concluded, “We do not know the actual incidence of abuse allegations in cases in which parents have separated, or the proportion of cases in which the allegations are intentionally false.”³⁴

Finding

Claim 3.3 ignores the expert panel that concluded, “We do not know ... the proportion of cases in which the allegations are intentionally false.” Claim 3.3 is **false**.

Assessment of Myth 3

Myth 3 sidesteps the issue of false allegations of *domestic violence*, which are often used to gain an unfair advantage in a divorce action.

Various studies of divorcing couples with custody disputes have found that allegations of partner violence are made in 55% to 68% of cases.^{35,36,37,38} Attorneys have likewise expressed concerns about the problem.^{39,40,41,42,43}

Overall, about 85% of claims of domestic violence are filed by women.^{44,45,46} In the context of a divorce action, mothers are seven times more likely than fathers to file false or exaggerated claims.⁴⁷

Considering the fact that less than half of all restraining orders are based on an allegation of physical violence, and judging by the fraction of temporary restraining orders that are approved by a judge at a final hearing, many such claims can be considered false or unnecessary.⁴⁸

The purported Myth 3, “Mothers frequently invent allegations of child sexual abuse to win custody” is **misleading** because it ignores the widespread problem of false allegations of domestic violence.

Myth 4: “Domestic violence has nothing to do with child abuse.”

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of two claims:

Claim 4.1: “A wide array of studies reveals a significant overlap between domestic violence and child abuse, with most finding that *both* forms of abuse occur in 30–60% of violent families.”

Citation:

- Appel A, Holden G. The co-occurrence of spouse and physical child abuse: A review and appraisal. *Journal of Family Psychology*, Vol. 12, No. 4, 1998.

Summary

The Appel and Holden article consists of a review of 31 studies that evaluate the co-occurrence of spousal and physical child abuse. The studies are categorized by the method used to assess rates of abuse co-occurrence:

- Representative surveys of community residents, with a co-occurrence rate of 6% to 21% (Table 1)
- Reports from female victims of violence, who reported co-occurrence rates of 4% to 100%, depending on the persons involved, referent period, and assessment tool used (Table 2)
- Reports from child abuse victims, showing co-occurrence rates of 26% to 59% (Table 3)

Analysis

Appel and Holden note that any conclusions from their study are “severely handicapped as a result of competing and sometimes unspecified or idiosyncratic determinations of physical child abuse.” The wide range of values they report from the various studies—4% to 100%—shows that no firm conclusions can be reached. Indeed, the authors state, “The clearest conclusion from this review is that there is an inadequate database with which to evaluate the extent of co-occurrence.”

What Other Research Shows

The methodological limitations identified by Appel and Holden remain unresolved to this day. A recent community-based study reported a 7% co-occurrence figure.⁴⁹

Finding

Given that Appel and Holden do not highlight the 30%–60% figure, one wonders where the CODV obtained this number.

A literature search reveals that the probable source is a book by Peter Jaffe that states, “30–60% of children whose mothers had experienced abuse were themselves likely to be abused.”⁵⁰ Jaffe in turn cites research by Edleson, which was discussed previously under Claim 2.2. A review of the Edleson paper was unable to identify the research that forms the basis of the 30%–60% figure.

This is an example of how an unverifiable factoid comes into existence, and it reflects the slipshod methods used to develop the CODV flyer. Claim 4.1 is **unsupported**.

Claim 4.2: “Other studies have shown intimate partner violence (‘IPV’) to be a strong predictor of child abuse, increasing the risk from 5% after one act of IPV to 100% after 50 acts of IPV.”

Citation:

- Ross SM. Risk of physical abuse to children of spouse abusing parents. *Child Abuse and Neglect*, Vol. 20, No. 7, 1996.

Summary

Susan Ross re-analyzed data from interviews of 3,363 parents who participated in the 1985 National Family Violence Survey.

The centerpiece of her analysis is a logistic regression graph shown in Figure 1 of the article. The author acknowledges that the skewed distribution of the variables “make for difficult statistical analysis” and she had to perform “several different combinations of marital violence and child abuse” to replicate the findings.

Based on Figure 1, Ross concludes, “The probability of child abuse by a violent husband increases from 5% with one act of marital violence to near certainty with 50 or more acts of marital violence. The predicted probability of child abuse by a violent wife increases from 5% with one act of marital violence to 30% with 50 or more acts of marital violence.”

Analysis

The Ross study contains a number of serious flaws:

- A close examination of the title of Figure 1 reveals that the graph only applies to male children. Ross does not present a graph for the whole data set, which casts doubt on her conclusions.
- The skewed distribution of the data violates the requirements of regression analysis. The pseudo-R² of only 5%–6% is considered very weak.
- The conclusion presented in the Abstract gives no hint of the highly selected sample used to calculate Figure 1.

What Other Research Shows

Several other studies have found mothers who hit their partners have similar levels of increased risk of child abuse as partner-aggressive fathers.^{51,52,53}

Finding

Given the serious problems with the Ross study and the fact that her findings have not been replicated, we conclude that Claim 4.2 is **false**.

Assessment of Myth 4

The statement “Domestic violence has nothing to do with child abuse” is **indeed a myth**.

Myth 5: “Abusive fathers don’t get custody.”*

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of three claims:

Claim 5.1: “Abusive parents are more likely to seek sole custody than nonviolent ones ...”

Citation:

- American Psychological Association. *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family*. Washington, DC. 1996.

Summary

This 141-page document consists of a compilation of broad assertions about family violence. None of the claims or conclusions in the APA paper is supported by citations from the scientific research.

This report is no longer available from the American Psychological Association. The APA removed the report in 2006 because, according to the APA representative, it is a “very old document” and “several statements in the report need to have a better research analysis.”⁵⁴

Analysis

By the admission of the American Psychological Association, the cited report is outdated and many of its claims are questionable. The absence of a scientific citation renders it virtually impossible to verify the claim. A previous analysis concluded flatly, “This monograph is not a scholarly publication.”⁵⁵

What the Research Shows

There is no known research that shows abusers are more likely to seek child custody than non-abusers.

Finding

Claim 5.1 is derived from an unspecified statement in an unavailable publication with admittedly questionable claims that lack a scientific basis. Claim 5.1 consists of an unverifiable factoid. Claim 5.1 is **false**.

Claim 5.2: “... and they are successful about 70% of the time.”

Citation:

- American Judges Foundation. Forms of emotional battering. In *Domestic Violence and the Court House: Understanding the Problem ... Knowing the Victim*. Undated.

* Note: In the interest of impartial inquiry, this analysis examines whether abusive fathers *and mothers* don’t get custody.

Summary

The American Judges Foundation publication asserts, “Studies show that batterers have been able to convince authorities that the victim is unfit or undeserving of sole custody in approximately 70% of challenged cases.”⁵⁶ The publication does not include any citations to support this or any of its other claims.

The lead author of the referenced publication is Lenore Walker, EdD, a psychologist who works with the Florida-based Domestic Violence Institute. She is well known for her advocacy work in the area of Battered Women’s Syndrome, a condition that is not recognized in the Diagnostic and Statistical Manual and has been described as having a “low level of scientific support.”⁵⁷

Analysis

The apparent source of the 70% figure is a 1989 report by the Gender Bias Committee of the Massachusetts Supreme Judicial Court, which concluded, “Refuting complaints that the bias in favor of mothers was pervasive, we found that fathers who actively seek custody obtain either primary or joint physical custody over 70% of the time.”⁵⁸

But that 70% figure is implausible in the light of the fact that in 85% of cases custody is awarded to the mother, according to the Bureau of the Census.⁵⁹

Indeed a subsequent review found the Gender Bias Committee’s conclusion was flawed. A re-analysis of the raw data showed that “*when mothers sought sole custody, the court granted the request at a rate 65% higher than it did when fathers made the same request. ... The SJC’s claim regarding court bias in custody cases appears less like objective research than like an exercise in manipulating numbers.*”⁶⁰

And there is more to the factual contortions. The American Judges Foundation document refers to *batterers* who seek custody only in *challenged* cases. But the CODV claim refers to *abusers* who seek custody in *all* cases. The majority of abusers, however, are not batterers. Thus, the CODV claim pertains to a much broader segment of the population.

What Other Research Shows

No known research assesses how often abusive parents who seek custody succeed in their efforts.

Finding

Claim 5.2 represents an egregious misrepresentation of the truth. Claim 5.2 is **false**.

Claim 5.3: “Allegations of domestic violence have no demonstrated effect on the rate at which fathers* are awarded custody of their children, nor do such allegations affect the rate at which fathers are ordered into supervised visitation. (i.e., abusers win unsupervised custody and visitation at the same rate as non-abusers)”

Citation:

- Kernic M, Monary-Ernsdorff D, Koepsell J, Holt V. Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence. *Violence Against Women*, Vol. 11, No. 8, 2005.

Summary

The study by Kernic and colleagues identified 324 cases that were “positive” for intimate partner violence (IPV), defined as cases in which one or more of the following applied:

- A restraining order had been filed.
- A police report had been made.
- Court dissolution records indicated “unsubstantiated allegations of IPV.”
- Court dissolution records indicated “substantiated allegations of IPV by the husband against the wife.”

Then the authors excluded IPV cases in which the husband was the victim, except for cases in which “additional documentation confirmed the male partner of the couple as the primary aggressor.” The authors did not justify this exclusion or state what documentation they used to determine primary aggressor.

The authors concluded, “We found that mothers with a history of IPV victimization were no more likely than comparison group mothers to be awarded child custody.”

Analysis

Credible evidence of domestic violence includes eyewitness accounts, police reports of “probable cause,” confirmatory medical records, and judicial findings. But Kernic used none of these.

The evidence that she did rely on is known to be flawed:

1. Restraining orders are often issued with no hard evidence of abuse.
2. Police reports often state that no violence likely occurred.
3. Court records which indicate “unsubstantiated allegations of IPV” are exactly that—unsubstantiated.

Kernic then excluded cases of female-on-male violence, further biasing her results. This study is an example of advocacy research in which the investigator reworks the definitions and cherry-picks the results in order to arrive at a pre-determined conclusion.

* Note: In the interest of impartial inquiry, this analysis examines the broader question of the rate at which fathers and mothers are awarded child custody or ordered into supervised visitation.

What Other Research Shows

According to an analysis by the American Bar Association, divorce courts in 26 states are required to consider domestic violence as a “best interest of the child” criterion. In 23 states, a finding of domestic violence is considered a rebuttable presumption against shared custody. And in five states, a domestic violence finding prohibits joint custody.⁶¹

One study analyzed 393 child custody/visitation orders in six states. In states with a legal presumption against awarding custody to domestic violence perpetrators, judges were more likely to award sole legal and physical custody to the non-perpetrator.⁶²

Finding

Claim 5.3 is **false**.

It should also be noted that the wording of Claim 5.3 appears to equate an “allegation of domestic violence” with being an actual “abuser.” A fundamental precept of jurisprudence is that an allegation is not synonymous with the occurrence of an offense or a judicial finding.

Assessment of Myth 5

All three claims listed under Myth 5 are false. Therefore the purported myth “Abusive fathers don’t get custody” is also **false**.

Myth 6: “Fit mothers don’t lose custody.”*

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of one claim:

Claim 6.1: “Mothers who are victims of DV are often depressed and suffering from post-traumatic stress disorder, and as a result, can present poorly in court and to best-interest attorneys and/or custody evaluators.”

Citations:

- Golding J. Intimate partner violence as a risk factor for mental disorders: A meta-analysis. *Journal of Family Violence*, Vol. 14, 1999.
- Kernic M, Monary-Ernsdorff D, Koepsell J, Holt V. Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence. *Violence Against Women*, Vol. 11, No. 8, 2005.

Summary of the Golding Article

This meta-analysis of research examined the effects of domestic violence on victims’ depression, suicidality, post-traumatic stress disorder, alcohol abuse, and drug abuse. Female victims of violence had an odds ratio ranging from 3.55 to 5.62, indicating a substantially higher risk of mental disorders.

* Note: In the interest of impartial inquiry, this analysis examines whether fit mothers *and fathers* don’t lose child custody.

Summary of the Kernic Article

The article by Kernic and colleagues is discussed under Claim 5.3. That study analyzed the impact of “substantiated” cases of marital interpersonal violence on subsequent child custody and visitation outcomes. For reasons described previously, the Kernic study is flawed.

Analysis

Overall, the Golding article is thorough and methodologically robust. The major shortcoming of the article is that it does not report the effects of domestic violence on men’s mental health status, based on the author’s spurious claim that surveys which show gender symmetry in abuse rates “are thought to be methodologically flawed.”

What Other Research Shows

Both male and female victims of domestic violence suffer from a variety of mental health disorders, although it is generally believed that women suffer more ill effects.^{63,64}

Finding

Although the first part of Claim 6.1 is correct (“Mothers who are victims of DV are often depressed and suffering from post-traumatic stress disorder”), there is no known research that addresses the effects of these mental health disorders on custody evaluations. Claim 6.1 is **not supported** by the existing research.

Assessment of Myth 6

The one claim listed under Myth 6 is **unsupported** by the research. Therefore, the purported myth “Fit mothers don’t lose custody” is **false**.

It should also be noted that even though most fathers are parentally fit, in 85% of cases custody of the child is awarded to the mother.⁶⁵

Myth 7: “Parental Alienation Syndrome (‘PAS’) is a scientifically sound phenomenon.”

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of one claim:

Claim 7.1: “The American Psychological Association has noted the lack of data to support so-called ‘parental alienation syndrome,’ and raised concern about the term’s use.”

Citation:

- American Psychological Association. *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family*. Washington, DC. 1996.

Summary

This document consists of a series of broad assertions about family violence. None of the claims or conclusions in the paper is supported by citations from the scientific research.

The APA removed the report in 2006 because, according to the APA representative, it is a “very old document” and “several statements in the report need to have a better research analysis.”⁶⁶

Analysis

As discussed under Claim 5.1, the American Psychological Association document cited in the CODV flyer consists of an array of unsubstantiated claims. The scientific validity of its conclusions is doubtful.

What Other Research Shows

One of the earliest and most influential studies in this area was a 12-year study of 700 divorce families commissioned by the American Bar Association, which detailed numerous instances of children who had been intentionally alienated from one parent.⁶⁷

Numerous research studies and clinical reports reveal that children can become hostile to a parent a result of relational aggression by the other parent. In his authoritative review, psychologist Richard A. Warshak concludes, “there is considerable scientific research which...validates key facets of PAS.”⁶⁸

Although experts debate whether parental alienation meets all the criteria of being a “syndrome,” there is no controversy that the problem does occur. “Anyone who works in the field of forensic psychology in the context of divorce will say, yes, it’s possible for a child to be turned away from a loving parent,” explains noted custody consultant Michael Bone.⁶⁹

Even though the American Psychological Association has not taken an official position on whether parental alienation is actually a syndrome,⁷⁰ a search of the APA PsycINFO database yields 265 hits on “parental alienation” and 244 hits on “parental alienation syndrome.”⁷¹ The APA’s Guidelines for Child Custody Evaluations in Divorce Proceedings⁷² favorably cites an authoritative reference book on this topic.⁷³ At least 355 books have been published on parental alienation.⁷⁴

Finding

Claim 7.1 is at best **misleading**.

Assessment of Myth 7

Asserting that the statement “Parental Alienation Syndrome (‘PAS’) is a scientifically sound phenomenon” is a myth is **misleading**.

Parental alienation is a scientifically recognized condition, even though debate continues as to whether the condition is actually a “syndrome.” It would be correct to state, “Parental alienation is a problem that has been widely observed and scientifically validated.”

Myth 8: “Children are in less danger from a batterer/parent once the parents separate.”

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of one claim:

Claim 8.1: “Many batterers’ motivation to intimidate and control their victims through the children *increases* after separation, due to the loss of other methods of exerting control.”

Citations:

- Bancroft L, Silverman J. *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks, CA: Sage Publications, 2002.
- Langford L, Isaac N, Kabat S. Homicides related to intimate partner violence in Massachusetts 1991–1995. Boston, MA: Peace at Home, 1999.

It should be noted that Myth 8 and Claim 8.1 address two very different issues—the physical risks to children versus an abuser’s use of children to control his or her victim. The following discussion addresses both issues.

Summary of the Bancroft and Silverman Book

Based largely on the authors’ clinical experience and amplified by selected research findings, this book analyzes the personality profile and behavior of parents who severely assault their partners and the effects this behavior has on children. The authors also explore the dynamics of custody and visitation disputes.

The book cites the research of leading family researcher Murray Straus and colleagues, but fails to mention their most important findings:

- Women are as likely as men to engage in severe partner violence.
- Partner abuse is often mutual.

Bancroft and Silverman acknowledge the problem of lesbian battering, stating that the “behavioral profile of lesbian and gay male batterers appears to correspond closely to that of heterosexual abusers.” But then they ignore female battering in the context of heterosexual relationships.

Summary of the Langford Article

The report by Langford and colleagues consists of an anecdotal collection of 194 DV-related homicides that occurred in Massachusetts over a 5-year period.⁷⁵

The study did not compare rates of child abuse or partner violence before and after separation. It did not systematically report on perpetrators’ motivations such as a desire to intimidate or control. The project did not undertake detailed analyses of the data or test for statistical significance.

The document spotlights the occurrence of male-perpetrated violence against their partners, but does not mention the fact that mothers are more likely than fathers to commit child homicides.⁷⁶

The 18-page document reads like a police investigation, not a research report in the usual sense.

Analysis

Lundy Bancroft views domestic violence from a decidedly ideological perspective, and his commitment to objectivity and balance has been questioned. In an early article, he drew a parallel between partner abuse and militaristic imperialism:

“Male battering and U.S. intervention are often viewed, even by political [sic] conscious people, as irrational or as aberrations [sic] from the norm. ... Battering and war play a critical role in keeping sexism and imperialism alive.”⁷⁷

Bancroft played a lead role in the ill-fated Public Broadcasting Service program, “Breaking the Silence: Children’s Voices.” This controversial show was repudiated by PBS ombudsman Michael Getler because “the totality of the presentation came across as quite tilted.”⁷⁸ Likewise, Ken Bode, ombudsman at the Corporation for Public Broadcasting, found the film “so totally unbalanced as to fall outside the boundaries of PBS editorial standards.”

And Bancroft, who once worked as a domestic violence educator for the Massachusetts family courts, boasted that he was fired for his excessive zeal⁷⁹—hardly a qualification that a credible researcher would be proud of.

This book has been criticized for presenting “one-sided analyses of domestic violence based on self-selected and non-representative samples.”⁸⁰ The highlighting of lesbian battering while denying heterosexual female battering seems illogical.

Bancroft and Silverman’s book deftly ignores the research on female-initiated violence, plies emotion-laden terms like “batterer,” and readily embraces false gender stereotypes. Overall, the book reads more like an ideological manifesto than an even-handed commentary.

What Other Research Shows

There is no good research that sheds light on a perpetrator’s motivations to control his or her victim during separation. Nonetheless, clinical reports reveal that in the course of marital dissolution, *both* parties may attempt to draw their children into the conflict—see discussion of Claim 7.1 above.

Finding

Claim 8.1 is **unsupported** by the research.

Assessment of Myth 8

Myth 8, “Children are in less danger from a batterer/parent once the parents separate,” is **misleading**. A true statement would read, “Children are at far greater risk of abuse and harm once the parents separate.”

There is no systematic evidence which shows that children are at *greater* risk of harm by the *abuser-parent* if the non-abusing parent has physical custody of the children; indeed, common sense argues for the opposite conclusion.

Research does show, however, that when a couple separates, the risk of child abuse by the *custodial parent* increases dramatically:

- The National Incidence Study (NIS) of Child Abuse and Neglect found that, compared to children living with both parents, children living with a single parent face a 77% greater risk of being harmed by physical abuse and about an 80% greater risk of suffering *serious* injury or harm. Of children who were maltreated by their birth parents, mothers were the perpetrators in 75% of cases, compared to fathers 46% of the time (some children were maltreated by both parents).⁸¹
- A British study that found that, compared to children residing with married biological parents, those residing with single mothers have a 14-fold higher risk of experiencing *serious* child abuse and a 7-fold higher risk of suffering *fatal* child abuse.⁸²

Myth 9: “Parents who batter are mentally ill, OR Parents with no evidence of mental illness cannot be batterers.”

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of three claims:

Claim 9.1: “Mental illness is found only in a minority of batterers.”

Citations:

- Gelles R, Straus M. *Intimate Violence*. New York: Simon and Schuster, 1988. “(reporting that mental illness accounts for only 10% of abusive incidents)”
- Gondolf EW. MCMI-III results for batterer program participants in four cities: Less “pathological” than expected. *Journal of Family Violence*, Vol. 14, No. 1, 1999.

Summary

The Gelles and Straus research was conducted on a nationally representative sample of persons who had engaged in any form of physical partner aggression. They found that mental illness accounts for only a small fraction of abuse incidents.

The Gondolf study tested 840 men attending batterer intervention programs in Pittsburgh, Houston, Dallas, and Denver in 1995. He found that 90% of the participants had scores on at

least one of the MCMI subscales that were suggestive of a “clinical personality pattern,” and 25% of men had evidence of severe mental disorder.

Analysis

It is generally recognized that as the severity and frequency of partner violence increases, so does the level of mental illness. Thus, it is not surprising that in a nationally representative sample in which minor violence predominates, mental illness is present in only 10% of incidents of physical abuse.

In contrast, the Gondolf study examined a sub-set of abusers who were participants in batterer intervention programs and were likely to have engaged in severe partner abuse—hence the higher rates of mental disturbance.

What Other Research Shows

In his review, psychologist Donald Dutton concludes, “Studies have found incidence rates of personality disorders to be 80–90 percent in both court-referred and self-referred wife assaulters. ... As the violence becomes more severe and chronic, the likelihood of psychopathology in these men approaches 100 percent.”⁸³

Likewise, elevations in personality disorders have also been documented among women convicted of spousal assault.^{84,85}

Finding

Since Claim 9.1 pertains to batterers, who are, by definition, at the high end of the abuse continuum, this claim is **false**.

Claim 9.2: “Psychological testing is not a good predictor of parenting capacity.”

Citation:

- Brodzinsky D. On the use and misuse of psychological testing in child custody evaluations. *Professional Psychology: Research and Practice*, Vol. 24, No. 2, 1994.

Summary

The Brodzinsky article reviews a variety of psychological measures of intelligence, academic functioning, and personality used to predict parenting capacity for child custody assessments. He concludes that psychological testing has a “very legitimate place” in child custody evaluations, but cautions that such tests “should only be used in conjunction with other standard data-gathering techniques, such as interviews and observations.”

Analysis

Although now somewhat outdated, the Brodzinsky article represents a thorough and objective summary of the research.

What Other Research Shows

Carr and colleagues have reached a conclusion similar to Brodzinsky’s—that psychological tests alone are not valid predictors of parenting capacity.⁸⁶

Finding

Although technically correct, Claim 9.2 is **misleading** because it implies that psychological testing has little or no value. An accurate statement would read, “*Used alone*, psychologist testing is not a good predictor of parenting capacity.”

Claim 9.3: “Mental health testing cannot distinguish a batterer from a non-batterer.”

Citation:

- O’Leary D. Through a psychological lens: Personality traits, personality disorders, and levels of violence. In Gelles R and Loseke D, eds. *Current Controversies on Family Violence*. Newbury Park, CA: Sage, 1994.

Summary

The O’Leary chapter reports that mildly abusive men score high on personality tests for impulsiveness, aggression, and suspicion of others. In contrast, extremely abusive men found in DV treatment programs usually have been diagnosed with severe psychological problems such as schizoid/borderline, possessive/dependent/compulsive, and narcissistic/antisocial personality traits.

Analysis

While Claim 9.3 states that mental health testing cannot identify a severe abuser, the O’Leary chapter cited by the CODV reached the exact opposite conclusion. As Dr. O’Leary explained, “Batterers consistently score higher on a broad range of psychological measures.”⁸⁷

What Other Research Shows

The research indicates that persons who are engaged in severe, frequent physical violence can usually be diagnosed with severe psychological disorders in both male^{88,89} and female batterers.^{90,91}

Finding

Claim 9.3 misrepresents the study that it cites and is inconsistent with other research. Claim 9.3 is **false**.

Assessment of Myth 9

Purported Myth 9, “Parents who batter are mentally ill, OR Parents with no evidence of mental illness cannot be batterers” is in fact **not a myth**. In addition, Myth 9 is ambiguous because “mental illness” is a vague term and there is controversy as to whether a personality disorder (Axis 2 in the American Psychiatric Association Diagnostic and Statistical Manual) constitutes a “mental illness.”

A true statement would read, “Parents who engage in severe and frequent physical abuse usually have diagnosable psychopathology.”

Myth 10: “If a child demonstrates no fear or aversion to a parent, then there is no reason not to award unsupervised contact or custody.”

The ABA Commission on Domestic Violence seeks to refute this myth on the basis of one claim:

Claim 10.1: “Children can experience ‘traumatic bonding’ with a parent who abuses the child or their other parent, forming unusually strong but unhealthy ties to a batterer as a survival technique (often referred to as ‘Stockholm Syndrome’).”

Citations:

- Bancroft L, Silverman J. *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks, CA: Sage Publications, 2002.
- Herman J. *Trauma and Recovery*. New York: Basic Books, 1992.

Summary of Bancroft and Silverman Book

This book contains a short discussion of the phenomenon of traumatic bonding and cites several studies (pp. 39–41). The scope and limitations of this book were previously discussed under Claim 8.1.

Summary of Herman Book

Judith Herman’s book probes the impact of severe psychological trauma and the process of recovery. Written from a feminist perspective, the book highlights the experiences of women who have experienced child abuse and domestic violence.

Although the book includes a brief discussion of abused children who form strong bonds with their abuser, no research is cited to support these statements.

Analysis

The Herman book appears to be ideologically biased. The book contains no mention of male victims of domestic violence and consistently refers to victims of child abuse in the female gender, even though boys are equally likely to be abused.

The book occasionally lapses into angry hyperbole, making such claims as:

- “Violence is a routine part of women’s sexual and domestic lives” (p. 28). This claim contradicts the fact that less than 15% of couples experience any physical aggression in a given year,⁹² and in many cases that violence is instigated by women⁹³.
- “Women are rendered captive by economic, social, psychological, and legal subordination” (p. 74). This claim is so overstated that no response can do it justice.

What Other Research Shows

It is generally recognized that children can form strong bonds with an abusive mother or father. Even though Stockholm Syndrome is not recognized in the Diagnostic and Statistical

Manual of the American Psychiatric Association,⁹⁴ the term is sometimes applied to a child's relationship to an abusing parent.

Although research on this topic is limited,⁹⁵ clinical reports confirm the existence of the problem, although it appears to occur infrequently.

Finding

Claim 10.1 can sometimes be **true**. However, traumatic bonding between an abusive parent and child is unusual, and should be regarded as such.

Assessment of Myth 10

Myth 10, "If a child demonstrates no fear or aversion to a parent, then there is no reason not to award unsupervised contact or custody," is **misleading**. The statement contains a potentially harmful implication: if a child demonstrates affection toward a parent, this should be taken as evidence of Stockholm Syndrome.

A true statement would read, "Attachment between a parent and child should be presumed to be evidence of a healthy and loving parent-child relationship, unless there is good evidence of severe child abuse."

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