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10 Custody Myths and How to Counter Them

Any attorney who represents clients in custody matters will recognize at least some of the following unfounded clichés about domestic violence and custody. In any easy-to-cut-and-paste format here are some resources that the ABA Commission on Domestic Violence provides for practitioners to use when representing victims of domestic violence.

MYTH 1: Domestic violence is rare among custody litigants.

- **Studies show that 25-50% of disputed custody cases involve domestic violence.**

S.L. Keilitz, National Center for State Courts, Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers (1997); J.R. Johnston, High-Conflict Divorce, 4 *Future of Children* 165 (1994).

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

- **“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.”**

Jaffe, Wolfe & Wilson, Children of Battered Women (1990).

- **Adverse effects to children who witness DV are well-documented, including aggressive behavior, depression, and/or cognitive deficiencies.**

Morrill, Dai, Dunn, Sung & Smith, Child Custody and Visitation Decisions When the Father Has Perpetrated Violence Against the Mother, 11(8) *Violence Against Women* 1076-1107 (2005); Jeffrey L. Edleson,

Problems Associated with Children's Witnessing of Domestic Violence, (1999), available at http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_witness.php

- **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).**

<http://www.acestudy.org/>
<http://www.cdc.gov/od/oc/media/pressrel/r980514.htm>

MYTH 3: Mothers frequently invent allegations of child sexual abuse to win custody.

- **Child sexual abuse allegations in custody cases are rare (about 6%), and the majority of allegations are substantiated (2/3).**

Thoennes & Tjaden, The Extent, Nature, And Validity Of Sexual Abuse Allegations In Custody And Visitation Disputes, 14(2) Child Sexual Abuse & Neglect 151-63 (1990).

- **False allegations are no more common in divorce or custody disputes than at any other time.**

Brown, Frederico, Hewitt, & Sheehan, Revealing The Existence Of Child Abuse In The Context Of Marital Breakdown And Custody And Access Disputes, 24(6) Child Abuse & Neglect 849-85 (2000).

- **Among false allegations, fathers are far more likely than mothers to make intentionally false accusations (21% compared to 1.3%)**

Bala & Schuman, Allegations of Sexual Abuse When Parents Have Separated, 17 Canadian Family Law Quarterly 191-241 (2000).

MYTH 4: Domestic violence has nothing to do with child abuse.

- **A wide array of studies reveal a significant overlap between domestic violence and child abuse, with most finding that *both* forms of abuse occur in 30-60% of violent families.**

Appel & Holden, The Co-Occurrence of Spouse and Physical Child Abuse: A Review and Appraisal, 12(4) Journal of Family Psychology 578-599 (1998).

- **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.**

S.M. Ross, Risk of Physical Abuse to Children of Spouse Abusing Parents, 20(7) Child Abuse & Neglect 589-98 (1996).

MYTH 5: Abusive fathers don’t get custody.

- **Abusive parents are more likely to seek sole custody than nonviolent ones...**

American Psychological Association, Violence And The Family: Report Of The American Psychological Association Presidential Task Force On Violence And The Family, (1996), available at <http://www.apa.org/pi/viol&fam.html>

- **...and they are successful about 70% of the time.**

American Judges Foundation, Domestic Violence and the Court House: Understanding the Problem...Knowing the Victim, available at <http://aja.ncsc.dni.us/domviol/page5.html>

- **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)**

Kernic, Monary-Ernsdorff, Koepsell & Holt, Children In The Crossfire: Child Custody Determinations Among Couples With A History Of Intimate Partner Violence 11(8) Violence Against Women, 991-1021 (2005).

MYTH 6: Fit mothers don’t lose custody.

- **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.**

J.M. Golding, Intimate Partner Violence As A Risk Factor For Mental Disorders: A Meta-Analysis, 14 *Journal of Family Violence* 99-132 (1999); Kernic, Monary-Ernsdorff, Koepsell & Holt, Children In The Crossfire: Child Custody Determinations Among Couples With A History Of Intimate Partner Violence 11(8) *Violence Against Women* 991-1021 (2005).

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

- **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.**

American Psychological Association, Violence And The Family: Report Of The American Psychological Association Presidential Task Force On Violence And The Family, (1996), available at <http://www.apa.org/releases/passyndrome.html>

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

- **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.**

Lundy Bancroft & Jay Silverman, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics (2002); Langford, Isaac & Kabat, Homicides Related to Intimate Partner Violence in Massachussets 1991-1995, *Peace at Home* (1999).

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

- **Mental illness is found only in a minority of batterers.**

Gondolf, MCMII-III Results for Batterer Program Participants in Four Cities: Less “Pathological” Than Expected, 14(1) *Journal of Family*

Violence 1-17 (1999); Gelles R. & Straus M, Intimate Violence (1988) (reporting that mental illness accounts for only 10% of abusive incidents).

- **Psychological testing is not a good predictor of parenting capacity.**

Brodzinsky, On the Use and Misuse of Psychological Testing in Child Custody Evaluations, 24(2) Professional Psychology: Research and Practice 213-219 (1994).

- **Mental health testing cannot distinguish a batterer from a non-batterer.**

O’Leary, Through a Psychological Lens: Personality Traits, Personality Disorders, and Levels of Violence, in Current Controversies on Family Violence 7-30 (Gelles & Loseke, eds.,1993).

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.

- **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”).**

Lundy Bancroft & Jay Silverman, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics, 39-40 (2002); Herman, Trauma and Recovery (1992).

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