

## **SPECIAL REPORT**

# **Myths of the ABA Commission on Domestic Violence: Summary Report**

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**EXECUTIVE SUMMARY**

Programs designed to curb domestic violence rely on valid research and an accurate understanding of that research by legal practitioners and policy makers. This Special Report analyzes the American Bar Association’s flyer, *10 Myths about Custody and Domestic Violence and How to Counter Them*. Developed by the ABA’s Commission on Domestic Violence, the flyer highlights a series of 10 purported myths, their associated claims, and supporting research.

The present analysis is shown in two documents:

1. Myths of the ABA Commission on Domestic Violence: Summary Report
2. Myths of the ABA Commission on Domestic Violence: Detailed Findings

Only 3 of the 10 purported myths are found to indeed be myths, and of the 19 claims only 2 are correct. The quality of many of the cited documents is poor or very poor. Overall, the great majority of assertions and conclusions in the CODV flyer are found to be unsupported, misleading, or wrong.

In its quest to expose custody and domestic violence misconceptions, the American Bar Association has ironically ended up misleading legal practitioners. In the end, children may be harmed.

## INTRODUCTION

Intimate partner violence is a continuing problem in American society. Unfortunately, a number of myths, half-truths, and false statistics pertaining to family violence have become embedded in the fabric of American consciousness.

These misrepresentations frustrate good policymaking, undermine the even-handed administration of justice, and handcuff efforts to develop effective programs. Professor Richard Gelles, who has devoted his career to the study of family violence, has warned, “Policy and practice based on these factoids and theory might actually be harmful to women, men, children, and the institution of the family.”<sup>1</sup>

In 2006, the American Bar Association (ABA) Commission on Domestic Violence published a two-page flyer titled, *10 Myths about Custody and Domestic Violence and How to Counter Them*. The flyer has been widely distributed,<sup>2</sup> can be downloaded from the ABA website,<sup>3</sup> and is available for purchase.<sup>4</sup>

The flyer’s introduction explains its purpose:

Attorneys who represent victims of domestic violence in custody matters often encounter the following false claims. To assist in overcoming these myths, the ABA Commission on Domestic Violence provides these facts and statistics for use in litigation.

The handout lists 10 purported myths, along with their 19 associated claims and studies designed to counter the myths. The flyer has not been approved by the House of Delegates of the ABA Board of Governors.

The purpose of this Special Report is to analyze each of the myths, claims, and supporting documents. In-depth documentation can be found in the accompanying Special Report, *Myths of the ABA Commission on Domestic Violence: Detailed Findings*.<sup>5</sup> To facilitate the analysis, each claim is numbered according to its corresponding myth. For example, the second claim under Myth 4 is Claim 4.2.

### **What Does the Research Say?**

In order to analyze these myths, it is helpful to understand key research findings:

1. Women are at least as likely as men to engage in partner aggression.<sup>6</sup> A recent Centers for Disease Control survey of young adults found that in cases of one-way partner aggression, women were the instigators in 71% of cases<sup>7</sup> (see Figure 1 on the next page<sup>8</sup>). Fewer than one in five cases of female violence are explained by the woman acting in self-defense.<sup>9,10</sup>

2. In at least half of all cases, partner violence is mutual.<sup>11</sup> “Several studies, including large and nationally representative samples, have found that the most prevalent pattern is mutual violence,” explains family researcher Murray Straus.<sup>12</sup>
3. In most cases, partner aggression does not escalate.<sup>13,14</sup> If the conflict does turn into a full-scale altercation, the woman is more likely to be injured. Nonetheless, males represent 38% of persons who suffer physical injury from partner aggression.<sup>15</sup>
4. Domestic violence rates vary depending on the couple’s marital status. Among intact married couples, partner violence rates are quite low—only 0.9/1,000.<sup>16</sup> But among separated couples, partner violence rates rise sharply to 49.0/1,000—a 50-fold increase.
5. Child abuse is also cause for concern. According to the Department of Health and Human Services, mothers acting alone are responsible for 40% of child maltreatment, compared to fathers acting alone, who account for 18% of cases<sup>17</sup> (see Figure 2). Likewise, child homicides are twice as likely to be perpetrated by mothers as by fathers.<sup>18</sup>

Figure 1:

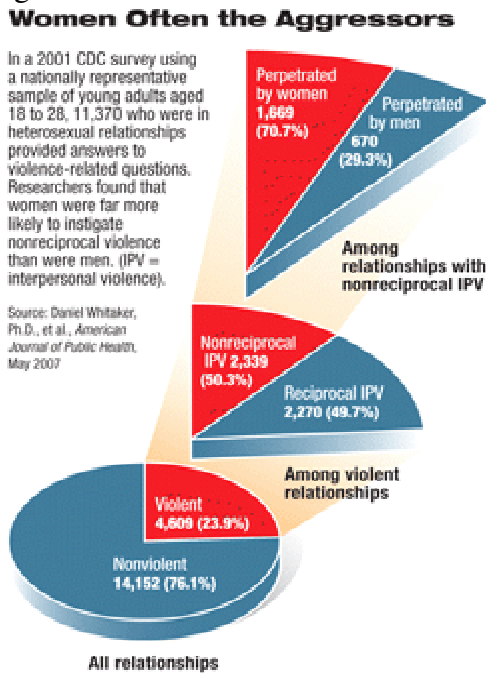
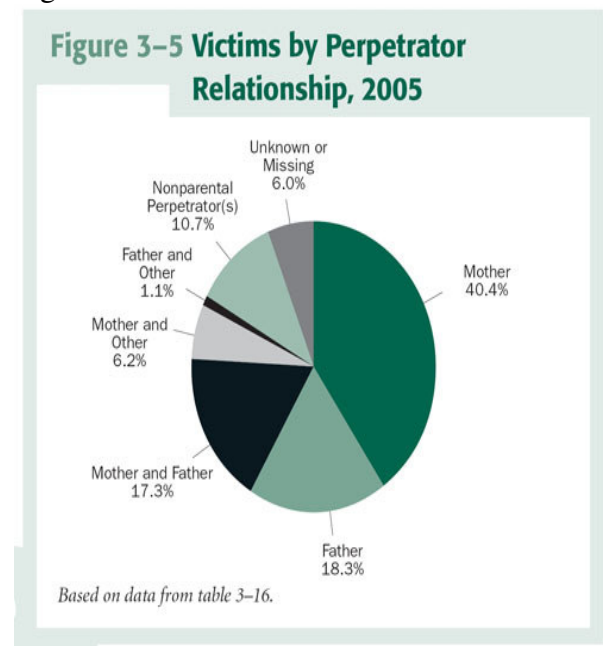


Figure 2:



6. Compared to their peers in two-parent homes, children who grow up in single-parent households are at far greater risk of experiencing social pathologies such as child abuse,<sup>19,20</sup> school disciplinary problems,<sup>21</sup> drop-outs,<sup>22</sup> sexual promiscuity,<sup>23</sup> juvenile delinquency,<sup>24</sup> homicide,<sup>25</sup> injuries,<sup>26</sup> suicide,<sup>27</sup> and poverty.<sup>28,29</sup>

### *A Note on Terminology*

The National Academy of Sciences report *Advancing the Federal Research Agenda on Violence Against Women* has noted the confusion that arises from vague use of terms.<sup>30</sup> For purposes of this Special Report, we employ the following definitions:

- Abuse: Any form of psychological, sexual, or physical mistreatment
- Intimate partner violence: A physical assault against a spouse, ex-spouse, boyfriend, or girlfriend
- Battering: Repeated, severe, and usually unilateral physical violence

Abuse is the broadest term that encompasses intimate partner violence. Because “battering” is a pejorative term,<sup>31</sup> this report generally avoids the use of that word.

## WHAT THE ANALYSIS REVEALS

A summary of the Findings and Assessments of the CODV Myths and Claims can be seen in the Appendix of this report. The detailed analysis is found in the accompanying Special Report, *Myths of the ABA Commission on Domestic Violence: Detailed Findings*.<sup>32</sup>

The analysis reveals widespread flaws in *10 Myths about Custody and Domestic Violence and How to Counter Them*—specifically flaws in how the myths are framed, the claims that are made, and the quality of the documents cited in the CODV flyer.

### Myths

Of the 10 purported myths, the following 3 are indeed **confirmed as myths**:

- Myth 1: “Domestic violence is rare among custody litigants.”
- Myth 2: “Any ill effects of domestic violence on children are minimal and short-term.”
- Myth 4: “Domestic violence has nothing to do with child abuse.”

The following 4 myths frame the issue in a **misleading** manner:

- Myth 3: “Mothers frequently invent allegations of child sexual abuse to win custody.”
- Myth 7: “Parental Alienation Syndrome (‘PAS’) is a scientifically sound phenomenon.”
- Myth 8: “Children are in less danger from a batterer/parent once the parents separate.”
- 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 following “myths” are, in fact, **not myths** but true statements:

- Myth 5: “Abusive fathers don’t get custody.”
- Myth 6: “Fit mothers don’t lose custody.”
- Myth 9: “Parents who batter are mentally ill, OR Parents with no evidence of mental illness cannot be batterers.”

### Claims

Of the 19 claims delineated by the American Bar Association, only 2 are **correct**:

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

The following 3 claims are **unsupported** by the available research:

- 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.”
- 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.”
- 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.”

The following 3 claims are **misleading**:

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

The following 11 claims are found to be **false**:

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

- Claim 3.1: “Child sexual abuse allegations in custody cases are rare (about 6%), and the majority of allegations are substantiated (2/3).”
- Claim 3.2: “False allegations are no more common in divorce or custody disputes than at any other time.”
- Claim 3.3: “Among false allegations, fathers are far more likely than mothers to make intentionally false accusations (21% compared to 1.3%).”
- 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.”
- Claim 5.1: “Abusive parents are more likely to seek sole custody than nonviolent ones ...”
- Claim 5.2: “... and they are successful about 70% of the time.”
- Claim 5.3: “Allegations of domestic violence have no demonstrated effect on the rate at which parents are awarded custody of their children, nor do such allegations affect the rate at which parents are ordered into supervised visitation. (i.e. abusers win unsupervised custody and visitation at the same rate as non-abusers)”
- Claim 9.1: “Mental illness is found only in a minority of batterers.”
- Claim 9.3: “Mental health testing cannot distinguish a batterer from a non-batterer.”

### **Cited Documents**

The CODV flyer cites 20 research studies, literature reviews, or reports in support of its claims. The quality of the documents was evaluated using six criteria: methodological rigor, generalizability, appropriate citation of prior research, recency of publication (i.e., published in 2000 or later), gender inclusiveness of subjects, and absence of ideological bias. The quality was found to range from Good to Very Poor:<sup>1</sup>

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

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<sup>1</sup> Documents determined to be Good: Johnston, Edleson, Dube, Thoennes, Appel, Gondolph, Gelles, Brodzinsky, and O’Leary; Acceptable: Morrill, Ross, and Golding; Poor: Keilitz, Brown, Bala, and Kernic; and Very poor: Jaffe, American Psychological Association, American Judges Foundation, and Bancroft.

## ANATOMY OF MISREPRESENTATION

Numerous myths exist in the area of domestic violence, and the persistence of such myths is cause for concern. In that sense, the attempt of the Commission on Domestic Violence to discredit such myths is commendable.

In the final analysis, however, the *10 Myths about Custody and Domestic Violence and How to Counter Them* is inadequate, confusing, and suggests policy directions contraindicated by science.

As explained above, 7 of the purported 10 myths are either misleading or found not to be myths. Eleven of the 19 claims are actually false. And the quality of 9 of the 20 cited documents is poor or very poor. In its quest to debunk a series of custody and domestic violence misconceptions, the ABA Commission on Domestic Violence ironically has ended up reinforcing old misconceptions.

What went wrong?

Was it the unfortunate confluence of a series of honest mistakes, minor oversights, and impossible deadlines? Perhaps.

Or was it an attempt to misrepresent a contentious field of knowledge and sow confusion in the minds of legal practitioners? Indeed, the nature and extent of the flaws is troubling:

1. Not citing recent relevant research (e.g., Claims 1.1, 2.1, 3.1, 3.2, 9.1)
2. Citing a press release instead of the actual research report (e.g., Claim 2.3)
3. Misquoting a key number from a research study (e.g., Claim 3.1)
4. Citing empirical research that is poor in quality (e.g., Claim 3.2)
5. Citing a review article that is unreliable as a basis for practice (e.g., Claim 4.1)
6. Not citing the original source of a key statistic, thus disseminating unverifiable factoids (e.g., Claim 4.1)
7. Accepting the statements of cited documents at face value without assessing their scientific value (e.g., Claims 5.1 and 7.1)
8. Presenting a claim that does not directly address its associated myth (e.g., Claim 8.1 and Myth 8)
9. Using pejorative terminology such as “batterer” (e.g., Myths 8 and 9)

Many of the errors can be considered egregious:

1. Citing documents that do not distinguish between the legal precepts of allegation vs. judicial finding (e.g., Claims 1.1 and 5.3)
2. Sidestepping the problem of false allegations of domestic violence during custody disputes (e.g., Myth 3)
3. Framing statements in a way that portrays fathers in a negative light (e.g., Claim 3.3, Myth 5)
4. Making shocking claims without providing any research to support these assertions (e.g., Claims 5.2 and 8.1)
5. Citing studies that downplay or ignore the problem of female-initiated abuse (e.g., Claims 5.3, 6.1, 8.1, and 10.1)
6. Framing statements in a way that implies mothers are treated unfairly by the courts (e.g., Myth 6, Claim 6.1)
7. Asserting the exact opposite of the finding from the cited research (e.g., Claim 9.3)

Overall, the CODV flyer conveys the belief that mothers are often mistreated by family courts (Myth 6). The flyer suggests that only fathers engage in child abuse and domestic violence (Claims 2.3 and 5.3), that such fathers are more likely to seek child custody (Claim 5.1) and to falsely accuse mothers of child sexual abuse (Claim 3.3), and that they succeed in 70% of cases (Claim 5.2).

Suffice it to say, these statements represent a profound distortion of the truth.

## CONCLUSIONS

The Commission on Domestic Violence website features this disclaimer:

The ABA Commission on Domestic Violence does not engage in research, and cannot vouch for the quality or accuracy of any of the data excerpted here. Users are advised to independently confirm data with source documents cited.<sup>33</sup>

This analysis reveals that *10 Myths about Custody and Domestic Violence and How to Counter Them* does not meet minimum standards of quality and accuracy. Under the guise of exposing myths, the American Bar Association has lent the imprimatur of legitimacy to numerous falsehoods about domestic violence, child abuse, and custody.

A recent review of 24 longitudinal studies concluded that a father's "active and regular engagement with the child predicts a range of positive outcomes," including less juvenile

delinquency and economic disadvantage in low income families, as well as fewer behavioral problems in boys and psychological problems in girls.<sup>34</sup>

But the numerous misrepresentations in the CODV flyer may serve to preclude fathers from active and regular engagement with their children. To the extent that they influence legal practice, judicial decisions, and government policymaking, the CODV distortions could have a deleterious impact on children.

*10 Myths about Custody and Domestic Violence and How to Counter Them* is profoundly and systematically biased. It is unworthy to be used as a foundation for legal practice or public policy.

Appendix

**FINDINGS AND ASSESSMENTS**

Following is a listing of each of the CODV Myths and Claims, along with their respective Findings and Assessments. An in-depth analysis, including citations of the scientific literature, is found in RADAR’s companion Special Report, “Myths of the ABA Commission on Domestic Violence: Detailed Findings.”<sup>35</sup>

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

***Claim 1.1***

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

***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***

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.”**

***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.”

***Finding***

Claim 2.1 is **misleading** with regard to sexual abuse. It would be more accurate to state, “Some children who are exposed to domestic violence show levels of emotional and behavioral problems comparable to those in 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.”

***Finding***

Claim 2.2 is mostly **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).”

*Finding*

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

***Claim 3.1***

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

*Finding*

Claim 3.1 carelessly misreports the findings of the Thoennes and Tjaden study; the reported occurrence of sexual abuse allegations was 2%, not 6%. Claim 3.1 also ignores other pertinent research. Claim 3.1 is **false**.

***Claim 3.2***

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

*Finding*

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%).”

*Finding*

Claim 3.3 is **false**.

***Assessment of Myth 3***

The statement “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.”**

### ***Claim 4.1***

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

### ***Finding***

A literature search reveals the probable source of the 30%–60% statistic is a 2003 book by Peter Jaffe. Jaffe in turn cites research by Edleson. 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 is disseminated. 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.”

### ***Finding***

Given the serious methodological problems with the cited study and the fact that its findings have never been replicated, 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.”**

### ***Claim 5.1***

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

### ***Finding***

Claim 5.1 is an implausible statement derived from an unspecified statement in an unavailable publication that lacks a scientific basis. Claim 5.1 is **false**.

### ***Claim 5.2***

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

### ***Finding***

Claim 5.2 represents a bald 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)”

*Finding*

Claim 5.3 is **false**. It should also be noted that the wording of Claim 5.3 inappropriately equates an “allegation of domestic violence” with being an actual “abuser.”

*Assessment of Myth 5*

The purported myth “Abusive fathers don’t get custody” is **false**.

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

*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.”

*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 purported myth “Fit mothers don’t lose custody” is **false**. Even though most fathers are parentally fit, in 85% of cases child custody is awarded to the mother.

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

*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.”

*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 meets all the criteria for being 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.”**

#### ***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.”

#### ***Finding***

Claim 8.1 is **unsupported**.

#### ***Assessment of Myth 8***

There is no systematic evidence that 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.

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.”

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

#### ***Claim 9.1***

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

#### ***Finding***

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

#### ***Claim 9.2***

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

#### ***Finding***

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.”

*Finding*

Claim 9.3 states the *opposite* conclusion from the study that it cites, an assessment with which researcher Daniel O’Leary concurs.<sup>36</sup> The CODV claim is inconsistent with other research. Claim 9.3 is **false**.

***Assessment of Myth 9***

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.”**

***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’).”

*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 to 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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