

Understanding the role of gender in intimate partner violence and homicide cases:  
A research guide for prosecutors and defense attorneys

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## Introduction

Intimate partner violence (IPV) is a major relationship and behavioral problem, as well as a criminal act requiring prosecution of perpetrators and protection of victims (Hines, Malley-Morrison, and Dutton, 2013). The societal response to this problem has significantly improved since the advent of the battered woman movement in the 1970's, but remains far from ideal. It has been widely acknowledged that shelters and other victim services are underfunded and the arrest policies are unevenly implemented, leaving some severely abused women insufficiently protected from violent predators (Buzawa, Buzawa, & Stark, 2017), while, paradoxically, more vigorous laws enforcement responses have their own limitations, as arrests are 60% less likely to result in conviction in states with mandatory and pro-arrest policies than those with discretionary arrest policies; Hirschel, Buzawa, Pattavina, & Faggiani, 2007). Not nearly as acknowledged is that these policies have failed male victims, female perpetrators, and LGBTQ populations even more.<sup>1</sup> Men account for the great majority of arrested and prosecuted perpetrators, and 90% of clients in court-mandated batterer intervention counseling programs (Cannon, Hamel, Buttell, & Ferreira, 2016). Women, with few exceptions, are the ones receiving shelter and victim services.

This state of affairs can be partially explained by the greater level of life-threatening injuries suffered by women compared to men, yet men are arrested and prosecuted at significantly greater rates than women even after controlling for type of incident and injuries (Henning & Renauer, 2005; Shernock & Russell, 2012). Criminal justice statistics do not reflect the actual proportions of perpetrators and victims in the general population. Due to greater societal tolerance for female-perpetrated IPV, and the expectation that men should present a façade of strength (Celi, 2011; Cook, 2009; Douglas & Hines, 2011; Rooney, 2010), men report IPV at a rate half that of victimized women, according to results from the National Violence Against Women Survey (Tjaden & Thoennes, 1998), even when they are severely abused physically and emotionally. Men are often arrested on a domestic violence charge despite the higher frequency of physical and emotional IPV by the partner throughout the course of the relationship (Capaldi, Shortt, Kim, Wilson, Crosby, & Tucci, 2009). Sometimes, arrests are made on the pretext that the men are the *dominant aggressor*, a reasonable concept that, in

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<sup>1</sup> Intimate partner violence and intimate partner homicides are serious problems in LBGT populations, whose characteristics and dynamics are both similar to and different from those in opposite-sex relationships, and require a separate review elsewhere. For more information, see: Mize & Shackelford (2008), Russell (in press), and Tillery, Ray, Cruz, & Waters (2017).

practice, police are either unwilling or unable to fairly enforce (Hamel, 2011). When men are recognized as victims, police minimize their situation and provide inadequate assistance (Hamel, 2011; Hamel & Russell, 2013; Storey & Strand, 2012). In short, the criminal justice system treats intimate partner violence (IPV) perpetrated by males far more seriously than IPV perpetrated by females, for legitimate reasons but also due to cultural stereotypes and pervasive bias among some stakeholders, most notably law enforcement and battered woman advocates (Dutton, 2006; Hamel & Russell, 2013).

### **Misinformation on IPV**

Having for many years provided consultation on IPV in family law cases, and for the prosecution as well as the defense in criminal cases, the author has seen first-hand the degree to which this bias has permeated the legal profession, leaving some of the otherwise savviest attorneys woefully misinformed. Empirical support for these observations was found in results of a 10-item quiz of basic IPV knowledge administered to various populations throughout the United States. Notably, family law attorneys and judges answered correctly on average only 3.17 out of 10, slightly better than the 2.66 average score from undergraduate university students with no training in IPV (Hamel, Desmarais, Nicholls, Malley-Morrison, & Aaronson, 2009).

Respondents were particularly unaware of the high rates of more serious IPV perpetrated by women. Similar misinformation was found on the pages of the American Bar Association website in a review by Dutton, Corvo, and Hamel (2009).

Attorneys are obligated to undergo continuing training and keep pace with recent findings in any field central to a particular court case, but their ability to do so with respect to IPV is compromised due to a lack of accurate, up-to-date information and training available from the major domestic violence organizations (e.g., National Coalition Against Domestic Violence; Hines, 2014) and leading mental health organizations (see Hamel, 2014 for discussion).

Adventurous attorneys who wish to directly investigate the scholarly social science literature will find this a daunting task. Where does one even begin? The available data sets can be confusing and nearly impossible to properly sort out; furthermore, there have been documented instances of researchers misrepresenting data, and arriving at conclusions inconsistent with their own findings (see Straus, 2010). It has taken well over a decade for Johnson's (2008) misleading estimates of female batterers in the general population to be properly debunked, and reliable research findings

on women offenders and power and control behaviors across gender have only recently begun to proliferate in the scholarly literature (e.g. Carney and Barner, 2012; Elmquist, Hamel, Shorey, Labrecque, Ninnemann, & Stuart, 2014; Hamel, Jones, Dutton, & Graham-Kevan, 2015; Jasinski, Blemenstein, & Morgan, 2014; Langhinrichsen-Rohling, & McCullars, 2012).

A mitigating factor in IPV is a history of previous IPV by the victim against a defendant, but defense attorneys and prosecutors I have worked with often fail to account for men's tendency to deny or minimize violence perpetrated upon them and to interview them accordingly. Male victims are especially reluctant to admit to experiencing fear (e.g. Celi, 2011; Cook, 2009). Attorneys may thus lack the confidence to vigorously defend a client at trial, and too often accept a guilty plea to a lesser charge, with all its attendant economic and social ramifications. It is also common for attorneys to conflate true battering, which involves a pattern of physical and emotional abuse, with less consequential situational violence, or to incorrectly assume that Walker's (1983) three-phase cycle of violence is representative of all IPV dynamics; and many attorneys continue to rely on Walker's original conception of the battered women syndrome despite its serious limitations, rather than emphasize the role of trauma and PTSD, which has much stronger empirical support (Follingstad, 2003; Russell, 2010).

Regardless of what side they represent, attorneys who are poorly informed about the causes, characteristics and consequences of IPV will be limited in their ability to properly defend their clients or effectively prosecute a case. In this paper, the author seeks to correct and augment attorneys' knowledge of IPV, based on his personal experience as an expert witness and a review of the scholarly literature, including papers on so-called "power and control" behaviors. Practical implications will be discussed for the adjudication of cases involving IPV, including homicide cases.

### **General research findings: Distinguishing between types of IPV**

It has been well-known among researchers that men and women in intimate relationships physically assault one another at approximately equal rates (e.g., Straus & Gelles, 1990; Archer, 2000). It has also been known that the large majority of IPV, sometimes known as *situational violence*, is infrequent, does not result in injury, and arises mostly from escalating arguments. However, the broader context in which IPV occurs had not been questioned until the past decade. Previously, it was assumed that women rarely initiate IPV, that their violence is primarily committed in self-defense or as a way of expressing anger – a more benign motive compared to

male-perpetrated IPV, thought to be committed primarily as a way to dominate and control the partner. Today, it is known that in intimate partner relationships women initiate the violence as often as their male partners (Hamel, Ferreira, & Buttell, 2015), and are just as likely as male perpetrators to do for coercive reasons (Langhinrichsen-Rohling et al., 2012; Elmquist, et al., 2014); and that with the notable exception of sexual coercion, engage in comparable levels of emotional abuse and controlling behaviors (e.g., psychological warfare and manipulation, threats, possessive and jealous behaviors). The largest, most recent national survey of IPV ever conducted, the National Intimate Partner and Sexual Violence Survey, reported that 12.7 million women and 17.3 million men are victims each year of emotional abuse and control in their intimate relationships (Black et al., 2011). The sweeping literature review by Carney and Barner (2012) reported virtually identical percentages of emotional abuse and control across gender (43% by men and 41% by women), as did the Hamel et al. (2015) survey of men and women in court-mandated perpetrator groups. At its core, IPV is a human problem, not one of sex or gender (Cross, Tee, & Campbell, 2011; Felson & Lane, 2010).

A pattern of physical abuse together with emotional abuse and controlling behaviors is known as *controlling-coercive violence* or, more commonly, *battering*. Based on this definition, national surveys in the United States and Canada have found comparable levels of battering across gender (Jasinski, et al, 2014; Laroche, 2006). Battering is considered the most serious type of IPV, with the greatest physical and psychological impact on victims (Hines, Malley-Morrison & Dutton, 2013). Aside from physical injuries, victims of battering report high levels of anxiety and depression, low-self-esteem, PTSD and other evidence of trauma (Coker, Davis, Arias, Desai, Sanderson, Brandt, & Smith, 2002; Hines & Douglas, 2013; Williams & Frieze, 2005). Although men and women incur minor injuries at comparable rates, due to their relatively lesser size and strength and difficulty defending themselves, women sustain a much larger share of serious injuries, and express much greater fear of victimization (Lawrence, Oringo, & Block, 2012). In cases of very severe battering, or *intimate terrorism*, sex differences are much more pronounced, because while women can terrorize their partners emotionally, they rarely are able to physically subjugate their partners, as men can. This is an important factor in understanding domestic violence dynamics, especially at extreme levels – e.g., in cases of repeated rape, kidnapping or forced prostitution (Hamel & Russell, 2013; Stark, 2007).

Victims of severe, chronic battering sometimes retaliate against their abusers, and may elicit sympathy from others, but often it is difficult to distinguish between victim and perpetrator, given that approximately 58% of physical IPV is bi-directional, and initiated at similar rates across gender (Langhinrichsen-Rohling, Misra, Selwyn, & Rohling, 2012). When emotional abuse and controlling behaviors are taken into account, the percentage of abusive relationships in which both partners engage in any type of abuse is even greater. This is the case even with victims who have entered a shelter. Approximately half of the women living in the first shelters established in the U.K. were co-batterers of violence towards husbands and/or their children (Pizzey, 1982), and in the U.S., a shelter survey found that 67.1% of female victims had perpetrated severe violence at least once towards their male partners in the previous year (McDonald, Jouriles, Tart, & Minze, 2009). In a large majority of abusive relationships, it is more accurate to view the parties neither as perpetrators or victims, but rather as co-perpetrators, particularly when non-physical forms of abuse are taken into account. When asked in another shelter survey about their relationship abuse, victimized women said their own violence was perpetrated in self-defense less than 50% of time (Saunders, 1986).

Other lines of research find that the female partners of men arrested for domestic violence initiate physical assaults in 40% of the cases (Gondolf, 1996; Stacey, Hazlewood & Shupe, 1993). As well, abused men who seek help through domestic violence hotlines sometimes report to having engaged in IPV of their own, mostly in self-defense (Cook, 2009; Douglas & Hines, 2011). Bi-directional IPV is not necessarily perpetrated at equal levels of severity or chronicity; often, one person is the dominant aggressor, who drives the relationship abuse. A history of abuse victimization must, therefore, be considered in the context of the entire relationship, and the personalities of the parties involved:

On the whole, men do indeed have a more powerful left hook. The problem is that the dynamic of domestic violence is not analogous to two differently weighted boxers in a ring. There are relational strategies and psychological issues at work in an intimate relationship that negate the fact of physical strength. At the heart of the matter lies human will. Which partner—by dint of temperament, personality, life history—has the will to harm the other? (Pearson, 1997, p. 117).

Attorneys litigating IPV cases should become familiar with the latest, most accurate information on the subject, including its prevalence, causes, characteristics and consequences.

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They are advised to become familiar with the 2, 687-page *Partner Abuse State of Knowledge Project*, a compendium of IPV research available for free online

([www.domesticviolenceresearch.org](http://www.domesticviolenceresearch.org)). Helpful information and suggestions can also be found in Hamel (2016), especially for those practicing family law.

### **Battering and Intimate partner homicides (IPH)**

Longitudinal studies indicate that adult IPV can be traced in both male and female perpetrators to a history of anti-social behavior and family dysfunction in childhood (e.g., Dutton, 2006; Ehrensaft, Moffitt & Caspi, 2004). Men and women arrested for perpetrating a domestic violence offense have been found to evidence personality traits often associated with interpersonal aggression, including borderline, anti-social, narcissistic, histrionic, and sadistic traits that are stable and consistent across relationships (Henning, Jones & Holdford, 2003; Johnston & Campbell, 1993; Simmons, Lehmann, Cobb, & Fowler, 2005). Mental illness and drug abuse are also risk factors. A major prison study (Jordan, Clark, Pritchard, & Charnigo, 2012) found that male and female perpetrators of lethal as well as serious, non-lethal IPV were equally likely to have mental health issues, although the women were less likely to have had problems with alcohol and drugs. The recent and comprehensive survey of 6,131 IPH cases reported through the National Violent Death Reporting System (Velopulos, Carmichael, Zakrison, & Crandall, 2019) found mental illness an equally contributing factor (about 7%) among both male and female perpetrators. An IPH analysis of 276 IPH cases from 1991-2010 in Quebec, Canada (Bourget & Gagne, 2012), determined that 42% of the women and 53% of the men had what the researchers termed a “psychiatric/pathological motive” for the killings (not fully explained). The Sebire (2017) study of 207 IPH cases in London, based on police reports covering the years 1998-2009, reported a higher percentage of mental illness among female perpetrators (29.4%) than male perpetrators (19.7%).

Few studies have reported on the specific personality characteristics of IPH offenders, as measured by validated assessment instruments. It appears that male offenders in homicide cases may differ from non-lethal battering, however, as so-called *overcontrolled* types (e.g., passive-aggressive and dependent on the MCMI measure) are over-represented (Dutton & Kerry, 1999). These types of individuals tend to be emotionally dependent on partners and react poorly to perceived or actual abandonment. After reviewing the IPH literature, Kivisto (2015) proposed a

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typology of male IPH offenders that included, aside from the overcontrolled types, an *under-controlled/dysregulated* category consisting of men with mostly borderline personality disorder; *chronic batterers*, with antisocial and narcissistic personalities; and a *mentally ill* group of offenders with no discernable Axis II diagnoses. One of the few studies to investigate the personalities of both male and female intimate IPH perpetrators (Kalichman, 1988), reported higher ratings on the MMPI (Minnesota Multi-Phasic Personality Inventory) for female perpetrators on scales for paranoid, anti-social and dependency traits. Males who had murdered a stranger scored higher on scales for psychopathic characteristics (Pd) and hypomania (Ma), compared to those who murdered their female partners.

### **Risk Factors**

One prominent risk factor for IPH victimization is younger age, with male and female victims alike at greatest risk between ages 20-29 (Garcia, Soria, & Hurwitz, 2007). Research with female victims indicates that a woman is a high risk for being severely injured or killed when her partner has engaged in a pattern of battering behavior (physically abusive, jealous, highly controlling). One literature review found evidence of previous battering behavior in 22% of male-perpetrated cases (Kivisto, 2015). Other significant risk factors include abuse of alcohol and drugs, unemployment, a history of violence outside the home, and having previously stalked the victim, forced her to have sex, or threatened to kill her (Aldridge & Browne, 2003; Campbell, Glass, Sharps, Laugon, & Bloom, 2007; Harden, Du, Spencer, and Stith, 2019; Saunders & Browne, 2000; Spencer & Stith, 2018). According to a survey of abused men who contacted a national domestic violence hotline, abused men are at greater risk of life-threatening violence when in a relationship with a partner who is low-income and has been psychologically and physically abusive, and when the man has sought help in the past (Hines & Douglas, 2013). Nonetheless, determining risk with any particular victim is not an exact science. The most reliable instrument for predicting lethality in IPV cases, the Danger Assessment (DA) at best predicts an attempted or completed murder in less than 50% of cases (Campbell, Webster, & Glass, 2009).

### **The Gender Paradigm and Battered Woman Syndrome**

Compared to men, women are proportionately more likely to be killed by an intimate partner than a stranger, and account for the large majority of intimate partner homicide victims (Bourget & Gagne, 2012; Catalano, 2012; Garcia et al., 2007; Spencer & Stith, 2018; Velopulos et al.,

2019). One literature review, reporting data for 66 countries worldwide, found that IPH accounted for 38.5% of all females homicide victims, compared to 63% for male victims (Stöckl, Devries, Rotstein, Abrahams, Campbell, Watts, & Moreno, 2013). Female perpetrators are far less likely than male perpetrators to physically overpower their victims and beat them to death, and use knives, guns, and other weapons instead (Cooper & Smith, 2011; Jurik & Winn, 1990; Mann, 1988; Mize, Shackeford, & Shackeford, 2009; Smith, Fowler, & Niolon, 2014; Swatt & He, 2006, Velopulos et al, 2019). They are also less likely to have a previous criminal record of violent crime (Block & Christakos, 1995; Jordan et al., 2012).

A prevailing set of assumptions, collectively known as the *gender paradigm* (Dutton & Nicholls, 2005; Felson & Lane, 2010) holds that men are naturally jealous and possessive and perpetrate intimate homicides for the same reason they perpetrate other forms of IPV: to enforce dominance over their female partners, assumed to be their right in a patriarchal society (Dobash & Dobash, 2011; Saunders & Browne, 2000; Serran & Firestone, 2004). This paradigm has been incorporated in various theories of human aggression, including General Strain Theory (Ericksson & Mazerolle, 2013), but is most strongly espoused in *male proprietariness theory*. From this evolutionary psychology perspective, it is assumed that men's success in passing on their genes depends on the jealous monitoring of mates and elimination of male rivals (Wilson & Daly, 1992); whereas women who kill their intimate partners do so in self-defense, or after years of psychological and physical abuse. Based on the work of Lenore Walker, the term *battered woman syndrome* (BWS) was formulated to explain the effects of such abuse, wherein victims become conditioned through a process of "learned helplessness" to stay in the most abusive relationships, until the violence reaches a certain level of dangerousness. At that point, some of these victims will kill their abusers, in the belief that this is the only way they have to prevent further assaults (Walker, 1983).

Several arguments have been put forth in support of the gender paradigm and BWS. Interviews with perpetrators, as well as collateral interviews with relatives and others, indicate that possessiveness and jealousy, along with fears of abandonment, are significant motivators for male-perpetrated IPH (e.g., Dobash & Dobash, 2011; Harden et al., 2019; Liem & Roberts, 2009). Women who kill their intimate partners are statistically more likely than men who kill their intimate partners to report having been previously assaulted (Browne, 1987; Garcia, et al., 2007; O'Keefe, 1997; Saunders & Browne, 2000). Compared to men, women are more likely to

kill their partners at some point during the relationship, possibly due to ongoing abuse, rather than after a break-up, thought to be due to pathological jealousy (Jordan et al., 2012, Wilson & Daly, 1993). Furthermore, the higher rates of suicide by male homicide perpetrators are thought to be an indication of guilt, whereas women would not harm themselves if they had killed their partner in self-defense and sought safety from further abuse (Browne, 1987; Carmichael, Jamison, Bol, McIntyre, & Velopulos, 2018; Morton, Runyan, Moracco, & Butts, 1998; Salari & Sillito, 2016). Additionally, the decreasing rates of female perpetrated intimate homicides relative to those by men of the past several decades has been cited as evidence for the self-defense motive, as the increased level of services for battered women has lessened their need to take matters into their own hands (Caman, Kristiansson, & Sturup, 2017; Cooper & Smith, 2011; Dugan, Nagin, & Rosenfeld, 1999; Titterington & Harper, 2005).

### **Flaws in the Gender Paradigm**

Beginning in the early 1990s, various domestic violence stakeholders have formed domestic violence fatality review teams, or DVFRTs for short, in more than 20 states, at both the local and state level, to learn more about the nature, causes and consequences of IPH. Aside from basic demographic information, only about half of these have provided specific details about the cases examined, and one report found that only 43% included information about abuse prior to the homicide, and of those reports that included case details provided information about legal outcomes (Pow, Murray, Flasch, Doom, & Snyder, 2015). The guilt or innocence of a defendant facing IPH charges certainly could not be assumed on a lack of previous IPV alone, given the large percentage of passive-dependent offenders discussed earlier. More pertinent in adjudicating these cases would be the defendant's motive. While disentangling the various motives and circumstances around intimate partner homicides is a difficult task, a clearer picture emerges from a broader reading of the empirical research literature, which, as a whole, does not support the gender paradigm and male proprietariness theory in cases of IPH. Although "the literature does not provide a detailed contextual picture of female offenders" (Jordan, et al., 2012, p. 429), it does indicate, as one research team has observed, that "intimate partner homicide is not simply a dual phenomenon, with aggressive men and defenseless women driven under the worst of interpersonal circumstances to kill one another. To adequately address the issue in both sociological and psychological terms, it must be understood more fully" (Titterington & Harper, 2005, p. 86).

*Large-scale studies*

The analysis by Felson and Messner (1998) of 2,058 partner homicide cases in 33 of the most populated U.S. counties found that 50% of female murderers had not been physically assaulted by their partner before the incident, and less than 10% were judged to have acted strictly in self-defense. Only 10% of male murders had suffered previous assaults, and in very few cases (0.5%) were the homicides deemed to be in self-defense. Unfortunately, the authors were unable to distinguish between violence perpetrated immediately prior to the homicide from violence perpetrated in the past, thus leaving unclear which cases might be explained by some version of battered person syndrome, and which cases involved simple retribution in a cycle of mutual abuse. The Velopulos et al. (2019) survey, previously cited, was somewhat more illuminating. As with other major surveys, reported percentages of female IPH victims were much larger than of male victims (79% versus 21%) overall. Compared to males, twice as many female perpetrators had experienced previous IPV from the victim at some point in the relationship (22.1% versus 10.4%). However, only 5.0% of the male victims and 0.8% of the female victims had assaulted their partner in the month preceding the homicide, and very few cases were categorized as justifiable self-defense – certainly for male perpetrators (0.1%) but also for female perpetrators (6.4%). Jealousy was a motive in a small number of cases (10.5% of the male perpetrators, 6.4% for female perpetrators).

A review of 2, 556 IPH cases in Chicago over several decades (1965-1993) confirmed the oft-cited finding that male-perpetrated IPH is more likely than female-perpetrated IPH to be due to partner's attempt to leave the relationship (13% versus 4%), but found sexual jealousy, whether imagined or involving an actual love triangle, to be the motive for about the same percentage of male and female perpetrators (Block & Christakos, 1995). In another large study, interviews with a national sample of 2,124 male and female prison inmates were asked about both victimization and perpetration experiences in childhood and adulthood, at the hands of intimate partners and other adults. These findings, based on self-report, are in sharp contrast to findings from other IPH studies that typically depend on criminal justice data (arrests, restraining orders) and therefore under-estimate the frequency of female-perpetrated assaults:

Men and women who killed or assaulted their partners tended to be similar to other violent male and female offenders. The women who attacked their partners were not particularly likely to have been abused by their partners. Rather, we found that men

who attacked their partners were particularly likely to have suffered partner abuse. This result challenges the idea that these women were responding to a history of abuse.

Violence against partners and victimization by partners were strongly correlated for both men and women, which indicates that a considerable amount of mutual violence was present in the relationship (Felson & Lane, 2010, pp. 329-330).

### *Smaller studies*

The review by Mann (1988) of 145 randomly selected closed cases of female-perpetrated intimate partner homicides in several U.S. cities indicated that 58.3% were pre-meditated, and 30% of the defendants had previously been charged with a prior felony assault. According to an analysis of court records and presentence reports of 158 intimate partner homicide cases in Arizona, in 56% of cases involving female perpetrators there was no reported history of physical abuse against the defendant (Jurik & Winn, 1990), undermining claims of self-defense, and a previous study found that 60% of women who murdered their partners had previous criminal records, and that only 21% of the homicides were preceded by a history of previous abuse, or threats of abuse by the partner (Jurik, & Gregware, 1989). A review of 45 IPH cases in Sweden concluded:

We found that more than half of the female perpetrators had been threatened and physically abused by their male victims, as opposed to a minority of the male perpetrators. However, we also found that the majority of the male victims had been threatened, and half of them physically abused the female perpetrators (Caman, Howner, Kristiansson, & Sturup, 2016).

In Finland, an investigation of police records and psychiatric interviews of 145 IPH cases adjudicated during the period 1994-2005 revealed found about 78% of the male perpetrators and 89% of the female perpetrators to have killed their partner in the context of a quarrel (Weizmann-Henelius, Grönroos, Putkonen, Eronen, Lindberg, & Häkkänen-Nyholm, 2012). A higher rate of female-perpetrated IPH than male-perpetrated IPH to have been committed in self-defense (36.0% versus 1.1%), but again, as other studies have shown the majority of IPH, by either sex, is perpetrated for other reasons. The Quebec study cited earlier (Bouret & Gagne, 2012) found evidence of previous assaults by the male victim in only 26.2% of the female-perpetrated homicides, no evidence for assaults in 21.4% of the cases, and previous assaults could not be determined in another 40.5%. Presence of intent to kill was found for 45% of the

female perpetrators and nearly 62% for the male perpetrators among cases in which information about intent was available. A history of previous assaults as a precipitant for IPH could not be found in about half of the 207 London cases reported by Sebire (2017), neither for the male nor the female perpetrators. In a Colorado study of 117 IPH cases (Belknap, Larson, Abrams, Garcia, & Anderson-Block, 2012), approximately half of the female-perpetrated homicides were found not to have been committed in self-defense; the others involved what the authors called *proxy* killings, where women previously abused by ex-partners took out their rage against a current mate, or where driven by purely instrumental motives or by jealousy. “Future research and policy” the authors suggested, “needs to acknowledge the issue-problem that prior victims of IPH may be at risk of killing future partners, especially if these partners are at all abusive, and that sexual proprietary killings of mates are not restricted to men” (Belknap, et al., 2012, p. 373.)

The research literature finds little support for the theory that men as a whole are motivated to batter their female partners to enforce traditional gender roles, at least in the United States (Sugarman & Frankel, 1996). Individuals arrested for domestic violence give a variety of reasons for assaulting their partners, among them self-defense, retaliation, failures in communication and anger regulation, jealousy, and to exercise control, but common to all battering is a need to dominate one’s partner, coupled with poor impulse control and beliefs that violence is acceptable (Capaldi, Knoble, Shortt, & Kim, 2012; Dutton, 2006). The famous National Family Violence surveys conducted by Straus and colleagues in the 1980s (Straus & Gelles, 1990) found a positive correlation between IPV and household dominance by *either the husband or wife*; and Straus’ international survey of 13,601 university students in 32 countries, male and female respondents who endorsed such items as “my partner needs to remember that I am in charge” were equally likely to use severe violence against their partner (Straus, 2008). In short, men, like women, attempt to control their partners for a variety of reasons, having more to do with personality and circumstances than gender roles. Furthermore, research suggests that sexual jealousy by females, as with sexual jealousy by males, can be well-explained according to principles of evolutionary psychology, given that maintaining paternal investment enhances survival of offspring and, ultimately, the dissemination of the woman’s genes (Harris, 2003; Miller & Fishkin, 1997).

Why, then do women engage in non-lethal battering at rates equal to men, but are at much higher risk to be victims of intimate partner homicide? Although men and women in the

general population experience comparable levels of anger and hostility, and women engage in higher levels of social aggression, such as ostracism and gossip (Averil, 1983; Brody & Hall, 2008; Eagly & Steffen, 1986; Richardson, 2005), men are clearly more outwardly aggressive, physically and, to a lesser extent, verbally (Archer, 2004), and perpetrate the large majority of crimes, including violent assaults, mostly upon other men. Men tend to engage in high-risk behaviors and to experience less fear than women, often putting them in dangerous situations. From an evolutionary psychology perspective, women's comparably higher levels of fear limit their exposure to outside danger, ensuring their safety and well-being required for child rearing and the survival of the human species (Campbell, 2013; Cross & Campbell, 2011).

On the other hand, even in the most patriarchal societies women regard the home as their domain, at times leading to the abuse of partners or children (Straus, 1999; Cross, Tee, & Campbell, 2011). Societal approval for women's violence in the home, combined with norms of chivalry, may help motivate women to overcome their natural fears and defend their interests. It is possible, based on emerging research, that the hormone oxytocin, involved in pair-bonding and childbirth, may also be involved through its stress and fear-reducing properties (Cross & Campbell, 2011). However, when battering is at its most extreme and dangerous, men have a distinct advantage. Norms of chivalry and whatever self-restraint they may have are overridden by the rage and other primitive impulses that come from a disordered personality, mental illness, or drug use. At this point, their typically greater size and strength can be truly terrifying (and deadly) for their female victims, and allows them to more easily protect themselves, one possible reason why they are less likely than female IPH perpetrators to kill in self-defense.

### **Alternatives to BWS**

While the term *battered person syndrome* has gained favor as a gender-neutral version of BWS, there is weak evidence for an actual syndrome or its ability to meet Daubert testimony standards for relevance and reliability. The term is vague, never operationally defined or confirmed by replication studies (Dutton, 1996) – e.g. a definition of “battering” includes coming home late (Downs & Fisher, 2005). Walker's theory was in fact based on a self-selected sample of subjects who were asked leading questions and whose responses were subjectively interpreted, and none of the women's partners were interviewed. Walker failed to provide comparison groups to gauge levels of BWS symptoms between abused and non-abused women or differences between abused women who have BWS and those who do not (Dixon and Dixon, 2003), and

failed to account for symptom variance due to mediators of psychological effects of battering (vulnerability factors, resources, support, other stressors, severity of the abuse, etc.; Follingstad, 2003). There is, in fact, inconsistent support for an actual cycle –e.g. less than 50 percent of subjects experienced all three phases, no time frame was proposed for the duration of a cycle, and no data provided on how often the tension stage does not lead to battering incident, or why some men (e.g. psychopaths) can strike without a tension build-up or never offer a third phase apology (Faigman, 1986).

These and other flaws in BWS have been amply documented elsewhere (e.g. Coughlin, 1994; Downs & Fisher, 2005; Dutton, 1996; Russell, 2010; Schopp, Sturges, & Sullivan, 1994). Notably, it has been criticized for providing an unconvincing “abuse excuse” for the defendant and lack of justice for the victim:

In self-defense law, the devil properly lies in the details. For example, while intentional homicides are committed for a variety of motives, BWS tends to reduce the abuse victim’s motivation to kill to simplistic terms. Though fear of an attack and a sense of futility about escaping are predominant, other motives may also enter the picture...Other motives include anger over finding out about the abuse of their children, jealousy and simple greed. Anyone who has studied cases in this area has encountered all of these motives for homicide. Battered women are human beings like the rest of us, and the use of BWS should not obscure the fact that battered women, despite the sympathy they deserve for their plights, sometimes kill for reasons that the criminal law cannot excuse or justify (Downs & Fisher, 2005, p. 247).

Additionally, a defense strategy based on BWS can backfire, because some features of the syndrome – in particular, learned helplessness – conflict with the legal standards of “reasonableness.” This is especially true in cases involving non-confrontational situations (e.g., the woman shoots her batterer while he is sleeping), even though these are far less prevalent than the confrontational ones (Osthoff & Maguigan, 20005). In this regard, juries may be sympathetic to female IPH defendants, even when they do not conform to the stereotype of a passive, helpless woman, when their defense is mounted within the framework of what psychologists call *social agency* theory, a better fit in particular for imperfect self-defense cases not involving an immediate threat (Buchhandler-Raphael, 2010; Mihajlovich, 1987; Ramsey, 2010; Russell, 2010; Terrance, Plumm, & Rhyner, 2012). The implications of this theory, within

the legal system, is known as “social framework evidence,” a clearer and more credible way to explain the actions of someone with a history of IPV victimization:

Courts have recognized that past violence by an aggressor toward the defendant influences the defendant’s assessment of the current danger posed by the aggressor’s actions. The evidence is routinely received in murder trials, because most homicides involve people who were either acquainted with each other or in family relationships. A defendant in such a circumstance uses his or her experience with the decedent as a basis for evaluating whether the decedent posed an imminent threat of serious injury” (Osthoff & Maguigan, 2005, pp. 231-232).

In contrast to BWS, Post-Traumatic Stress Disorder is an accepted diagnosis, supported by a wealth of compelling social science data finding high rates of trauma-related disorders among victims of IPV, and providing much a more solid empirical basis for mitigating factors in cases involving both male and female victims who fight back against an abuser. It has been estimated that 31 to 84 percent of battered women experience PTSD (Dutton & Goodman, 1994), depending on whether the diagnosis is based on formal DSM-V criterion or the more expansive definitions inherent in the increasingly popular diagnosis of Complex PTSD (Courtois, 2008). Surveys have found abused men to average a 45 cut-off score for PTSD on the PTSD checklist or PCL; experience PTSD at a rate more than 15 times that of men in the general population; and, as with female victims (Johnson and Leone, 2005) at the highest rates when reporting experiences of battering rather than situational violence (Hines and Douglas, 2011, 2015). Focusing on trauma symptoms has many advantages, both diagnostically and legally. PTSD and Complex PTSD are well-defined terms, referring to actual behaviors, known etiologies, and the existence of relevant symptoms – e.g., there is a correlation between levels of violence suffered and PTSD symptoms (Terrance and Matheson, 2003).

Trauma-related categories better account for research findings on the consequences of battering on male and female victims, including the relatively gender-neutral impact of emotional abuse. When included in a social framework evidence defense, they more accurately explain the various types of battering phenomena, including memory lapses, aggressive episodes and other contradictions that might otherwise compromise a BWS defense (e.g. the victim is thought to be helpless, but can accurately predict future acts of violence and seek support). Thus, the constellation of mitigating factors included in the term “battered woman syndrome,”

and presented in expert testimony, can be better described as “testimony on battering and its effects” (Osthoff & Maguigan, 2005, p. 230), and may make the difference between a manslaughter, rather than, murder, conviction.

### **Conclusions**

There is now a convincing body of research to suggest that both women and men are capable of experiencing severe, and sometimes lethal IPV at the hands of their female partners. The findings discussed above are especially compelling given growing concerns around the concept of BWS, and the proliferation of research on the role of trauma. Even if the Felson and Lane (2010) prison study cited above is an outlier, assumed rates of previous violence by IPH victims may not differ across gender as much as commonly assumed. It is not always clear, in any particular case, exactly what effects previous abuse may have on IPH perpetration, and there is no agreed-upon calculus available to dependably determine that role, especially given the multiplicity of possible motives and situations. Other than self-defense and jealousy, the extant research literature has failed to properly investigate other possible motives. The research makes it quite clear that female victims of intimate partner violence are, on the whole, more physically and emotionally impacted than male victims, providing perhaps stronger support for the consideration of mitigating circumstances in those cases. However, gender differences are relative, not absolute, and while gender “plays a role in determination of incidents as IPV, arrest, trial, conviction, and dispensations from the court, ultimately these considerations fail to address the relational context of these incidents” (Barner & Carney, 2015, p. 161).

Life-threatening and lethal IPV is perpetrated for various reasons, including jealousy, financial gain, revenge, and the desire to maintain control over one’s partner and relationship. Some perpetrators who kill their partners (more often, but not always, women) have experienced previous abuse at the hands of the victim. However, even when such a history has been established its relevance will vary depending on the nature of that history, the particular dynamics of the abuse, the motives and mindset of the parties involved, and the circumstances surrounding the incident (see Appendix).

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Appendix: Questions relevant to the adjudication of IPH

*Questions regarding the event:*

1. Did the defendant plan to assault the victim?
2. Did the assault occur during a confrontational situation, and if so, what was the defendant's role in the confrontation – e.g., did he/she initiate violence or contribute to the escalation process?
3. Was there an intent to injure or kill?
4. If there was such an intent, did the defendant believe he/she was in imminent danger of unlawful bodily harm?
5. To what extent was this belief based on objective evidence of imminent danger, and not simply subjective? For example, did the defendant have a naturally anxious or paranoid personality? Was the fear of harm based on memories of past abuse by others? In other words, did the victim's behavior (e.g., arguing, yelling), not previously associated with serious, life-threatening abuse, trigger an exaggerated fear response in the defendant?
6. Did he/she use only a reasonable amount of force to counter the perceived danger?
7. Was either party under the influence of drugs or alcohol?
8. What unusual circumstances did the defendant and victim face at the time of the assault?
9. What other motives, aside from fear, may have driven the defendant's actions – such as revenge for something the victim did (e.g., have an affair) or might do (leave the relationship, report them to law enforcement for past or current abuse), to avoid spousal or child support payments, collect on a life insurance policy, or for other monetary gain?

*Questions regarding defendant and victim histories:*

Hamel (200) Role of gender in IPV and IPH

1. Was the defendant previously subjected to a pattern of battering, consisting of physical assaults leading to serious bodily harm, threats to seriously injure or kill her or family, and/or emotionally abusive and controlling behaviors?
2. To what extent was the defendant under the influence of the victim throughout the course of their relationship? To what extent was this influence due directly to the victim's physical and psychological abuse, threats, and controlling behaviors, as opposed to situational or personality differences (e.g., lack of assertiveness, emotionally dependent)?
3. Is there confirmation of such a pattern of battering and influence aside from the defendant's self-report – e.g., prior calls to police, arrest reports, eyewitnesses, medical reports, or trauma symptoms?
4. Does the defendant evidence signs of trauma, and how are these symptoms relevant to the defendant's actions against the victim?
5. How have these symptoms impacted how the defendant has been able to present him/herself in court, and perhaps undermined his/her credibility?
6. Does the defendant have a history of prior trauma (in childhood or previous relationships) that might account for these symptoms (rather than abuse at the hands of the victim)?
7. Was the defendant able to predict, based on the victim's pattern of violence against him/her, when he/she would be violent again?
8. How often when he/she recognized signs of impending violence did violence actually occur?
9. When previously assaulted, or threatened with assault by the victim, did the defendant make efforts to seek help? If not, is there evidence of previous life-threatening threats by the victim?
10. If he/she did seek help, was help available? For example, was the local shelter full, police slow to respond, a restraining order issued but ignored, etc.?
11. If there is evidence of prior bi-directional abuse between the defendant and victim, was there a dominant aggressor? Bi-directionality, by itself, does not necessarily imply mutual culpability.
12. Is there a record of the defendant, or the victim, perpetrating any previous battering behavior upon other partners?

13. What are the characteristics of the defendant's personality? Does he/she present with characteristics typical of perpetrators rather than victims – e.g., angry temperament, need to dominate and control, jealous, impulsive, with borderline, narcissistic, paranoid or antisocial traits?
14. What are the characteristics of the victim's personality? Does he/she present with characteristics typical of perpetrators rather than victims?
15. Did the defendant subject the victim to a pattern of battering, consisting of physical assaults leading to serious bodily harm, threats to seriously injure or kill her or family, and/or emotionally abusive and controlling behaviors?
16. Is there confirmation of such a pattern of battering aside from the victim's self-report – e.g., prior calls to police, arrest reports, eyewitnesses, or medical reports?