Over a period of several years providing consultation on intimate partner violence (IPV) in family law cases, and for the prosecution as well as the defense in criminal cases, the author has noted how misinformed attorneys appear to be on this subject. 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 ill-informed about the high rates of more serious IPV perpetrated by women. In this article, the author summarizes the literature on intimate partner violence, and their implications for the adjudication of homicide cases.

For several decades, 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 so for coercive reasons Langhinrichsen-Rohling et al., 2012; Elmquist, Hamel, Shorey, Labrecque, Ninnemann & Stuart, 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).

A pattern of physical abuse together with emotional abuse and controlling behaviors is known as controlling-coercive violence or, more commonly, battering. National surveys in the United States and Canada have found comparable levels of battering across gender (Jasinski, Blumenstein, & Morgan, 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 et al, 2002; Hines
et al., 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).

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 nearly 70% of physical IPV is bi-directional (Langhinrichsen-Rohling, Misra, Selwyn, & Rohling, 2012). 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, 1983), 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).

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 battering is essentially fueled by a desire to dominate one’s partner, coupled with poor impulse control and beliefs that violence is acceptable (Capaldi, Knoble, Shortt, & Kim, 2012; Dutton, 2006). Research with female victims indicates that a woman is a highest risk for being severely injured when her partner has engaged in a pattern of battering behavior (physically abusive, jealous, highly controlling), abuses alcohol and drugs, is unemployed, and has a history of violence outside the home. Additional risk factors relevant to lethal assault include partner having previously stalked the victim, forced her to have sex, or threatened to kill her (Campbell et al., 2003; Campbell, Glass, Sharps, Laugon, & Bloom, 2007). 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). The prison study by Jordan et al. (2012) found that
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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. 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., Ehrensaft, Moffitt & Caspi, 2004). Men and women arrested for perpetrating a domestic violence offense have been found to evidence personality traits often associated with violence, 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). One of the few studies to investigate the personalities of both male and female intimate homicide perpetrators, conducted by 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. Unfortunately, the most reliable instrument for predicting lethality in IPV cases, the Danger Assessment, was designed only for female victims, and, when properly used, predicts an attempted or completed murder in less than 50% of cases (Campbell, Webster, & Glass, 2009). Still, a knowledge of relevant risk factors, combined with all other facts of a case, can help determine which party is the dominant aggressor.

In the United States, 16% of murder victims are killed by an intimate partner (U.S. Department of Justice, 2011). 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 (Garcia, Soria, & Hurwitz, (2007). Female perpetrators are far less likely than male perpetrators to physically overpower their victims and beat them to death, but as likely to use
knives, guns, and other weapons (Jurik & Winn, 1990; Mann, 1988; Swatt & Ho, 2006). They are also less likely to have a previous criminal record of violent crime (Block & Christakos, 1995; Jordan, Clark, Pritchard, & Charnigo, 2012). A prevailing theory, known as the gender perspective (Felson & Lane, 2012), holds that men are 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 (Saunders & Browne, 2000; Serran & Firestone, 2004). According to this view, women who kill their intimate partners typically do so in self-defense, or when in fear of imminent harm, after years of traumatic psychological and physical abuse – the main features of the now well-known battered woman syndrome (Walker, 1983).

There are several arguments in support of this theory. 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, Soria & Hurwitz, 2007; O’Keefe, 1997; Saunders & Browne, 2000; Stout & Brown, 1995). 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 (Block & Christakos, 1995; Jordan et al., 2012, Wilson & Daly, 1993). Furthermore, the higher rates of suicide by male homicide perpetrators might 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; Morton, Runyan, Moracco, & Butts, 1998). 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 (Dugan, Nagin, & Rosenfeld, 1999).

On the other hand, other research studies have yielded contradictory results, and disentangling the various motives and circumstances around intimate partner homicides has proved to be a difficult task. Many findings in support of the gender perspective were based on studies using small samples, but a large scale 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 partner before the incident, and less than 10% were judged to have acted strictly in self-defense. 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), 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).

Furthermore, higher reported rates of victimization among female perpetrators may not accurately reflect the actual numbers. Information about past victimization comes from either the parties involved, or criminal justice data such as previous arrests and criminal protection orders, and can be misleading. Due to greater tolerance for female-perpetrated IPV, and the expectation that men present a façade of strength (Celi, 2011; Cook, 1997; Douglas & Hines,
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2011; Rooney, 2010), men report abuse 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 and in fear for their lives. Men are often arrested on a domestic violence charge despite a higher rate of physical and emotional IPV by the partner prior to the incident (Capaldi, Shortt, Kim, Wilson, Crosby, & Tucci, 2009). Police tend to minimize the risk to male victims (Hamel & Russell, 2013; Storey & Strand, 2012), and in many jurisdictions are trained to view men as the dominant aggressor (Hamel, 2011; Hamel & Russell, 2013). Men are also arrested and prosecuted at significantly greater rates than females, even after controlling for type of incident, injuries, etc. (Henning & Renauer, 2005; Shernock & Russell, 2012).

The research literature finds little support for the theory that men are motivated to batter their female partners to enforce traditional gender roles, at least in the United States (Sugarman & Frankel, 1996). 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. Why women engage in non-lethal battering at rates equal to men, but are more at risk to be killed, is a question that remains unanswered. One possibility is that men’s superior strength allows them greater lethal options, such as using their fists. Another is that men, who are generally more violent than women, may temper their aggressive tendencies in the home lest
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they violate social rules of chivalry and duty to protect women, but may feel less restrained when relationship conflicts reach a certain level of intensity or chronicity, and/or when afflicted with mental illness or a substance abuse disorder (Cross, Tee, & Campbell, 2011; Felson and Lane, 2010).

Conclusions

Intimate partner homicides are perpetrated for various reasons, including jealousy and the desire to maintain control over one’s partner and relationship. Some perpetrators (more often, but not always, women) have experienced abuse at the hands of the victim. However, there is a difference between violence committed in self-defense or in response to a perceived threat of harm, as opposed to retaliation for previous abuse. Determining which of these is most relevant to a particular case is not always simple. A useful guide can be found in Table 1. For a more in-depth discussion of these issues, and the limitations of a battered women syndrome defense, the reader may want to read some if the excellent books and journal articles available (e.g., Coughlin, 1994; Faigman, 1996; Follingstad, 2002; Russell, 2010; Schopp, Sturgis, & Sullivan, 1994).
Questions regarding the event:

1. Did the defendant plan to assault the victim?
2. Was there an intent to injure or kill?
3. Did the defendant believe he/she was in imminent danger of unlawful bodily harm?
4. Did he/she use only a reasonable amount of force to counter the perceived danger?
5. If she did not retreat, did the defendant feel he/she was in danger of death or serious bodily injury?
6. What unusual circumstances did the defendant and victim face at the time of the assault?

Questions regarding defendant and victim histories:

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. Is there confirmation of such a pattern of battering aside from the defendant’s self-report – e.g., prior calls to police, arrest reports, eyewitnesses, medical reports, or trauma symptoms?
3. Does the defendant evidence signs of trauma, and how are these symptoms relevant to the defendant’s actions against the victim?
4. How have these symptoms impacted how the defendant has been able to present him/herself in court, and perhaps undermined his/her credibility?
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5. 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)?

6. Was the defendant able to predict, based on the victim’s pattern of violence against him/her, when he/she would be violent again?

7. How often when he/she recognized signs of impending violence did violence actually occur?

8. Did the defendant respond to the perceived threat based on a reasonable fear of harm, as opposed to memories of past abuse by others? In other words, did objectively non-threatening behavior by the victim trigger fear that was then projected on the victim?

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?

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?
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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?
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