

## **In the Best Interests of Children: What Family Law Attorneys Should Know about Domestic Violence**

by  
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It has been known for several decades that abuse between married, cohabitating, or dating partners, whether in same-sex or opposite-sex relationships, is a major social and public health problem. Intimate partner abuse (IPA or PA), commonly known as *domestic violence*, may involve physical, sexual, or emotional abuse, stalking, and domineering and controlling behaviors. It negatively impacts millions of families in the United States, including families in which the parents seek a dissolution of their marriage. Ample social science research finds that children who witness abuse by one parent against another, or by both parents, are at greater risk than other children for incurring a variety of emotional and behavioral problems, including depression, anxiety, aggression, and declining school performance.<sup>1</sup>

In child custody disputes, “the determination by the court that domestic or family violence has occurred,” according to Model Code 401 from the National Council of Juvenile and Family Court Judges, “raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.”<sup>2</sup> Although well-intentioned, these guidelines are at best vague, and at worst they

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<sup>1</sup> See, e.g., Kathleen Watson MacDonnel, *The Combined and Independent Impact of Witnessed Interparental Violence and Child Maltreatment*, 3 PARTNER ABUSE 358 (2012); Melissa L. Sturge-Apple, et al., *Impact of Parental Conflict and Emotional Abuse on Children and Families*, 3 PARTNER ABUSE 379 (2012).

<sup>2</sup> Peter G. Jaffe & Robert Geffner, *Child Custody Disputes and Domestic Violence: Critical Issues for Mental Health, Social Service, and Legal Professionals*, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH AND APPLIED ISSUES 373 (George W. Holden & Ernest N. Jouriles eds. 1998).

may result in court decisions that are not at all in the best interests of children, if family court professionals – especially mediators, evaluators and judges – fail to implement them in accordance with accepted scientific standards, which include a sound knowledge of the relevant scholarly research literature in the presumed area of expertise.<sup>3</sup>

## I. The Gender Debate

One of the longest-running, most polarizing issues in family law has concerned the role that gender plays in PA. Advocates for battered women believe that relationship violence by males upon their female partners is far more prevalent than violence by females upon their male partners, with far greater consequences for children, that female-perpetrated violence typically occurs in response to assaults initiated by male partners, and that men's violence is caused by a desire to dominate women and maintain a position of superiority in the household, supported by traditional patriarchal social structures.<sup>4</sup> Their concern is that *not enough* violent fathers are prevented from seeing their children.<sup>5</sup> On the other side, men's rights advocates argue that there is a great deal of gender symmetry in intimate partner abuse, and they are concerned that *too many* fathers are denied access to their children due to false or exaggerated domestic violence accusations.<sup>6</sup>

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<sup>3</sup> For a discussion from various disciplines, see Am. Psychol. Ass'n, *Ethical Principles of Psychologists and Code of Conduct* (2010), <http://www.apa.org/ethics/code/index.aspx>; see also DAVID FAIGMAN ET AL., *MODERN SCIENTIFIC EVIDENCE: STANDARDS, STATISTICS, AND RESEARCH METHODS* (2008).

<sup>4</sup> See, e.g., Molly Dragiewicz, *Patriarchy Reasserted: Fathers' Rights and Anti-VAWA Activism*, 3 *FEMINIST CRIMINOLOGY* 121 (2008); Michael S. Kimmel, "Gender Symmetry" in *Domestic Violence: A Substantive and Methodological Research Review*, 8 *VIOLENCE AGAINST WOMEN* 1332 (2002).

<sup>5</sup> Marsha B. Liss & Geraldine Butts Stahly, *Domestic Violence and Child Custody*, in *BATTERING AND FAMILY THERAPY* 175 (Marsali Hansen & Michele Harway eds. 1993); Jay Silverman, et al., *Child Custody Determination in Cases Involving Intimate Partner Violence: A Human Rights Analysis*, 94 *AM. J. PUB. HEALTH* 951 (2004); Joan Zorza, *How Abused Women Can Use the Law to Help Protect Their Children*, in *ENDING THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN* 147 (Einat Peled et al. eds. 1995).

<sup>6</sup> See, e.g., *Stop Abusive and Violent Environments, Key Facts About Sexual Assault and Domestic Violence* (2015), <http://www.saveservices.org/key-facts/>.

Attempts to resolve this issue empirically have generated more heat than consensus. “In order to minimize advocacy over scholarship,” write Marc Ackerman and Jonathan Gould, “individuals who are involved in scholarly debate need to practice systematic self-reflection . . . so as to minimize the potential effects of confirmatory bias on their thinking and on the teaching of others.”<sup>7</sup> Self-reflection, however, would appear to be in short supply among some PA researchers who, by some accounts, serve more as advocates for a specific group of victims rather than as unbiased investigators. While small in number, these researchers have wielded an inordinate influence.<sup>8</sup>

The research literature reveals a great deal of gender symmetry in rates of both physical and non-physical PA, as well as in risk factors and motives for perpetration.<sup>9</sup> Still, well-designed social science experiments have identified a broad gender bias, one that overestimates the prevalence and impact of male-perpetrated PA while minimizing abuse by females, among a variety of professional groups and organizations, including police officers,<sup>10</sup>

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<sup>7</sup> Marc J. Ackerman & Jonathan W. Gould, *Child Custody and Access*, in APA HANDBOOK OF FORENSIC PSYCHOLOGY, VOLUME I: INDIVIDUAL AND SITUATIONAL INFLUENCES IN CRIMINAL AND CIVIL CONTEXTS 428 (Brian L. Cutler & Patricia A. Zapf eds. 2015).

<sup>8</sup> See Murray Straus, *Thirty Years of Denying the Evidence on Gender Symmetry in Partner Violence: Implications for Prevention and Treatment*, 1 PARTNER ABUSE 332 (2010).

<sup>9</sup> See, e.g., DONALD G. DUTTON, *RETHINKING DOMESTIC VIOLENCE* (2006); DENISE A. HINES ET AL., *FAMILY VIOLENCE IN THE UNITED STATES: DEFINING, UNDERSTANDING, AND COMBATING ABUSE* (2d ed. 2013); Donald G. Dutton, *The Domestic Abuse Paradigm in Child Custody Assessments*, 2 J. CHILD CUSTODY 23 (2006); Donald G. Dutton, *The Gender Paradigm and the Architecture of Anti-Science*, 1 PARTNER ABUSE 5 (2010); John Hamel, *Toward a Gender-Inclusive Conception of Intimate Partner Violence Research and Theory: Part I – Traditional Perspectives*, 6 INT’L J. MEN’S HEALTH 36 (2007); John Hamel, *Toward a Gender-Inclusive Conception of Intimate Partner Violence Research and Theory: Part II – New Directions*, 8 INT’L J. MEN’S HEALTH 41-59 (2009); John Hamel et al., *Perceptions of Motives in Intimate Partner Violence: Expressive Versus Coercive Violence*, 22 VIOLENCE & VICTIMS 563 (2007).

<sup>10</sup> John Hamel & Brenda L. Russell, *The Partner Abuse State of Knowledge Project: Implications for Law Enforcement Responses to Domestic Violence*, in PERCEPTIONS OF FEMALE OFFENDERS: HOW STEREOTYPES AND SOCIAL NORMS AFFECT CRIMINAL JUSTICE RESPONSES 151 (Brenda Russell ed. 2013).

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attorneys,<sup>11</sup> law students,<sup>12</sup> and mental health professionals.<sup>13</sup> In one notable study, for example, various respondents were presented with hypothetical case vignettes depicting relationship abuse, and victim advocates wrongly ascribed coercive motives to male actors, whereas a control group of university students, with no formal education in domestic violence, did not.<sup>14</sup>

Informational pages on domestic violence can be found on the websites of organizations such as the National Association of Social Workers (NASW) and the American Psychological Association (APA) and internet “fact sheets” intended for broad public consumption.<sup>15</sup> The precise extent to which these facts sheets are relied upon by individuals unfamiliar with the full breadth of PA research (such as family court professionals) has yet to be quantified, but the degree to which they provide misleading data certainly has. Recently, Denise Hines examined the fact sheets on websites of the National Coalition Against Domestic Violence (NCADV), their state chapters and allied organizations, and identified 338 that used incorrect data.<sup>16</sup> For example, 34.9% of the websites reported that “according to the FBI, a woman is beaten every 15 seconds in the United States”; 26.0% claimed that domestic violence “is the leading cause of injury to women

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<sup>11</sup> Donald G. Dutton, et al., *The Gender Paradigm in Domestic Violence Research and Practice, Part II: The Information Website of the American Bar Association*, 14 *AGGRESSION & VIOLENT BEHAV.* 30 (2009).

<sup>12</sup> Teresa Meuer & Jeffrey P. Greipp, *Dynamics of Domestic Violence*, Marquette Law School Syllabus (Spring Semester 2007) (on file with author).

<sup>13</sup> Diane R. Follingstad, et al., *Psychologists' Judgments of Psychologically Aggressive Actions When Perpetrated by a Husband Versus a Wife*, 19 *VIOLENCE & VICTIMS* 435 (2004); Jennifer Skeem, et al., *Gender and Risk Assessment Accuracy: Underestimating Women's Violence Potential*, 29 *LAW & HUM. BEHAV.* 173 (2005).

<sup>14</sup> Hamel, et al., *supra* note 9.

<sup>15</sup> See Am. Psychol. Ass'n, *National Domestic Violence Awareness Month*, PUBLIC INTEREST NEWSL. (Oct. 2012), <http://www.apa.org/pi/about/newsletter/2012/10/domestic-violence-awareness.aspx>; Nat'l Ass'n of Soc. Workers, *About Family Safety*, HELP STARTS HERE (June 21, 2005), <http://www.helpstartshere.org/kids-and-families/family-safety/about-family-safety.html>; Nat'l Ass'n of Soc. Workers, *How Social Workers Can Help in Cases of Domestic Violence*, HELP STARTS HERE (June 21, 2005), <http://www.helpstartshere.org/kids-and-families/family-safety/how-social-workers-help-in-cases-of-domestic-violence.html>.

<sup>16</sup> Denise A. Hines, *Violence Agencies in the United States*, 5 *PARTNER ABUSE* 69 (2014).

between the ages of 15 and 44 in the United States—greater than car accidents, muggings and rapes combined”; and 21.3% cited outdated crime surveys claiming “95% of victims of domestic violence are women who were abused by their male partners.”<sup>17</sup>

To ascertain whether this gender bias has unduly influenced family court professionals, John Hamel, Sarah Desmarais, Tonia Nicholls, Kathleen Malley-Morrison, and Jon Aaronson created a brief ten-item quiz to measure basic PA knowledge.<sup>18</sup> The quiz was administered online and in-person. The online version was administered to family court professionals and family law attorneys whose e-mail addresses were obtained from the national membership directory of the Association of Family and Conciliation Courts (AFCC); to family court judges listed as participants at the 2004 annual conference of the National Council of Juvenile and Family Court Judges; and to shelter workers and victim advocates drawn from a directory published by the National Coalition Against Domestic Violence and state chapters of the National Coalition against Domestic Violence. The paper and pencil version of the quiz was also administered to family court professionals and attorneys in attendance at the AFCC 2006 Conference in San Francisco, and to undergraduate psychology students at Massachusetts University, who were invited to complete a paper and pencil format in partial fulfillment of their introductory psychology research requirement.

As a summary of the data, the average respondent answered only 2.8 questions correctly. For example, 43% of respondents believe the percentage of PV perpetrated by men in the general population to be between 85% - 95% (it is in fact about half); 48% assume it is almost always the man, but sometimes the woman, who perpetrates verbal and emotional abuse and controlling behaviors (it is roughly symmetrical across gender); and more than a third (37%) incorrectly believe that in abusive households the violent father is more likely than the mother to also hit the children.<sup>19</sup> Although family court mediators, evaluators, attorneys, and judges did better than the victim advocates,

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<sup>17</sup> *Id.* at 72.

<sup>18</sup> John Hamel, et al., *Domestic Violence and Child Custody: Are Family Court Professionals' Decisions Based on Erroneous Beliefs?*, 1 J. AGGRESSION, CONFLICT & PEACE RES. 37 (2009) (survey may be found in Appendix A).

<sup>19</sup> *Id.* at 50-51 (Appendix A).

they did not answer significantly more items than undergraduate university students with no training whatsoever in domestic violence or family law.

The Wingspan Conference on Domestic Violence and Family Courts, convened in 2007, brought together several dozen child custody researchers and practitioners in a good-faith effort to resolve some of the more contentious gender issues. Findings from the conference were published in a special issue of the *Journal of Child Custody*, and included a promising set of protocols with which to more accurately assess partner violence.<sup>20</sup> However, in a subsequent issue of the journal in 2010, Donald Dutton, John Hamel, and Jon Aaronson called into question some of the conclusions drawn by these authors, and the body of research upon which they were based.<sup>21</sup> Although the Wingspan authors acknowledged the roughly equal rates across gender for less consequential relationship violence, they clearly depended on unreliable data sets for other conclusions, in particular the assumption of sharp gender asymmetry in more serious forms of relationship abuse, known as *intimate terrorism (IT)*, *controlling/coercive violence*, or the more common term, *battering*, which involve a combination of physical violence and ongoing use of emotional abuse and controlling behaviors.<sup>22</sup>

## II. The Research Evidence

The unmistakable conclusion from Dutton et al.<sup>23</sup> is that family law professionals ought to be better informed about partner abuse, and would benefit from sound, up-to-date research data. Given the unreliability of information currently available, motivated individuals would be well-served to investigate the topic themselves. However, conducting an extended literature

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<sup>20</sup> See Peter Jaffe, et al., *Custody Disputes Involving Allegations of Domestic Violence: The Need for Differentiated Approaches to Parenting Plans*, 46 FAM. CT. REV. 500 (2008); Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476 (2008).

<sup>21</sup> See Donald G. Dutton, et al., *The Gender Paradigm in Family Court Processes: Re-balancing the Scales of Justice from Biased Social Science*, 7 J. CHILD CUSTODY 1 (2010).

<sup>22</sup> *Id.*

<sup>23</sup> See Dutton, et al, *supra* note 21.

search is a time-consuming process, and many people would not even know where to begin. Furthermore, how does one know which data sets are to be trusted? The astute family law attorney reading this article might wonder, “Why should I believe the author rather than Wingspan? How can I tell who is engaging in *selective citation* (“cherry-picking” data) and who is not? The *Daubert v. Merrell Dow Pharmaceuticals* decision<sup>24</sup> and subsequent changes to the Federal Rules of Evidence require that expert evidence and testimony be derived from clear, established scientific methods of inquiry.<sup>25</sup> With this in mind, the next section will summarize results from the author’s compilation and analysis, with other qualified researchers and scholars, of the largest, most up-to-date and methodologically-sound review of the domestic violence literature available – definitive enough to maximize consensus while lessening the possibility of confusion, needless argument, and selective citation in service of a particular agenda.

### III. The Partner Abuse State of Knowledge Project

The author, in his capacity as Editor-in-Chief of the peer-reviewed journal, *Partner Abuse*, sought to establish in 2012 a database of domestic violence research that would be comprehensive, scholarly, and definitive, yet accessible to everyone for free at one convenient location.

Scholars with expertise in various areas of PA research were recruited from the United States and Canada, each of them asked to do formal literature review on their particular topic of interest. They were instructed to do a formal keyword search, using PsychInfo and other established search engines, to identify all known studies from the United States and other English-speaking countries published since 1990 that appeared in a peer-reviewed journal, reported on quantitative data, and used rigorous sampling and measurement methods and statistical analyses. Not considered were qualitative reports, government publications, articles, book chapters, and dissertations not subjected to the peer-review process.

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<sup>24</sup> 509 U.S. 579 (1993).

<sup>25</sup> See Ackerman & Gould, *supra* note 7.

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Over a period of more than two years, 41 authors and 65 research assistants from 20 universities and research centers researched and wrote what would eventually become the 17 manuscripts of the Partner Abuse State of Knowledge Project (PASK), published between Spring, 2012 and Spring, 2013 in five special issues of *Partner Abuse*.<sup>26</sup> (See Table 1). In the interest of clarity and transparency, the authors were asked to summarize every study cited in their review, and to put these 1,700 summaries into tables, organized by year, author, and sample type (large population and community surveys, dating and student samples, clinical and legal samples). The unprecedented 2,657 pages of published manuscripts and accompanying tables can now be found online.<sup>27</sup>

A. *Physical Abuse Prevalence Rates*

Sarah Desmarais, Kim Reeves, Tonia Nicholls, Robin Telford, and Martin Fiebert<sup>28</sup> examined prevalence rates for physical perpetration and victimization. Because of the diminished accuracy of older surveys, these authors sought only articles published after the year 2000. After conducting an exhaustive literature search, they considered 750 articles and reported on the 360 that met their inclusion criteria. The 244 pages of published manuscripts and tables reported that, overall, 28.3% of women and 21.6% of men had perpetrated some type of physical assault upon an intimate partner in the 12-month period prior to the survey.

Most of the surveys utilized some version of the Conflict Tactics Scales, and typically included: pushing, grabbing, slapping, punching, kicking, biting, hitting partner with an object, beating up, and use of a weapon. Lifetime rates of perpetration

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<sup>26</sup> PARTNER ABUSE, <http://www.springerpub.com/journals/partner-abuse.html>.

<sup>27</sup> DOMESTIC VIOLENCE RESEARCH GROUP, PARTNER ABUSE STATE OF KNOWLEDGE PROJECT (PASK), <http://www.domesticviolenceresearch.org> (last visited Feb. 15, 2015).

<sup>28</sup> See Sarah Desmarais et al., *Prevalence of Physical Violence in Intimate Relationships - Part 1: Rates of Male and Female Victimization*, 3 PARTNER ABUSE 140 (2012) [hereinafter Desmarais et al., *Victimization*]; Sarah Desmarais et al., *Prevalence of Physical Violence in Intimate Relationships - Part 2: Rates of Male and Female Perpetration*, 3 PARTNER ABUSE 170 (2012) [hereinafter Desmarais et al., *Perpetration*].

were somewhat higher, for both genders. Female-to-male rates of partner violence (FMPV) were higher than male-to-female rates (MFPV), regardless of the type of population sampled: 24.1% FMPV, 18.0% MFPV in large population studies; 29.7% FMPV, 22.4% MFPV in small community samples; 27.5% FMPV, 20.0% MFPV in samples of university students and young adults; 27.9% FMPV, 16.2% MFPV among high school, middle school and adolescents; and 41.7% FMPV, 32.9% MFPV in clinical samples.<sup>29</sup> With respect to victimization rates, across all studies and samples, 18.8% of women and 19.8% of men reported to have been assaulted by an intimate partner in the past year.<sup>30</sup>

Not included in the PASK reviews were results from the National Intimate Partner and Sexual Violence Survey, also known as NISVS, conducted by researchers at the Center for Disease Control and Prevention.<sup>31</sup> The most recent, large-scale national study on partner violence victimization, NISVS drew on a U.S. sample of 4,741,000 women and 5,365,000 men. Results indicate that in the year prior to the survey, 4.3 million women and 5.1 million men were victims of minor physical assaults (e.g., slapping, pushing), and 3.2 million women and 2.2 million men suffered severe assaults (e.g., punching, beating up) that typically result in physical injuries.<sup>32</sup> Thus, while overall rates were similar across gender, women were more likely than men to report being the victims of more consequential violence.

Comparing physical abuse victimization rates across sexual orientation, a separate NISVS report found that:

- 43.8% of lesbians have been physically victimized, stalked, or raped by a partner in their lifetime, compared to 35.0% of heterosexual women, 29.0% of heterosexual men, and 26.0% of gay men.
- Bisexual women experienced the highest rates, at 61.1%.
- Bisexual women experienced the highest lifetime rates of psychological abuse victimization (76.2%), followed by

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<sup>29</sup> *Id.*

<sup>30</sup> See Desmarais et al., *Victimization*, *supra* note 28.

<sup>31</sup> See Michele C. Black, et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report* (2011), [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>32</sup> *Id.* at 38, Tables 4.1-4.2.

lesbian women (63.0%), gay men (59.6%), bisexual men (53.0%), heterosexual men (49.3%), and heterosexual women (47.5%).<sup>33</sup>

#### B. *Physical Violence: Unidirectional Versus Bi-directional*

Comparable rates of relationship violence across gender do not, of course, explain the context in which it occurs. Much of the literature says nothing, for example, about how much of the violence is bi-directional (involving both partners hitting one another), or how much is initiated by men and how much by women, and for what reasons. The PASK literature review and tables by Jennifer Langhinrichsen-Rohling, Tiffany Misra, Candice Selwyn, and Martin Rohling, totaling 152 pages, sought to answer these questions by reporting on the 49 methodologically-sound studies culled from an original pool of 320 publications.<sup>34</sup> Across all sample types, the authors determined that 58% of physical assaults are bi-directional and 42% unidirectional, with unilateral MFPV representing 13.8% of all violence, and unilateral FMPV 28.3%. These findings suggested that unilateral assaults by women account for at least 28.3% of all relationship assaults, plus whatever the percentage may be for female-initiated bi-directional assaults.

Langhinrichsen-Rohling, et al. did not publish information on which partner initiated the assaults – that is, who struck the first blow. However, John Hamel reported on the handful of studies where initiation rates were taken into account.<sup>35</sup> Except for one study, based on a military sample, initiation rates were found to be quite similar across gender among dating surveys,<sup>36</sup>

<sup>33</sup> See Mikel L. Walters, et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation* (2013), [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_SOfindings.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_SOfindings.pdf).

<sup>34</sup> See Jennifer Langhinrichsen-Rohling, et al., *Rates of Bi-directional Versus Unidirectional Intimate Partner Violence Across Samples, Sexual Orientations, and Race/Ethnicities: A Comprehensive Review*, 3 PARTNER ABUSE 199 (2012).

<sup>35</sup> See Hamel, *Toward a Gender-Inclusive Conception: Part I*, *supra* note 9; Hamel, *Toward a Gender-Inclusive Conception: Part II*, *supra* note 9.

<sup>36</sup> See Alfred DeMaris, *Male Versus Female Initiation of Aggression: The Case of Courtship Violence*, in INTIMATE VIOLENCE: INTERDISCIPLINARY PER-

as well as large population surveys.<sup>37</sup> Very few studies have reported on rates of initiation using samples of clients enrolled in domestic violence perpetrator programs. The female partners of men in perpetrator treatment initiate the violence between 33% and 40% of the time,<sup>38</sup> a fairly high percentage considering that these women were, legally, the victims of their husbands' abuse. Female perpetrators in a Northern California perpetrator survey said they initiated the physical violence 45.6% of the time, and male perpetrators said they had done so 32.1% of the time.<sup>39</sup> Verbal abuse was initiated by female perpetrators 47.7% of the time, and 39.7% by men.<sup>40</sup>

### C. Sexual and Emotional Abuse and Control

There are three types of non-physical abuse: emotional (or psychological) abuse, stalking, and sexual coercion (which of course can involve physical coercion.) In their 330-page review of the literature, PASK authors Michelle Mohr Carney and John R. Barner considered 300 surveys, and reported on 204 that provided perpetration rates on one or more of these types.<sup>41</sup> By far the most common are the various manifestations of emotional

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SPECTIVES 111 (Emilio C. Viano ed. 1992); June Henton, et al., *Romance and Violence in Dating Relationships*, 4 J. FAM. ISSUES 467 (1983); Chad LeJeune & Victoria Follette, *Taking Responsibility: Sex Differences in Reporting Dating Violence*, 9 J. INTERPERSONAL VIOLENCE 133 (1994).

<sup>37</sup> David M. Fergusson, et al., *Partner Violence and Mental Health Outcomes in a New Zealand Birth Cohort*, 67 J. MARRIAGE & FAM. 1103 (2005); Marilyn J. Kwong, et al., *Gender Differences in Patterns of Relationship Violence in Alberta*, 31 CAN. J. BEHAV. SCI. 150 (1999); Barbara J. Morse, *Beyond the Conflict Tactics Scale: Assessing Gender Differences in Partner Violence*, 10 VIOLENCE & VICTIMS 251 (1995).

<sup>38</sup> See ANSON SHUPE, ET AL., *VIOLENT MEN, VIOLENT COUPLES: THE DYNAMICS OF DOMESTIC VIOLENCE* (1987); Edward W. Gondolf, *Characteristics of Batterers in a Multi-Site Evaluation of Batterer Intervention Systems*, MINN. CTR. AGAINST VIOLENCE & ABUSE (1996), <http://www.mincava.umn.edu/documents/gondolf/batchar.html>.

<sup>39</sup> John Hamel, et al., *Gender and Batterer Intervention: Implications of a Program Evaluation for Policy and Treatment*, 25 RES. SOC. WORK PRAC. 1 (2015)

<sup>40</sup> *Id.*

<sup>41</sup> Michelle Mohr Carney & John R. Barner, *Prevalence of Partner Abuse: Rates of Emotional Abuse and Control*, 3 PARTNER ABUSE 286 (2012).

abuse, perpetrated by 80% of respondents across all samples.<sup>42</sup> Rates of *coercive abuse* (e.g., monitoring, isolating, threatening) were found to be nearly identical across gender (41% female-perpetrated, 43% male-perpetrated), whereas a larger number of women (40% versus 32%) reported to having perpetrated *expressive abuse* (e.g., making derogatory comments, ridiculing, shaming).<sup>43</sup> In terms of victimization, the NISVS survey found annual rates of coercive abuse to be higher among male victims (17.3 million, compared to 12.7 million victimized women).<sup>44</sup> Somewhat more women than men (12.3 million versus 10.6 million) said they had been victims of expressive abuse.<sup>45</sup>

Stalking behaviors, also known as *obsessive relational intrusion* (ORI), and sexual coercion, occur less frequently than expressive and coercive abuse, but may be more traumatic for victims. The Carney and Barner review concluded that 4.1% to 8% of women and 0.5% to 2% of men have been physically stalked at least once during their lifetime, 33% - 50% of it perpetrated by an intimate partner.<sup>46</sup> When non-physical ORI were considered (e.g., calling on the phone, texting), the rates across gender were more comparable. With regard to sexual coercion, national samples indicate that a far greater proportion of women than of men (4.5% versus 0.2%) have been forced to have sexual intercourse by a partner in their lifetime, although gender differences are less for sexual coercion when defined more broadly to include psychological forms of coercion (e.g., taking advantage of someone while they are intoxicated, suggesting the victim must be a homosexual if he doesn't agree to have sex).<sup>47</sup>

A survey of non-physical abuse, the Controlling and Abusive Tactics Questionnaire, was field-tested with 190 male and 147 female domestic violence perpetrators enrolled in treatment programs throughout California.<sup>48</sup> For abuse perpetrated, there were no significant differences across gender for 47 of the 62

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<sup>42</sup> *Id.* at 287.

<sup>43</sup> *Id.*

<sup>44</sup> Black et al., *supra* note 31, at 46

<sup>45</sup> *Id.*

<sup>46</sup> Carney & Barner, *supra* note 41, at 287-88.

<sup>47</sup> *Id.*

<sup>48</sup> John Hamel, et al., *The CAT: A Gender-Inclusive Measure of Abusive and Controlling Tactics*, 30 VIOLENCE & VICTIMS 547 (2015).

original items and 27 of the 37 final items that remained after insufficiently-endorsed items were dropped. Male clients reported significantly more perpetration for the following six items: “controls the money and excludes partner from financial decisions,” “tries to restrict partner’s movements,” “withholds child support,” “forgets important things (e.g., to pay bills or relay calls/messages),” “pressures partner to have sex when he/she doesn’t want to,” and “pressures partner to engage in unwanted sexual practices.”<sup>49</sup> The female clients were significantly more likely to endorse the following nine items: “makes fun of partner’s sexual performance,” “blames partner for all the problems in the relationship,” “calls, pages or text messages constantly,” “searches partner’s purse/wallet/cell phone calls,” “nags,” “refuses to accept ‘no’ for an answer,” “withholds affection or sex,” “tells children negative things about partner,” and “locks partner out of bedroom or residence when angry.”<sup>50</sup>

#### D. Risk Factors

Gender symmetry has also been found in the etiology of partner abuse, as indicated by the 297-page PASK manuscript by Deborah M. Capaldi, et al.<sup>51</sup> Because of ethical and practical considerations, social science research cannot, strictly speaking, identify “causes” of behavior so much as associations between variables, which are known as *risk factors*. After examining 877 studies and summarizing 228 of these, the authors concluded that, with few exceptions, risk factors for physical PA are the same for men and women.<sup>52</sup>

The major demographic risk factors predictive of partner violence are: younger age, low income, unemployment, minority group membership, and being in a dating or cohabitating relationship rather than married.<sup>53</sup> Low to moderate associations were found between partner violence and childhood-of-origin exposure to abuse, whether by the parents upon one another or

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<sup>49</sup> *Id.* at 553.

<sup>50</sup> *Id.*

<sup>51</sup> Deborah M. Capaldi, et al., *A Systematic Review of Risk Factors for Intimate Partner Violence*, 3 PARTNER ABUSE 231 (Apr. 2012).

<sup>52</sup> *Id.* at 237 (“The reviewed studies generally indicate that men and women are relatively equally likely to perpetrate IPV”) (citation omitted).

<sup>53</sup> *Id.* at 237-38.

perpetrated upon the child.<sup>54</sup> While many of the studies (but not all) identified insecure attachment – primarily preoccupied (clingy, having anxiety over abandonment) and avoidant (distant, having a fear of intimacy) – as risk factors, much stronger correlations were found between partner violence and conduct disorder/anti-social personality as well as presence of *negative emotionality*, defined as having problems managing anger, poor impulse control, and jealousy.<sup>55</sup> Depression was a weak predictor of partner violence, but much stronger for women in comparison to men.<sup>56</sup> Weak-moderate associations were found between drug abuse and partner violence, and alcohol abuse better predicted female-perpetrated violence.<sup>57</sup>

Dovetailing with research finding a significant proportion of relationship violence to be bi-directional,<sup>58</sup> Capaldi, et al. identified certain relationship characteristics as risk factors – primarily the presence of high conflict and low relationship satisfaction.<sup>59</sup> Consistent with hypotheses drawn from feminist patriarchal theory, hostility toward women by men was identified as a low to moderate proximate predictor of violence; however, contrary to feminist theory, so were attitudes approving of or justifying relationship violence and/or a need to dominate, by either gender.

Two widely-cited studies examined this issue in greater detail. According to a meta-analysis by David Sugarman and Susan Frankel in 1996, male attitudes supportive of violence significantly predicted assaults against female partners, but traditional gender role attitudes (e.g., that the woman should let the man make all the decisions, not work outside the home, etc.) did *not* differentiate violent from non-violent men.<sup>60</sup> Furthermore, violent men actually measured lower on measures of masculinity, including goal-directed and instrumental (masculine) behaviors, compared to expressive (female) behaviors. The other study, based on surveys of 13,601 university students in 32 countries,

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<sup>54</sup> *Id.* at 240-41.

<sup>55</sup> *Id.* at 245-46.

<sup>56</sup> *Id.* at 246-47.

<sup>57</sup> *Id.* at 247-48.

<sup>58</sup> See Langhinrichsen-Rohling et al., *supra* note 34.

<sup>59</sup> Capaldi et al., *supra* note 51, at 252-53.

<sup>60</sup> See David B. Sugarman & Susan L. Frankel, *Patriarchal Ideology and Wife-Assault: A Meta-Analytic Review*, 11 J. FAM. VIOLENCE 13 (1996).

found a need to control one's partner to be roughly equal across gender, based on the nine scale items related to dominance (e.g., "my partner needs to remember that I am in charge") although higher dominance scores were found for women in 24 of 32 countries.<sup>61</sup> It was also determined that dominance by *either* partner increases the probability of severe violence.

#### E. *Motivation*

The gendered view of partner abuse assumes more benign motives for female perpetrators, such as self-defense or using physical violence in a more expressive, less intentional way (e.g., to discharge anger) in comparison to men whose violence is assumed to be motivated out of a desire to control and dominate the partner. As previously discussed, however, research suggests that women strike the first blow at least half of the time, a finding that is incompatible with self-defense or to discharge anger. In this section, we discuss the various perpetration motives, as reported in 2012 by Jennifer Langhinrichsen-Rohling, Adrienne McCullars, and Tiffany Misra in their 168-page PASK review of the literature.<sup>62</sup> Across the 74 summarized studies, there were no significant statistical differences for the most frequently-endorsed motives, including expressing anger or other feelings that the individual could not put into words, to get a partner's attention, because of stress or jealousy, and to get back at a partner for having hurt them emotionally.

The review identified ten studies on self-defense reporting containing gender-specific statistical analyses. Five found women to report self-defense as a motive significantly more often than men, and in one study men endorsed this motive at rates significantly higher than women. The remaining four studies found no statistically significant differences across gender. Overall, self-defense was endorsed in most samples by only a minority of respondents, with male endorsement rates between 0% and 50%

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<sup>61</sup> See Murray A. Straus, *Dominance and Symmetry in Partner Violence by Male and Female University Students in 32 Nations*, 30 CHILDREN & YOUTH SERV. REV. 252 (2008).

<sup>62</sup> Jennifer Langhinrichsen-Rohling, et al., *Motivations for Men and Women's Intimate Partner Violence Perpetration: A Comprehensive Review*, 3 PARTNER ABUSE 429 (2012).

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and female rates between 5% and 65%.<sup>63</sup> The power/control motive was directly compared between men and women in eight studies. Four reported either mixed findings or comparable endorsement rates across gender. Women endorsed power and control at higher rates in one study and men in three others, but gender differences were weak.<sup>64</sup>

Not included in the 2012 Langhinchen-Rohling, et al. work is a recently-published survey from 2014 using the Reasons for My Violence Scale, which compared 103 female clients enrolled in perpetrator treatment programs in Tennessee with 106 female clients enrolled in programs in California.<sup>65</sup> More women than men endorsed the power/control motive (67.0% versus 61.1%) as well as self-defense (65.0% versus 57.4% of men).<sup>66</sup> Retaliation was endorsed by nearly 71% of women and 61.1% of men, and about 50% of women and 32% of men said that jealousy was a motive for their violence.<sup>67</sup>

Although mixed, these results find a great deal of gender symmetry for the self-defense and power/control motives, greatly undermining two of the primary assumptions of the gendered perspective on domestic violence. Langhinrichsen-Rohling, et al. also point out that:

Individually, particular motives may be more acceptable to report than others; however, the acceptability of reporting specific motives may also vary by gender. For example, it might be particularly difficult for highly masculine males to admit to perpetrating violence in self-defense because this admission implies vulnerability. Conversely, it may be more culturally sanctioned for women to admit to perpetrating violence as a result of jealousy related to their partner's infidelity than to admit to committing violence as a power and control strategy. A better understanding of gender socialization processes related to admission of motive would be helpful.<sup>68</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Joanna Elmquist, et al., *Motivations for Intimate Partner Violence in Men and Women Arrested for Domestic Violence and Court Referred to Batterer Intervention Programs*, 5 *PARTNER ABUSE* 359 (2014).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Jennifer Langhinrichsen-Rohling et al., *supra* note 62, at 457-58.

#### IV. Impact of Abuse on Partners

Aside from rates of physical stalking and sexual coercion, there are significant gender differences in the consequences that physical assaults have upon partners, with women more likely to be the victims.

The Partner Abuse State of Knowledge (PASK) review by Erika Lawrence, Rosaura Orenge-Aguayo, Amie Langer, and Rebecca Brock in 2012 summarized results of 132 peer-reviewed scholarly articles in 93 manuscript pages and tables.<sup>69</sup> Results indicated that, compared to non-victims, individuals who have experienced physical and/or psychological abuse are significantly more likely to evidence physical injuries, poorer occupational and social functioning, problems with cognitive functioning, higher rates of psychological symptoms (e.g., depression, anxiety, post-traumatic stress disorder, and substance abuse), as well as poorer physical functioning and health outcomes – the latter including a greater likelihood of engaging in high-risk sexual behaviors, eating unhealthy foods, and smoking. These symptoms are generally greater for female victims compared to males. Women are much more likely than men to incur physical injuries that are life-threatening and require a visit to an emergency room or hospital; however, men and women report similar rates of less serious injuries, such as scratches, bruises, and mild contusions.

Additionally, the reviewed studies found a strong association between psychological victimization (having experienced expressive or coercive abuse, stalking or sexual coercion) and depression, suicidal ideation, anxiety, stress, insomnia, alcohol abuse, and poor self-esteem. Depression, post-traumatic stress disorder, and alcohol abuse were as strongly correlated, or more so, with psychological abuse as with physical victimization. With respect to gender, some studies have found no differences between men and women in the impact of psychological abuse on partners. For example, Erika Lawrence, Jeungeun Yoon, Amie Langer, and Eunyoe Ro's 2009 study of 103 young Midwestern couples found that psychological victimization predicted anxiety

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<sup>69</sup> See Erika Lawrence et al., *The Impact and Consequences of Partner Abuse on Partners*, 3 PARTNER ABUSE 406 (2012).

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and depression equally for males and females.<sup>70</sup> Other studies have yielded contradictory or mixed results.<sup>71</sup>

A. *Partner Abuse Typologies*

The reader may recall that one of Dutton et al.'s major concerns about the Wingspan reports was its insistence that gender symmetry only exists for lower level violence that arises within the context of escalated conflict (situational couple violence), whereas the use of violence, often severe violence, together with emotional abuse and coercive control (battering, or intimate terrorism) is heavily asymmetrical, with men by far the predominant perpetrators.<sup>72</sup> In the Wingspan rebuttal article, Dutton, et al. wrote:

J. B. Kelly and Johnson (2008) and Jaffe, et al.'s (2008) presentation and interpretation of research findings are misleading; they present data from selected and non-representative samples as indicative of all domestic violence. They also ignore or under-report data sets from several branches of IPV research that indicate a non-gender-based framework for IPV causation. These fundamental limitations are relevant to the work of family court professionals, commissioners, and judges. In promoting the gender paradigm, while simply disregarding an extensive body of gender-inclusive IPV research that refutes it, these writers prepare family court personnel to misconstrue case-specific evidence, so that—when both parents have engaged in IPV—“erring on the side of safety” may well result in children’s best interests being placed in the hands of a more harmful mother rather than a safer father.<sup>73</sup>

These conclusions are supported by the much more complete data set provided by PASK. The PASK manuscripts – which reported on all types of samples, including large representative

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<sup>70</sup> See Erika Lawrence, et al., *Is Psychological Aggression as Detrimental as Physical Aggression? The Independent Effects of Psychological Aggression on Depression and Anxiety Symptoms*, 24 *VIOLENCE & VICTIMS* 20 (2009).

<sup>71</sup> Erika Lawrence, et al., *The Impact of Partner Abuse on Partners*, 3 *PARTNER ABUSE*, 406 (2012); Moises Prospero, *Sex Symmetric Effects of Coercive Behaviors on Mental Health? Not Exactly*, 24 *J. INTERPERSONAL VIOLENCE*, 128 (2009); Casey Taft, et al., *Examining the Correlates of Psychological Aggression among a Community Sample of Couples*, 20 *J. FAM. PSYCHOL.*, 581 (2006).

<sup>72</sup> See Dutton, et al., *supra* note 20.

<sup>73</sup> *Id.* at 22-23 (citing Jaffe et al., *supra* note 20; Kelly & Johnson, *supra* note 20).

gender-inclusive population samples and not just clinical samples of male perpetrators and their female victims – clearly show that while women are more impacted by physical abuse, rates are roughly equal across gender, and aside from sexual coercion and physical stalking, men and women engage at similar rates of non-physical forms of abuse, including expressive and coercive abuse and control. In addition, men are generally not more motivated to physically aggress upon partners to maintain dominance over them.

Reporting on those responses, which included multiple types of PA together in one questionnaire, Carney and Barner concluded that overall abuse rates were higher in the direction of MFPV in studies examining a combination of physical assaults with sexual abuse and/or stalking, but symmetrical in studies measuring physical violence in combination with emotional abuse, which comprise by far the most prevalent forms of PA.<sup>74</sup>

In 2005, Michael Johnson and Janel Leone conducted a secondary analysis of data from the National Violence Against Women Survey, or NVAWS, a large U.S. survey conducted in the 1990s.<sup>75</sup> Married women who reported having experienced both physical violence and high levels of expressive and coercive abuse were deemed to be victims of intimate terrorism (IT).<sup>76</sup> Another secondary NVAWS analysis, published in 2014, sought to duplicate Johnson and Leone's work, but included reports from both the 5,292 male and 4,967 female respondents who were married at the time of the survey.<sup>77</sup> Among "victims of inti-

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<sup>74</sup> See Carney & Barner, *supra* note 41.

<sup>75</sup> See Michael P. Johnson & Janel P. Leone, *The Differential Effects of Intimate Terrorism and Situational Couple Violence: Findings from the National Violence Against Women Survey*, 26 J. FAM. ISSUES 322 (2005) (evaluating Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*, Centers for Disease Control and Prevention (2000), <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>).

<sup>76</sup> The seven expressive/coercive abuse items were: "tries to limit your contact with family and friends," "is jealous or possessive," "insists on knowing who you are with at all times," "calls you names or puts you down in front of others," "makes you feel inadequate," "shouts or swears at you," and "prevents you from knowing about or having access to the family income even when you ask."

<sup>77</sup> Jana Jasinski et al., *Testing Johnson's Typology: Is There Gender Symmetry in Intimate Terrorism?*, 29 VIOLENCE & VICTIMS 73 (2014).

mate partner violence,” they found, “women were no more likely than men to be victims of IT . . . In all, 36% of marital spousal abuse where the woman is the victim can be called IT, as operationalized by Johnson and Leone (2005), compared to 35% of spousal violence with male victims.”<sup>78</sup> (The total number of ITs were somewhat higher for women because the total percentage of women incurring partner violence was higher than the percentage of men – 59% versus 41%). Additionally, the study found that the female victims did not experience more frequent or more severe incidents of violence than the male victims, nor did they incur significantly greater levels of depression, PTSD, or days missed at work. Consistent with other research, female victims did, however, sustain more serious physical injuries.

An analysis of the 1999 General Service Survey of 25,876 Canadians reported on respondents’ victimization experiences at the hands of a current or previous spouse.<sup>79</sup> Based on the same core definition of IT used by other scholars, but including fear of the partner, injuries sustained, and the use of community resources such as the police, shelters and mental health counseling, the analysis found that 3% of the surveyed women, and 2% of the men, were counted as victims of severe intimate terrorism (IT) for the five year period covered by the study.

Some scholars have suggested that because women are more likely than men to be in fear of physical harm, their behavior is more easily controlled, thus affecting abuse dynamics even when the violence is bi-directional.<sup>80</sup> Still, because of its subjective nature, fear is difficult to quantify. On the other hand, abuse dynamics can be altered in the other direction, because men are socialized to not hit women, and when assaulted are reluctant to

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<sup>78</sup> *Id.* at 79-80.

<sup>79</sup> Denis Laroche, *Aspects of the Context and Consequences of Domestic Violence: Situational Couple Violence and Intimate Terrorism in Canada in 1999*, Institut de la Statistique du Quebec (2005), [http://www.stat.gouv.qc.ca/statistiques/sante/environnement-social/violence-couples/aspect-violence\\_an.pdf](http://www.stat.gouv.qc.ca/statistiques/sante/environnement-social/violence-couples/aspect-violence_an.pdf).

<sup>80</sup> L. Kevin Hamberger, *Men’s and Women’s Use of Intimate Partner Violence in Clinical Samples: Toward a Gender-Sensitive Analysis*, 20 *VIOLENCE & VICTIMS* 131(2005).

report it.<sup>81</sup> Further research is required to take these variables, and other potential factors, into account.

A common sentiment is, “You can’t compare violence by women to violence by men; put a couple together in a boxing ring, and the man wins every time.” This seems to make sense, unless one realizes that nobody has a boxing ring in their living room:

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?<sup>82</sup>

## V. Impact of Abuse and Conflict on Children

Two PASK manuscripts examined this topic, of enormous relevance in disputed child custody cases. The 155-page manuscript by Kathleen Watson MacDonell reviewed 73 studies that focused on the impact on children of being maltreated as well as witnessing violence between parents, and the 113-page review by Melissa Sturge-Apple, Michael Skibo, and Patrick Davies in 2012 reported on 161 studies on the consequences of parental conflict and emotional abuse on children and families.<sup>83</sup>

Among MacDonnell’s findings were that children are more likely to experience abuse, including physical abuse, at the hands of the mother, and many of the studies found an additive effect for children of having been exposed to both direct abuse and witnessing inter-parental violence.<sup>84</sup> In general, witnessing bi-directional violence between the parents predicted both internalizing (e.g., anxiety, depression, low self-esteem) and externalizing outcomes (e.g., peer problems, deviancy, school problems, aggression upon family members and/or dating partners) for children

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<sup>81</sup> See John Hamel, *Male Victims of Domestic Violence and Reasons Why They Stay with Their Abuser*, in *ENCYCLOPEDIA OF DOMESTIC VIOLENCE* 457 (Nicky Ali Jackson ed. 2007)).

<sup>82</sup> PATRICIA PEARSON, *WHEN SHE WAS BAD: VIOLENT WOMEN AND THE MYTH OF INNOCENCE* 17(1998)

<sup>83</sup> See MacDonnell, *supra* note 1; Sturge-Apple et al., *supra* note 1.

<sup>84</sup> See MacDonnell, *supra* note 1.

and adolescents. Children's exposure to violence by the mother upon the father, stepfather, or boyfriend resulted in both internalizing and externalizing problems, but significantly so for the latter. Children who witnessed violence by the father, stepfather, or boyfriend upon the mother were significantly more likely to suffer internalizing as well externalizing problems in comparison to children not exposed. Finally, witnessing violence by the parents in childhood significantly predicted trauma symptoms, depression, and partner abuse in adulthood, for both males and females, thus perpetuating a cycle of abuse from one generation to the next.<sup>85</sup>

Internalizing and externalizing problems were also correlated with parental conflict, including conflict that occurs during and after a marital separation. Sturge-Apple, et al. reported that children are affected more by exposure to conflict characterized by hostility, contempt, and withdrawal in comparison to conflicts fueled only by anger, and that children suffered a higher level of symptoms when the topic under discussion concerned the child, such as arguments over child rearing or ones in which the child was blamed for the parents' problems.<sup>86</sup> The authors identified two paths by which children are affected by inter-parental conflict: a *direct path* in which children are adversely impacted by virtue of exposure to inter-parental hostility, and an *indirect path* characterized by high parental conflict/emotional abuse that leads to a decrease in parental sensitivity, warmth, and consistent discipline, and an increase in harsh discipline and coercive control.<sup>87</sup>

The extent to which children are impacted by direct child abuse versus witnessing inter-parental violence depends on the nature of the study, in particular the type of population sampled. The comprehensive meta-analysis of the literature, conducted by Katherine Kitzmann, et al. in 2003, found no significant difference in impact, a conclusion based on samples of battered women living in shelters, victims of the most severe forms of violence.<sup>88</sup> However, a comprehensive review by Suzanne Salz-

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<sup>85</sup> *Id.*

<sup>86</sup> Sturge-Apple et al., *supra* note 1.

<sup>87</sup> *Id.*

<sup>88</sup> Katherine M. Kitzmann et al., *Child Witnesses to Domestic Violence: A Meta-analytic Review*, 71 J. CONSULTING & CLINICAL PSYCHOL. 339 (2003).

inger, et al. in 2002, which examined 100 CPS cases of physically abused children in New York City, found the impact of direct child abuse and neglect to be greater.<sup>89</sup> Other studies have determined that children are far more adversely affected by the mother's verbal abuse than by witnessing violence by either the father<sup>90</sup> or the mother.<sup>91</sup>

Taken together, these studies suggest that children are as much at risk living in a household with an abusive mother as one with an abusive father, and the special focus by victim advocates on the impact of inter-parental *violence* is warranted mostly in severe cases. However, it is important to stress that *the majority of partner violence consists of lower-level assaults that do not lead to significant injury or trauma*. According to Dutton et al.:

One issue that permeates the subject of spouse abuse and child custody is the suggestion that men who abuse spouses will also abuse their children. Basing their estimate on shelter samples, Jaffe et al. (2003) put the overlap (both wife and child victims) at 30–60% (p. 30). Appel and Holden (1998) reviewed 31 studies to examine this issue, also finding an average overlap of 40% when the sample was drawn from women's shelters or abused children. However, in "representative community samples" the overlap was 6%. In all studies reviewed, the reporter was the mother. Even with this bias in the data, the confirmatory distortion and the advocacy perspective in Jaffe et al.'s (2003) estimate is clear. In community samples, the risk of child abuse, given that spouse abuse is proven, is much lower than Jaffe et al. (2003) suggest. Furthermore, to the extent that overlap does exist, it typically involves less serious forms of abuse, such as slapping.<sup>92</sup>

## VI. Conclusions

In sum, the scholarly research on intimate partner abuse finds a great deal more gender symmetry than asymmetry (See Table 2) and, therefore, does not support the gendered perspective promulgated by numerous victim advocates and some re-

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<sup>89</sup> Suzanne Salzinger et al., *Effects of Partner Violence and Physical Child Abuse on Child Behavior: A Study of Abused and Comparison Children*, 17 J. FAM. VIOLENCE 23 (2002).

<sup>90</sup> Timothy E. Moore & Debra J. Pepler, *Correlates of Adjustment in Children at Risk*, in CHILDREN EXPOSED TO DOMESTIC VIOLENCE 157 (George W. Holden et al. eds. 1998).

<sup>91</sup> Diana J. English et al., *Effects of Family Violence on Child Behavior and Health During Early Childhood*, 18 J. FAM. VIOLENCE 43 (Feb. 2003).

<sup>92</sup> Dutton et al., *supra* note 21, at 22.

searchers. Asymmetry is found primarily in the physical and mental health consequences of physical assaults, with women the predominant victims. Asymmetry in the impact of interpersonal violence certainly has implications in terms of safety planning, with a priority that that appropriate services are available to the most vulnerable victims – mostly women and children. However, relevant research data suggests that children are adversely affected by witnessing or experiencing abuse regardless of the perpetrator's gender, with repercussions throughout development and into adulthood. Family law attorneys would be well-served, therefore, in considering the following suggestions:

1. Become as familiar as possible with the existing body of research on domestic violence and child abuse, and get ongoing training on new findings and developments in research and applications of research to practice.
2. Obtain training from victim advocates on topics related to the needs of battered women but some of the research in this article, and the experience of the author, indicates that victim advocates may be the least-informed stakeholders in the field, expect perhaps for political officials engaging in policy design and legislation.
3. Be wary of findings and conclusions from anyone who insists on identifying as a “feminist” researcher. There is no reason to doubt the feminist credentials of scholars who have argued against the gendered perspective and who are just as likely to be women as men, or more so (29 of the 42 PASK scholars were women). The rights of men or women are not the issue when it comes to research. Research is either accurate or it is not, and political beliefs or a fervent belief in a cause is hardly advanced by theoretically-biased, poorly designed, or methodologically weak research.
4. In court, challenge the credentials of witnesses who claim to be PA experts (whether you are hiring that expert or the other party is doing so). When possible, have them complete a brief questionnaire on basic PA knowledge such as the one used by Hamel et al.<sup>93</sup> Do not accept them unless they score well over 50% correctly. Ask the

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<sup>93</sup> Hamel et al., *supra* note 18.

expert about the Partner Abuse State of Knowledge Project.<sup>94</sup> If he or she is not sure what you are referring to, question the neutrality or source of knowledge and opinion. For someone who claims to be an expert in the field of domestic violence to be unfamiliar with PASK is akin to a doctor who has never heard of the Physician's Desk Reference.

5. Challenge the use or admissibility of any research that appears to have a strong gender bias by asking the expert to specify what type of sample the study was based upon. Samples using battered women and men in perpetrator treatment are inherently skewed and generalize to neither the general population nor disputed child custody cases.
6. The most-informed and unbiased data sets, such as PASK, provide a general fund of knowledge that can reduce gender bias among family court professionals, and increase the likelihood of better-informed custody decisions. However, there is no substitute for a thorough assessment of the facts because all cases are different. Assessments involving allegations of domestic violence should be thorough, and follow best practice protocols, such as those advanced by Ackerman and Gould and some of the Wingspan scholars.<sup>95</sup>
7. Challenge the conclusions of mediators and evaluators when their recommendations against custody are based on incomplete information or are overly cautious. Specifically, how well were the allegations corroborated, and by whom? The mere issuance of a temporary restraining order may mean something, or it may not; it does not necessarily indicate that anyone is actually in danger. This is particularly true if the temporary restraining order was issued *ex parte*. What was the form and how severe was the alleged abuse, and, of consequence, what was the particular pattern in which it unfolded? If the term *battering* was used, was it used correctly? Battering should not be

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<sup>94</sup> John Hamel et al., *More Than a Literature Review: The Partner Abuse State of Knowledge Manuscripts and Online Data Base*, 3 PARTNER ABUSE 131 (2012).

<sup>95</sup> See Ackerman & Gould, *supra* note 7.

confused with any particular incident of physical violence. A pattern of physical and/or emotional abuse over several years and across multiple relationships may be of far more concern than occasional incidents of violence accompanied by low levels of coercive abuse, or violence that was restricted to the period following separation, especially when one parent is suddenly prevented from seeing his or her children.

8. Remember that children can be just as affected by parental conflict as by witnessing parental violence, and that PA and is not the only type of family dysfunction. Did the mediator or evaluator consider the impact on the children of chemical dependency and child physical abuse, endangerment and maltreatment in addition to witnessed PV or conflict? What about the impact of separation and divorce? How did they weigh these factors and determine why one or another has greater consequences for the child? A good question to ask is, "Is the reduced exposure to a partner-aggressive parent offset by damage to the child caused by restricting his or her access to that parent if he or she is otherwise loving and able to meet that child's needs?"

**Table 1. PASK Research Manuscripts/Topics and Authors**

Manuscript	Author(s)
Topic 1: Prevalence of Physical Violence in Intimate Relationships - Part 1. Rates of Male and Female Victimization	Sarah Desmarais, Kim A. Reeves, Tonia L. Nicholls, Robin Telford, and Martin S. Fiebert
Topic 2: Prevalence of Physical Violence in Intimate Relationships - Part 2: Rates of Male and Female Perpetration	Sarah L. Desmarais, Kim A. Reeves, Tonia L. Nicholls, Robin P. Telford, and Martin S. Fiebert
Topic 3: Rates of Bi-directional versus Uni-directional Intimate Partner Violence Across Samples, Sexual Orientations, and Race/Ethnicities: A Comprehensive Review	Jennifer Langhinrichsen-Rohling, Tiffany A. Misra, Candice Selwyn, and Martin L. Rohling
Topic 4: A Systematic Review of Risk Factors for Intimate Partner Violence	Deborah M. Capaldi, Naomi B. Knoble, Joann Wu Shortt, and Hyoun K. Kim
Topic 5: Prevalence of Partner Abuse: Rates of Emotional Abuse and Control	Michelle Mohr Carney and John R. Barner
Topic 6: Partner Abuse in Ethnic Minority and LGBT Populations	Carolyn West
Topic 7: The Combined and Independent Impact of Witnessed Interparental Violence and Child Maltreatment	K. Watson MacDonnel
Topic 8: Impact of Witnessed Parental Conflict/Emotional Abuse on Children and Families	Melissa Sturge-Apple, Michael A. Skibo, and Patrick Davies
Topic 9: The Impact and Consequences of Partner Abuse on Partners	Erika Lawrence, Rosaura Orengo, Amie Langer, and Rebecca L. Brock
Topic 10: Motivations for Men and Women's Intimate Partner Violence Perpetration: A Comprehensive Review.	Jennifer Langhinrichsen-Rohling, Adrienne McCullars, and Tiffany A. Misra
Topic 11: The Crime Control Effects of Criminal Justice Sanctions for Intimate Partner Violence	Christopher Maxwell and Joel Garner

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Manuscript	Author(s)
Topic 12: Gender and Racial/Ethnic Differences in Criminal Justice Decision Making in Intimate Partner Violence Cases	Stan Shernock and Brenda Russell
Topic 13: Effectiveness, Victim Safety, Characteristics and Enforcement of Protective Orders	Brenda Russell
Topic 14: Partner Abuse Worldwide	Teri Lambert and Zeev Winstok
Topic 15: Risk Assessment in Intimate Partner Violence: A Review of Contemporary Approaches	Tonia Nicholls, Michelle Pritchard, Kim Reeves, and Edward Hilterman
Topic 16: Effectiveness of Primary Prevention Efforts of Intimate Partner Violence	Daniel J. Whitaker, Christopher M. Murphy, Christopher I. Eckhardt, Amanda E. Hodges, and Melissa Cowart
Topic 17: The Effectiveness of Intervention Programs for Perpetrators and Victims of Intimate Partner Violence	Christopher I. Eckhardt, Christopher M. Murphy, Daniel J. Whitaker, Joel Sprunger, Rita Dykstra, and Kim Woodard
Commentary	Murray Straus
Commentary	Sandra Stith

**Table 2. Symmetry and Asymmetry Across Gender**

<u>Symmetry</u>	<u>Asymmetry</u>
Rates of physical abuse	Rates of sexual abuse
Rates of emotional abuse	Rates of physical stalking
Rates of non-physical stalking	Impact of physical abuse on partners
Motives	
Causes and risk factors	
Impact of emotional abuse on partners	
Impact on children/families	