

# DOMESTIC VIOLENCE REPORT™

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## Response to Bates and Taylor

by Joan Meier

Bates and Taylor's piece on Coercive Control Involving Male Victims of Intimate Partner Violence raises many interesting and provocative issues. While I believe it is important to recognize that true male victims of female abuse exist, I do not believe that much of the research cited therein reliably demonstrates this. Reports from men that they are being victimized by women taking them to court and falsely claiming abuse are equally likely to reflect the common complaints of perpetrators of abuse who call themselves victims. Indeed, myths of women falsely alleging child abuse and child sexual abuse are widespread, propagated especially by the pernicious notion of "parental alienation," itself invented by Richard Gardner explicitly to deny mothers' reports of child sexual abuse during custody litigation. (Meier, 2009, p. 238). Gardner rationalized the theory by saying women are titillated by imagining their husbands in sexual conduct with their children, and with the explanation that "hell hath no fury like a scorned woman." (Gardner, 1987, 1992).

Thus, while I am skeptical of—and would like to see more specifics on—the assertion that women are using "coercive control" in the robust sense intended by Evan Stark (*i.e.*, infused by fear and reinforced by social gender norms of male dominance), I am

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## Coercive Control Involving Male Victims of Intimate Partner Violence

by Elizabeth A. Bates and Julie C. Taylor

The feminist movement of the 1970s across the United Kingdom, United States, and Canada, can be credited with bringing domestic violence to the forefront of public attention. During this period, feminist researchers (*e.g.*, Dobash & Dobash, 1979; Yllo, 1993; Browne, 1987) began exploring how intimate partner violence (IPV) affected women. There now exists a substantial body of literature that has been influential in shaping policy and practice with the aim of reducing violence and abuse against women. The gendered model informed by the findings of this research is still influential today in terms of policy development and in practice (*see, e.g.*, Strategy to End Violence against Women and Girls: 2016 to 2020; Bates, Graham-Kevan, Bolam & Thornton, 2017).

Alongside this literature exists a parallel body of research and literature that highlight women's violence and men's victimisation. According to current U.S. data from the National Intimate Partner and Sexual Violence Survey (a telephone survey of 16,000 adults conducted by the Centers for Disease Control and the National Institute of Justice), about one in four women (25.1% or 30.0 million) in

the U.S. experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact. Nearly one in 10 (10.9% or 12.1 million) men in the U.S. experienced the same forms of violence by an intimate partner during their lifetime and reported some form of IPV-related impact. (Smith et al., 2018). However, UK evidence suggests even higher prevalence figures: one in three victims of domestic violence are male (equating to 695,000 men). (Office for National Statistics, 2019).

Despite the prevalence of IPV against male partners, the narrative of men's victimisation remains largely in the margins. Male victims' experiences of non-physical forms of abuse have received even less research attention than physical abuse even though the former constitutes the most prevalent type of IPV. For example, the National Intimate Partner and Sexual Violence Survey (Black, et al., 2011) found 48.4% women and 48.8% men reported lifetime experience of psychological aggression.

Research by this author and colleagues (Bates, Graham-Kevan and

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Archer, 2014) found that women reported perpetrating significantly more coercive controlling behaviours in an act-based measure than men. In our study, we surveyed 1,104 UK participants using a self-report measure of victimisation and perpetration of violence and control. Our analysis revealed that women rated themselves as using more physical aggression and controlling behaviour than men. For both men and women, their IPV perpetration was predicted by rates of general aggression and control, and we concluded that rather than a gendered or male control theory predicting men's violence towards women, these results support the presence of a more generally coercive and aggressive interpersonal style regardless of perpetrator gender (Corvo & de Lara, 2010).

The few existing studies in the literature that have focused specifically on male victims' experiences of psychological abuse have found similarities with the behaviours experienced by female victims. For example, scholars note the presence of threats and intimidation (Hines, et al., 2007), and bullying and blackmail (Drijber, et al., 2013). Machado, Hines and Matos (2016), utilising the Conflict Tactics Scale (CTS; Straus, 1979) with a male help-seeking sample, found that the

most commonly endorsed psychologically aggressive items were "shouted or yelled at them" (73%) and "insulted or swore at them" (69.7%). Qualitative studies have yielded specific examples that indicate the severity of the control women were exerting: Nybergh, Enander and Krantz (2016) included a participant in their interview-based study who described how his female partner "followed him daily at a distance of ten centimeters and did not let him go to the toilet by himself, refused to pay for rent and stole and extorted money from him." (see p. 195).

Bates (2019a) further reports findings on coercive control from her qualitative study of 161 men. She found men who described having their personal freedom controlled, manipulation and isolation from friends and family, denigration and humiliation, and fear and uncertainty. For example, they reported having their whereabouts checked up on, being harassed by text or phone, contact that began to interfere with work, and coercive controlling behaviours around the children. They further described instances of "gaslighting." The term originates from the 1944 film "Gaslight" (directed by George Cukor and starring Ingrid Bergman) in which the main character, a husband, manipulates his wife's environment in a way to destabilize her

and cause her to question her own memory and beliefs (Gass & Nichols, 1988). Although this phenomenon previously has been linked to women's victimisation of IPV (e.g., Guerin & de Oliveira Ortolan, 2017), it has not been explored in a male victims' sample. When asked about their experiences of this phenomenon, many men described that they had experienced a sense of questioning themselves and their sanity, whilst not always knowing the label of this type of abuse. This experience was particularly impactful for their mental health and left them questioning their sense of self.

There has been a recent recognition of the impact of coercive control in UK legislation. In 2015, Parliament enacted legislation criminalizing the use of emotional abuse, psychological abuse, and coercive control in the absence of physical violence (see Section 76 of the Serious Crime Act, 2015; Crown Prosecution Service [CPS], 2017). The UK legislation was influenced by the work of Evan Stark (Stark, 2007). This legislation aimed to capture the types of non-physical abuse that can be detrimental to physical and mental health but would not have previously come to the attention of police in the same way as injurious physical aggression. The guidance

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# Coercive Control, the Offense, and Men: Reply to Bates and Taylor

by Cassandra Wiener and Evan Stark\*

We wish to clarify one point raised by Bates and Taylor with respect to the narrow focus of the English legislation (section 76 of the Serious Crime Act 2015) and respond to their claim that the offense fails to anticipate the unique circumstances of male victimization. Our main interest is to help readers appreciate the scope of current efforts to incorporate coercive control into policy.

An outstanding dilemma in shaping policy around coercive control was whether to craft a “bespoke definition” (a definition or law specifically designed to capture the particular pattern of behaviours) or an “incremental” definition that only incorporates elements of the crime existing law failed to cover. The risk in the former approach is requiring too radical a paradigm shift. The latter approach can imply all that is needed is “more of the same.” In fact, the constituent parts of the UK have taken very different approaches to this dilemma. The UK Home Office initially adapted the broad definition offered by Evan Stark. Section 76 Serious Crime Act 2015 (section 76) came into force in England and Wales in December 2015. This law took an incremental

approach, as Bates and Taylor (2019) rightly suggest, and “aimed to capture the types of non-physical abuse that can be detrimental to physical and mental health.” The Domestic Abuse Scotland Act 2018 (the Scottish Offense) took the broadest and, in our view, the most progressive approach. Section 76 is currently being revised and may address some of the coverage gaps they identify in their article.

In England, the broad strategic framework for an appropriate “cross-governmental response” was spelled out by the Home Office in a new “Working Definition” of Coercive Control to include “[a]ny incident or *pattern of incidents* of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality.” (UK Home Office, 2013). *Coercion* encompassed “psychological, physical, sexual, financial and emotional abuse.” *Controlling behaviour* was defined as “making a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday lives.” These definitions are taken from Evan Stark’s (2007) book on *Coercive Control*. From 2012-2014, the new Working Definition replaced more than 20 other conflicting definitions that guided the funding and delivery of services to abuse victims throughout Britain. But the new Working Definition had no legal standing.

Wiener (2019) argues that the Conservative Party Attorney General crafted the offense (s76) of coercive and controlling behavior in England/Wales far too narrowly to carry the weight or breadth of the Working Definition. In distilling the working definition into law, the government took the position that “newlaw” was unnecessary because existing statutes already covered violence, sexual assault, stalking

and harassment, for instance. To our mind, section 76 is weak not only because of its minimalist language but also because it set aside the larger coercive control framework which makes the particular acts identified by the offense intelligible as part of a malign pattern of (male) domination.

The explicit enumeration of bad acts in the Scottish Offense makes sense only against the background of this larger context. The Bates and Taylor (2019) article seems oblivious to this context.

The Scottish Offense came into force in April earlier this year. It places coercive control at the centre of a new offence of domestic abuse, which incorporates all of the different behavioural manifestations of coercive control: physical, sexual, psychological, and economic abuse. It also, crucially, applies to partners *and* ex-partners. Another limitation, picked up by Bates and Taylor, is that the definition of personal connection in subsection 7(4) of section 76 means that an abusive ex-partner who is no longer living with the victim is exempt. As is well known, post-separation abuse is “a dangerous time for women” and the inadequacy of section 76 in this regard is a cause for concern. The government’s stated intention at the time was that post-separation abuse could be captured by the Protection from Harassment Act 1997 (Hansard, 2015), but Bates and Taylor are correct to point out that abuse around court processes and child contact orders would in all likelihood fall outside its remit. In any event, the “end of the relationship” rarely occurs as a single transactional moment (Tuerkheimer, 2013), and using it as a legal boundary separating two key offences (coercive control and/or harassment and stalking) creates as many problems as it solves.

The thrust of Bates and Taylor’s argument, however, is that there are particular types of post-separation abuse that are experienced only by

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men that are currently not reported in the literature or captured by the criminal law. They offer as an example that men fear the threat and use of, false allegations as a “form of manipulation used by their partners both during and after the relationship.” The power of these false allegations exists because “social narratives about IPV construct men as perpetrators and women as victims.” Section 76 is a gender-neutral offence. The fact that 99.99% of the first 180 or so successful prosecutions to date have involved a male perpetrator and a female victim could be the result, as Bates and Taylor suggest, of “barriers men face when seeking help.” But it is more likely a reflection of the gendered nature of the power imbalance that makes coercive control possible. Barriers to help-seeking cannot explain why the same sex differences

are reflected in answers to questions about *needing* help with coercive control asked by the Crime Survey of England and Wales (Office for National Statistics, 2018).

In an era when the family law dockets in the U.S. and UK are filled with contested custody claims from men claiming to have been (psychologically) victimized by their wives, we remain sceptical about the hidden population of reticent men exposed by the small volunteer sample drawn by Bates and Taylor. This is not to dismiss the reality that many women coercively control their partners. For the rest, however, at least where patterns of criminal behavior are concerned, the early statistics on section 76 support the view that the social narratives referred to by Bates and Taylor that construct men as perpetrators and women as victims are, unfortunately, entirely accurate.

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around this legislation suggests that controlling behaviour “is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim . . . designed to make a person feel subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independent, resistance and escape and regulating their everyday behaviour.” The CPS guidance describes two ways that prosecutors can prove that this behaviour has a “serious effect” on the victim in that it causes them to fear violence, or causes alarm or distress that has a substantial adverse effect on their day to day activities, listing examples such as negatively impacting physical or mental health, engagement with social activities and changes to routines, work patterns or employment status.

The evidence of coercive control described above is in part mirrored in the women’s victimisation literature. However, there is another form of abuse described by men that has been largely absent from women’s accounts. Legal and administrative

aggression (sometimes called “litigation abuse”) is a term used to describe the way one partner may manipulate legal and administrative systems to the detriment of the other (Hines, Douglas & Berger, 2015; Ward 2015). This phenomenon is thought to be something that men experience differently, due to the gendered perceptions and stereotypes that exist within services (Tilbrook, Allan & Dear, 2010; Taylor, Bates, Colosi & Creer, 2019). Evidence of this type of abuse appears in the literature. For example, Hines, et al. (2007) found that 50.3% of their sample reported their female partner had manipulated systems. Within their sample, of the 107 men who had children, 64.5% said their female partners had used the children as a means of control, and 67.3% reported that their partners had threatened to take the children away.

Similarly, in Bates’s (2019a) study, men described the threat of, and use of, false allegations as a form of manipulation used by their partners both during and after the relationship. One man said “I have never attacked her or fought back at all. I have tried to restrain her at times to prevent her from attacking me . . . she would then show me bruises a couple of days later and tell me that

she could report me to the police for assault and that they would believe her story” (p. 6). The fear these men felt at this threat was significant and created a barrier to their help-seeking and leaving the abusive relationship. The perceptions of service providers and some professions are seen within men’s descriptions of their attempts to help-see. For example, six of the eight men in Migliaccio’s (2001) study had called a domestic abuse helpline and had been made to feel they were lying about their experience. Machado, Santos, Graham-Kevan and Matos (2017) described men’s experiences of feeling they were not treated fairly by the system; one man was quoted as saying “The professional [from social services] always treated me as if I was an offender” (p. 519).

In Bates’s work (see 2019b), the impact of these experiences was significant. Men described these societal perceptions impacting on their mental health, with many men describing experiences of depression and anxiety. Moreover, the fear of false allegations was found to serve as a powerful barrier to disclosure. Respondents reported a fear of not being believed, and feeling shame and embarrassment.

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## Several States Enact New Protections for Survivors

by D. Kelly Weisberg\*

Several states recently enacted new protections for domestic violence victims. Pennsylvania and New York are among the growing number of states that have passed some form of gun control legislation in the past few years. New York's legislative efforts went beyond these new firearm restrictions and covered many additional areas, including economic abuse, voting, reporting crimes, contract law housing discrimination, and employment discrimination.

### Pennsylvania Firearm Surrender Law

The Pennsylvania state legislature enacted a law (H.B. 2060) that requires Pennsylvania residents who are convicted of domestic violence or subject to final restraining orders to surrender their firearms within 24 hours. The new law applies to firearms as well as "other weapons, ammunition and firearm licenses." The law thereby enhances victim safety during the most dangerous period when one intimate partner tries to leave a relationship by reporting their partner to law enforcement or seeking a restraining order.

### Pennsylvania Gun Transfer Restrictions

The new law also restricts transfers of firearms to third parties. Specifically, it prohibits domestic abusers from handing over their firearms to friends or family members. Now, they must forfeit their guns to law enforcement authorities, a district attorney or a licensed gun dealer. The new law amends Section 6105(a)(2), 6105 (a.1)(2) and (3) and 6105 (c)(6) and (9) of Title 18 ((Crimes and Offenses) of the Pennsylvania Consolidated Statutes.

The law is the first anti-violence legislation enacted by the state legislature in more than a decade that deals directly with firearms. (The last major piece of gun control legislation there implemented the state's

background check system in 1995.) Historically, the Pennsylvania state legislature has been especially protective of gun rights. For years, the state legislature rejected efforts by two Democratic governors to obtain gun-control restrictions, including an expansion of background checks. The last time the legislature approved anti-violence legislation targeting firearms was 2005, when it gave judges the discretion to seize firearms in restraining orders cases. Domestic violence advocates attribute passage of the new law to the groundswell of public opinion following the high school shooting in Parkland, Florida, that killed 17 people as well as the #MeToo movement.

Prior to the new Pennsylvania law, people convicted of domestic violence had 60 days to surrender their firearms, although some defendants were forced to give up their guns before conviction as a condition of bail or a restraining order. Formerly, for those abusers subject to restraining orders, the law left the forfeiture of firearms to the judge's discretion. However, judges only ordered forfeiture in a small number of cases. As a result, this law was necessary to strengthen state relinquishment practice.

The law marks a major victory for anti-gun violence advocates who have long tried to impose stricter gun laws. Nonetheless, some Pennsylvania lawmakers are concerned about an amendment that was added to the legislation at the last minute that weakens these restrictions. The amendment, called the "Quinn Loophole" after State Rep. Chris Quinn, allows abusers to keep their firearms if the judge will agree. In the case of an application for a restraining order, the judge can agree to a settlement that allows a defendant to keep his or her firearms. That is, abusers who are subjects of final restraining orders do not have to surrender their firearms if they reach an agreement with the person who filed for the restraining order that does not require the relinquishment. The judge has discretion whether to approve those agreements.

In a statement on Twitter, Senate Minority Leader Jay Costa criticized the amendment as follows: "I laud any movement in the direction of protecting the victims of domestic violence, but I have very serious reservations about an amendment added to H.B. 2060, which would allow abusers to keep their firearm under a consent order if they can get their victims to agree. The victims of domestic violence should not be put in a position where their abuser coerces, threatens or forces them to agree with this provision. An abuser with a weapon has a powerful influence over their victim. The court should require abusers to surrender all firearms in every case of domestic violence. We cannot put victims in the position to negotiate firearms with their already-hostile abusers. We have an incredible opportunity to save lives with this bill; we cannot get it wrong and concede to abusers and the NRA."

### NY Extreme Risk Protection Order

The New York state legislature also recently passed major new gun control legislation that will protect victims of domestic violence. The new New York law authorizes the "Extreme Risk Protection Order." This so-called "Red Flag" bill (S.2451/A.8976) introduced by state Senator Brian Kavanaugh, allows law enforcement officials, family and household members, and certain school officials to seek a court order prohibiting a person who is likely to harm themselves or others from purchasing or possessing a firearm for up to one year. The petitioner, who could be a family member or law enforcement officer, would be required to file a sworn application describing the circumstances and justification for the request. Following a hearing, the court could grant the order if there is a finding that there is reasonable cause to believe the individual in question is likely to engage in conduct that would result in serious harm to him or herself or others. In emergency circumstances, the court

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would also be authorized to issue a temporary order restricting access to firearms pending a final hearing.

The ban on firearm possession could be renewed past this time if the petitioner obtains court approval for an extension within 60 days of the expiration of the existing order. The respondent has the right to appeal the initial order as well as any extension. Under existing appeals procedure (in the civil practice laws and rules), individuals would be permitted to appeal the court's decision to issue an extreme risk protection order. They also would be entitled to submit a request, at any time while the order is in place, for a hearing to discontinue the order based on a change of circumstances and a showing that he or she no longer poses a danger.

#### NY Mental Health Records Law

Another new law enables New York authorities to review the mental health records of out-of-state applicants for gun permits. Under New York law, the state Commissioner of Mental Health has the duty to collect, retain or modify mental health records and transmit those records to the New York State Division of Criminal Justice Services or to the Criminal Justice Information Service (CJIS) of the FBI to respond to queries to the National Instant Criminal Background Check System (NICS) database that the FBI uses to perform background checks prior to firearm transfers. Such records may also be disclosed to the State Division of Criminal Justice Services for the purpose of determining whether an individual's firearms license should be denied, suspended, or revoked under state or federal law. However, a loophole existed that allowed out-of-state applicants who have residences in New York to apply for gun permits but avoid providing their out-of-state mental health records. This loophole prevented some gun purchasers from being disqualified from gun ownership based on their mental health background. Federal law prohibits possession of a firearm or ammunition by any person who has been "adjudicated as a mental defective" or involuntarily "committed to any mental institution."

The new law, the "Out of State Mental Health Records" bill (S.2438), introduced by state Senator Anna Kaplan, requires out-of-state citizens who have homes in New York and apply for a firearm license to waive the confidentiality of their home state mental illness records in order to allow New York to review those records when considering a firearm license application. Formerly, out of state applicants for gun permits in New York did not have to provide their out-of-state mental health records. The former policy created a dangerous loophole in state law that permitted persons with a disqualifying mental health condition who lived in another state (but who owned residential property in New York) to get a gun permit in New York. Now, prospective gun purchasers who want to obtain a firearm license in New York must submit to mental health background checks as required of all New Yorkers to prove that they are qualified to purchase a firearm according to New York's strict standards.

#### NY Background Check Period

New legislation in New York would extend the period for background checks for firearm purchases under state law. The "Effective Background Check Act" (S.2374), introduced by Deputy Majority Leader Michael Gianaris, establishes an extension of up to 30 calendar days for in-state background checks to be completed before a gun must be delivered to a purchaser.

Under current federal law, licensed gun dealers must conduct a background check through the National Instant Criminal Background Check System (NICS) before selling a firearm. The NICS system responds with one of three messages: "proceed," "denied" or "delayed." The dealer must deny the sale if the NICS background check determines the buyer is a prohibited purchaser. However, if the response is "delayed," the dealer may nonetheless complete the sale after three business days. In these cases, the FBI continues to investigate the eligibility of the prospective purchaser beyond the three-day period even though the person has likely already been sold the firearm.

Under former state law, gun dealers had three business days to complete the requisite background check.

If the check could not be completed within three business days, the sale or transfer could proceed despite the possibility that disqualifying information might exist. The extension of the waiting period to 30 days allows authorities more time to complete the background check and prevent firearms from being delivered to purchasers who are disqualified from possessing them. The measure was spurred in part because of the mass shooting in Charleston, South Carolina, in 2015, when the shooter was able to purchase a gun before the completion of the background check. In addition to the new firearm regulations, the NYS Legislature also passed major domestic violence reforms in other areas of law (described below).

#### NY Economic Abuse, Voting, Reporting

On August 8, 2019, Governor Andrew M. Cuomo signed a package of bills expanding protections for victims of domestic violence in the areas of economic abuse, voting, and reporting crimes. The first measure broadens the criminal definition of domestic violence by making the term "economic abuse" an explicit element of the crime of "domestic violence." The law includes identity theft, grand larceny and coercion as illegal acts under the new definition. To be prosecuted as an act of domestic violence, the acts must have "resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child." (S.2625/A.5608)

A second measure give victims the choice to vote by mail-in ballot, even if they remain within the county where they are registered to vote (S.3232-A.219A). The new law allows victims to apply in person or by mail for an absentee ballot, which traditionally is provided to voters away from their home community on election day. The victim must affirm in the application that "he or she is the victim of domestic violence, that he or she has left his or her residence because of such violence and. . . [faces] the threat of physical or emotional harm to himself or herself or to family or household members."

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## Gender Equality and Prevalence of DV: What Is the “Nordic Paradox”?

by Megan Amanda Miller\*

A perennial question focuses on the causes of intimate partner violence (IPV). In diagnosing these causes, researchers long believed that greater gender equality would reduce the prevalence of IPV. However, a recent study conducted by the European Union’s Agency for Fundamental Rights (FRA) reveals that countries with some of the highest levels of gender equality also have some of the highest prevalence of IPV. This finding has been dubbed the “Nordic Paradox” because of the high rate of domestic violence in Scandinavian countries.

Researchers have postulated many possible causes for this phenomenon. However, a threshold question to address before exploring those theories is: Did measurement bias create the Nordic Paradox? In other words, is the Nordic Paradox real, or does it result from problems within the FRA Survey itself?

A group of researchers from Spain and Sweden recently addressed this question. Enrique Gracia, Manuel Martin-Fernandez, and Marisol Lila from the University of Valencia (Valencia, Spain), Juan Merlo from the University of Lund (Malmo, Sweden), and Anna Karin Ivert from Malmo University found that measurement bias did not give rise to the Nordic Paradox. This article briefly describes their findings, and the background studies that set the stage for their research.

### Prior Research

Research concerning the Nordic Paradox rests on previous findings concerning which countries have the highest levels of gender equality, and which have the highest rates of violence against women.

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**Gender Equality.** Several studies have endeavored to measure and compare gender equality across the world. One such study central to identifying the Nordic Paradox is the European Institute for Gender Equality’s (EIGE) Gender Equality Index (the Index) for EU Member States. The Index measures gender gaps between women and men, and considers gaps detrimental to either women or men as “equally problematic.” The Index quantifies equality across six “core domains”: work, money, knowledge, time, power and health. Each core area is ranked on a 1 to 100 point scale where “1” signifies “total inequality” and a “100” signifies “full equality.”<sup>1</sup> The Index reflects that, in both 2015 and 2012 the following countries were the three most equal in the EU: Sweden (SE) (at 82.6%, and 79.7% respectively), Denmark (DK) (at 76.8% and 75.6% respectively), and Finland (FI) (at 73% and 74.4%, respectively).<sup>2</sup> The Index also measures two “satellite domains”: “violence” and “intersecting inequalities.”<sup>3</sup> The Index poses that gender inequity and violence against women are positively correlated, by characterizing “violence against women” as “the cause and result of structural inequalities experienced by women in many aspects of life — work, health, money, power, knowledge and time use,” and “the most brutal manifestation of gender inequality.”<sup>4</sup>

**Violence Against Women.**<sup>5</sup> The FRA considers violence against women as a violation of several rights protected by the Charter of Fundamental Rights of the European Union, including the right to human dignity (Article 1), the right to the integrity of the person (Article 3), the principle of non-discrimination on the ground of sex (Article 21), the right to equality between women and men (Article 23), the right to an effective remedy and to a fair trial (Article 47). In 2014, the FRA published “Violence Against Women: an EU wide survey” (the Survey). The Survey’s objective was

to gather “comprehensive, robust and comparable data on [violence against women’s] extent and nature,” in order to better identify appropriate methods for reducing its prevalence. The Survey interviewed 42,000 women across all 28 Member States of the European Union (EU) about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence (IPV) and non-partner violence (NPV). Women were also asked about stalking and sexual harassment, and about their experiences of violence in childhood. Interestingly, women were also asked about the role technology played in their experiences of abuse. The Survey reveals “extensive abuse that affects many women’s lives, but is systematically under-reported to the authorities.” The Survey showed, for example, that one in 10 women had experienced some form of sexual violence since the age of 15, and one in 20 had been raped. A little over one in five women had experienced physical and/or sexual violence from a current or previous partner. A little more than one in 10 women indicated that they had experienced sexual violence from an adult before the age of 15. However, these incidents of violence went underreported, whether or not they were perpetrated by a partner. For example, only about 14% of women reported their most serious incident of IPV to the police, and only 13% reported their most serious incident of NPV to the police.

The Survey observed that EU Member States that ranked highest in gender equality also tended to have higher rates of violence against women, when comparing FRA’s survey results with EIGE’s Gender Equality Index for EU Member States. But some states deviated from this pattern. On a table showing the percentage of women in each EU Member State who had experienced physical and/or sexual violence by current and/or

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previous partner, women in Denmark, Finland, and Sweden reported some of the highest rates violence. And, rates of IPV were highest in countries with a higher rate of gender equality (ranging from 30%–32% in Finland, Denmark and Latvia), and lowest in countries with less gender equality (around 13% in Austria, Croatia, Poland, Slovenia and Spain). Countries with the highest rates of NPV also followed a similar pattern, ranging from 34%–40% in Sweden, the Netherlands, and Denmark to 10%–11% in Portugal, Greece and Poland. NPV was also positively correlated with IPV,

place of employment, and social support system may be influencing this result. They also echoed a suggestion set forth in the FRA Survey: that women in Nordic countries may feel more free to talk about IPV because of their relatively equal status. If this were the case, then the Nordic Paradox would more probably reflect higher levels of disclosure based on cultural factors, as opposed to higher rates of actual prevalence, and thus would be the result of measurement bias. Gracia and Merlo noted that women in Nordic countries tend to report violence less frequently to the police than do women in other EU countries, which would seem to undercut an inference that information bias explained the

and Spain together exemplified the Nordic Paradox. For example, the Global Gender Gap Index ranked Sweden as the fifth most equal country, and Spain as the 24th most equal. Sweden was the most equal EU country according to the European Index of Gender Equality, and Spain was the 11th. And other comparative gender equality studies placed these two countries in similarly high and low positions, respectively. But, in keeping with the Nordic Paradox, the FRA Survey ranked IPV frequency in Sweden at 28%, but only 13% in Spain. Having identified two suitable countries with which to anchor their study, the researchers proceeded to explore the presence of measurement bias in the FAR Survey.

At the outset, the researchers identified some strengths in the FRA Survey which could reduce the influence of measurement bias: the FRA asks responders about whether specific conduct has occurred (*i.e.*, slapping, cutting), as opposed to asking responders whether they have had, for example, an abusive partner. These objective conduct-based questions reduce the risk of measurement bias by reducing the possibility that responders would interpret the question differently. Still, the FRA's measurement invariance (or measurement equivalence) across countries had not yet been tested. The researchers analyzed whether the FRA Survey questions addressing physical and sexual IPV were reliable, valid,<sup>8</sup> and comparable as to Sweden and Spain.

The researchers used a sample of responders from the FRA survey, including 1447 Spanish women and 1,483 Swedish women between the ages of 18 to 74 who had ever been partnered. This secondary data analysis analyzed all 10 FRA survey items addressing physical IPV and four questions concerning sexual IPV, perpetrated by a current or previous partner. Respondents answered questions such as “Your current/previous partner has grabbed you or pulled your hair?” (physical IPV) or “Your current/previous partner has made you take part in any form of sexual activity when you did not want to or you were unable to refuse?” (sexual IPV).

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***Nordic countries, such as Denmark, Finland, and Sweden, have both relatively high gender equality and relatively high rates of violence against women.***

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meaning that NPV was higher in countries that also had higher rates of IPV. In apparent reference to these results, the Survey opined that “increased gender equality leads to higher levels of disclosure about violence against women.” This points to one possible explanation for the Nordic Paradox: that women in countries with greater equality may be more willing to disclose their experiences in a survey.

**Identifying the “Nordic Paradox.”** In 2016, researchers Enrique Gracia and Juan Merlo (Gracia and Merlo) identified the Nordic Paradox based on results from the FAR Survey discussed above.<sup>6</sup> They pointed out that Nordic countries, such as Denmark, Finland, and Sweden, have both relatively high gender equality and relatively high rates of violence against women. And, conversely, EU countries with some of the highest levels of gender inequality, such as Portugal, Italy and Greece, also have some of the lowest rates of violence against women. Gracia and Merlo provided several possible theories to explain this paradox: that Nordic countries may be experiencing a “backlash effect” in the wake of relatively recent laws promoting gender equality, and that multiple factors such as one’s neighborhood,

results. Still, they emphasized the need to explore whether measurement bias explained the Nordic Paradox. Gracia and Merlo, along with other researchers, then took up that very question in the following study.

**More Recent Findings**

In May 2019, a team of five researchers from Spain and Sweden, including Gracia and Merlo (the researchers), published a study supporting the conclusion that the Nordic Paradox did not result from measurement bias.<sup>7</sup> These researchers looked specifically at rates of IPV against women, as opposed to NPV, and compared one Nordic country and one non-Nordic country: Sweden and Spain. The researchers emphasized the importance of ensuring “measurement invariance,” meaning ensuring that differences in how responders from different cultures perceive or interpret the question do not explain the difference in results. This is especially important in surveys involving “culturally sensitive” issues, such as IPV. Measurement invariance ensures that IPV scores between countries reflect actual differences that can be meaningfully compared. At the time of this study, Sweden



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Responses were based on a 4-point Likert scale, with “1” being “never,” and “4” being “6 or more times.” Respondents were considered to have experienced physical IPV where they reported that any one of the items happened once or more. Severe violence was found where responders indicated that the event happened more than once. Similarly, sexual IPV was found to have occurred where respondents indicated that one of the events had happened once or more, and severe violence was found where responders had experienced any of the events more than once. The researchers used two variables from the FRA study to test the survey’s validity: “self perceived health,” and “self reported physical and sexual IPV and victimization.” For self perceived health, responders were asked to rate their health in general on a five-point Likert scale, with “1” being “very bad” and “5” being “very good.” For self-reported IPV, responders were asked to confidentially answer two binary (yes or no) questions. One addressed physical IPV: “My partner or an ex-partner has been physically violent against me.” The other addressed sexual IPV: “My partner or an ex-partner has been sexually violent against me.”

The researchers first evaluated whether the questions were reliable and valid measurements of physical or sexual violence in Sweden and Spain. Their analysis supported that the questions were valid and reliable in measuring two distinct, but related, constructs: physical violence and sexual violence. In concluding the test was valid, researchers also considered the responders’ answers to the binary questions about self-perceived health and victimization. Self-perceived health tended to negatively correlate with both physical and sexual IPV, meaning that people who reported overall lower physical health also tended to report higher rates of physical and/or sexual IPV. And, self-reported victimization positively correlated in general with whether responders had experienced physical or sexual IPV. In other words, responders who reported experiencing any of the physical (or sexual) IPV

scenarios also tended to answer “yes” to whether any partner has been physically (or sexually) abusive to them.

Once the researchers had established the survey’s validity and reliability, they used measurement equivalence tests to determine whether the survey results could be compared between countries. They determined that the results could be compared. Both a differential item functioning (DIF) analysis and a multiple group confirmatory factor analysis (MG-CFA) showed that a responders’ country had no effect on the accuracy of their response to the physical or sexual IPV questions. The DIF scores for each item showed that the probability of a person giving a certain response was not explained by which country they came from. This is distinct from whether a Swedish or Spanish woman would be more likely to have experienced IPV. Rather, the DIF analysis determined whether a person’s membership in a group, here Sweden or Spain, would make them respond differently to the IPV questions, regardless of the true answer. And, the MG-CFA analysis showed that responders used the same conceptual framework in responding to the survey questions. This reflected that responders interpreted the questions similarly, regardless of which country they came from.

Having established the validity, reliability, and comparability of the survey results, the researchers compared the physical and sexual IPV data from Sweden and Spain. They reflect the Nordic Paradox: rates of both general and severe physical and sexual IPV are higher in Sweden than in Spain. This was especially so for sexual IPV. Overall, 89.1% of Swedish responders had a higher physical IPV value than Spanish responders. And, 99.4% of Swedish responders had a higher sexual IPV value than Spanish responders. Based on this sample, the probability that a randomly selected Swedish woman would score higher than a randomly selected Spanish woman on physical IPV is 80.7%. For sexual IPV, that probability is even greater, at 96.1%.

In sum, research supports that the Nordic Paradox is a real phenomenon. Both physical and sexual IPV are higher in Nordic countries, such as Sweden, than in Spain, for example. And, these differences could not be explained by

differences in how Swedish and Spanish respondents interpreted the questions, or to other factors associated with their subgroup identity. This finding disturbs long-held perceptions of gender inequality as a main cause of IPV, and gender equality as its solution.

However, this finding does not obviate the relevance of gender equality in IPV research. To the contrary, the authors emphasize that gender equality is still relevant to the prevalence of IPV, but the Nordic Paradox suggests that the “nature and direction” of this relationship is “complex.” This complexity must be the subject of future research. Now that the Nordic Paradox has been established as a real phenomenon, rather than as an artifact of measurement bias, researchers can focus efforts on understanding the nature of this complex relationship between IPV and gender equality.

#### End Notes

1. Davide Barbieri, Jakub Caisl, et al., *Gender Equality Index 2019*, European Institute for Gender Equality (EIGE) and Rey Juan Carlos University. Available at <https://eige.europa.eu/gender-equality-index/about>.
2. **Id.** See also <https://eige.europa.eu/gender-equality-index/2012/countries-comparison/index/bar>.
3. **Id.** See also <https://eige.europa.eu/gender-equality-index/about>.
4. **Id.** See also <https://eige.europa.eu/gender-equality-index/2015/domain/violence>.
5. European Agency for Fundamental Rights (FRA) (2015). Violence against women: An EU wide survey. Available at [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf). Unless otherwise noted, all information in this section derives from this Survey.
6. Gracia E., Merlo J. (2016). Intimate partner violence against women and the Nordic Paradox. *Soc Sci Med.* 2016 May 157, 27–30. PMID: 27058634. doi:10.1016/j.socscimed.2016.03.040. Epub 2016 Mar 31. Unless otherwise noted, all information in this section is from this article.
7. Gracia E., et al. (2019). *Prevalence of intimate partner violence against women in Sweden and Spain: A psychometric study of the “Nordic paradox.”* PLoS ONE 14(5): e0217015. Unless otherwise noted, all information in this section is from this article.
8. “Validity” essentially refers to whether a test measures what it purports to measure, while “reliability” refers to whether a test will consistently measure that thing. ■

## Case Law Summaries

by Anne L. Perry

*Editors' Note: The cases in this issue concern a range of home invasion crimes. These may include trespass (entering a property without permission); burglary (entering a building for the purpose of committing a crime); and home invasion (forcibly entering an occupied dwelling). While definitions and penalties vary across the states, lawmakers recognize increased severity and danger when a home is occupied at the time of the entry. Not only does the possibility of confrontation increase risk, but there is a strong privacy interest in one's home. The "castle doctrine" (a man's home is his castle) has been used to justify a homeowner's use of force against an intruder in his or her home. However, charging abusers (many of whom already have court orders that require them to stay away from their victim) with home invasion crimes reveals the need for these statutes to be adapted to reflect the realities of DV relationships. Reading these cases contextually with a domestic violence lens captures additional complexities about how the post-separation conduct of abusers challenges a survivor's ability to be autonomous in her own dwelling.*

### Illinois: Defendant Subject to No Contact Order Properly Convicted of Home Invasion for Entering Victim's Home "Without Authority"

**The Facts.** Defendant Marcelus Witherspoon and victim S.L. were in a dating and sexual relationship. Witherspoon was charged in a separate case with domestic battery and criminal trespass to a residence. He was released on bond, with the court ordering as conditions of the bail bond that Witherspoon have no contact with S.L. and that he refrain from entering or remaining at S.L.'s residence or premises. Despite this order, Witherspoon continued to visit S.L. at her home, where they would have sex and then he would leave. Both were aware that Witherspoon was not supposed to be in S.L.'s home at these times. Later that same month, Witherspoon returned to and entered S.L.'s home and argued with her about another man. S.L. told Witherspoon to leave, and on his way out, he grabbed her house and car keys and cell phone and left in S.L.'s car. S.L. locked the

house and went to bed, testifying that she knew Witherspoon would eventually bring her things back.

S.L. testified that, when Witherspoon returned, he grabbed her by the hair and punched her in the head, back, and side. Witherspoon threatened to kill S.L. and then forced her to have sex with him. After Witherspoon fell asleep, S.L. drove to a friend's house and called the police. Witherspoon was charged with home invasion, aggravated criminal sexual assault, domestic battery, unlawful possession of a controlled substance, and violation of bail bond. S.L.'s testimony on the issue of whether she granted Witherspoon permission to enter her home "varied."

**Lower Court Decision.** The circuit court found Witherspoon not guilty of aggravated criminal sexual assault but guilty of domestic battery and possession of a controlled substance.

With respect to the home invasion charge, the court observed that the offense requires the State to prove that the defendant entered the victim's residence "without authority." A person commits home invasion when "without authority he or she knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more person is present . . . and . . . [i]ntentionally causes any injury . . . to any person or persons within the dwelling place." The court concluded that the State had failed to prove S.L. denied authority to Witherspoon to enter her home on the night in question based on S.L.'s acceptance of his practice of using and then returning her car and keys and entering her residence.

However, the court noted that there was still a question as to whether the State could establish that Witherspoon entered S.L.'s residence "without authority" based on the conditions set forth in his bail bond. The court ordered additional briefing and argument from the parties on the issue. The court then concluded that the conditions of Witherspoon's bail bond did deprive him of any authority to enter S.L.'s residence. The court thus

found Witherspoon guilty of home invasion and merged that conviction with the domestic battery conviction.

**Appellate Court Decision.** The appellate court reversed Witherspoon's conviction for home invasion. The appellate court determined that the consent of the resident of a dwelling place for a person to enter trumped a court order prohibiting that person from entering. The appellate court determined that because S.L. had consented to Witherspoon's entry into her home and because that consent was controlling, the State had failed to prove Witherspoon guilty of home invasion. The appellate court remanded the case to the circuit court for sentencing on Witherspoon's domestic battery conviction and the State appealed.

**The Appeal to State Supreme Court.** For purposes of the home invasion statute, the Supreme Court of Illinois considered the question of who may deny the person authority to enter the dwelling place. The court considered Witherspoon's argument that it is the consent of the resident that must determine if one enters the dwelling "without authority," focusing entirely on the actions taken by the occupant of the dwelling. The court disagreed with Witherspoon, noting that his interpretation limited the reach of the statute. The court found that "nothing in the plain language of the home invasion statute limits the phrase 'without authority' solely to those situations where authority to enter is denied by the occupant." The court reasoned that the home invasion statute was intended "to protect the safety of persons in their homes." When a court orders a defendant to refrain from entering or remaining at a residence, as was done in this case, "this means there has been a judicial determination that the defendant poses a risk to the safety of the victims." These individuals are the ones who should most clearly be kept out of the victims' homes. Therefore, the court held that "a defendant enters

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the dwelling place of another ‘without authority’ when either the occupant has not granted consent to enter or a court order has prohibited entry.”

Based on this holding, the court rejected the appellate court’s reasoning that an occupant’s consent “trumped” any court order. Rather, when “a defendant’s prosecution for home invasion is premised on the violation of a court order, the consent of the occupant is legally irrelevant.” Additionally, the court concluded that the “without authority” element must include the mental state of knowledge. “Under the home invasion statute, the State is required to prove the defendant had knowledge of the court order prohibiting him from entering the victim’s home, not that he understood the law.” In this case, Witherspoon knew he was ordered not to enter S.L.’s home and that he violated that order. Therefore, the State met its burden of proving that Witherspoon knew he entered S.L.’s home without authority and he was properly found guilty of home invasion. The Illinois Supreme Court reversed the judgment of the appellate court and the judgment of the circuit court was affirmed. **People v. Witherspoon**, 129 N.E.3d 1208 (Ill. 2019).

*Editors’ Note: The “permission” or “authority” elements of home invasion statutes can be problematic in DV relationships where a survivor has less autonomy to exercise her own authority. Witherspoon argued that because his former girlfriend S.L. acquiesced at times to his entering her home and taking her car, the State failed to meet all the elements of the home invasion charge that resulted from the time he took her car and keys without consent, then returned and sexually assaulted her. Witherspoon’s appeal seems to focus on the behavior of S.L., belied by the fact Witherspoon was under a bail bond at the time that forbade him from having contact with S.L.*

### First Circuit: Evidence Supported Convictions and Life Sentence in Home Invasion and Attempted Murder of Wife

**The Facts.** Defendant Gregory Owens was convicted of interstate domestic violence and discharge of a firearm in relation to a crime of violence, in “a case about a double life,

an attempted uxoricide, and excellent police work.” Owens’s wife, Rachel Owens, was staying overnight with friends when an intruder gained entry to the house and fired at her three times while she slept, hitting her in the head, arm, and torso.

Rachel survived, but was left with a bullet lodged in her brain and severely limited use of her right hand. The intruder, later identified as Owens, gained entry to the house by breaking a section of double-paned glass and unlocking a deadbolt. Owens also fired shots at the home’s owner, who was awakened by the breaking glass. Officers retrieved human hair from the area between the shattered panes of glass and swabbed the area for DNA. Officers also recovered shell casings from the second floor of the house and a footprint in the dirt by the side of the house. Other officers were dispatched to Owens’s residence, where they saw light go off as they approached around 5:00 a.m. While walking up the driveway, an officer placed a hand on Owens’s SUV and noted that the hood and grill were warm. Officers also saw blood, a pair of boots with wet stains, and a computer hard drive inside the vehicle.

Owens acted surprised to learn that his wife had been shot and provided an account of his night, during which he claimed to be working on a military consultancy proposal and emailing colleagues, while making trips out for coffee, which were captured on store security footage. Owens explained that he was a military retiree and kept an “arsenal” of weapons in his home. Officers also collected other evidence, including a DNA sample and articles of clothing. All of the crime scene evidence ultimately matched with Owens, including the DNA from the glass, the weapon used, and the boot print. In addition, the police investigation found that Owens had been carrying on a decade-long affair with another woman in a different state, using his need to travel on covert trips as a military consultant as an explanation to both women about his extended absences.

Owens’s attempted murder of Rachel came two weeks after the other woman learned that he was still married and he vowed to make it up to her. After his assault on Rachel, but before

his arrest, Owens spent a week with the other woman while his wife was recovering from her injuries. Following a 10-day jury trial, Owens was found guilty of both interstate domestic violence and discharge of a firearm in relation to a crime of violence and sentenced to life in prison. He appealed, challenging evidentiary rulings, the sufficiency of the evidence, and the reasonableness of his sentence.

**The Appeal.** The U.S. Court of Appeals for the First Circuit first reviewed Owens’s arguments that the district court erred in denying his motions to suppress evidence gathered as result of the entry into his property and to suppress search warrants issued for his house, vehicles, and electronics. Owens claimed that the police officer entry into his driveway on the night of the crime and the touching of his vehicle hood constituted an illegal search because the driveway formed part of his house’s curtilage, or “area immediately surrounding and associated with the home,” and therefore was protected from warrantless searches by the Fourth Amendment. The court declined to address whether the driveway was a protected part of the curtilage, instead finding that the officers faced “exigent circumstances” when they entered the driveway and an officer placed a hand on the vehicle. In examining the “totality of the circumstances,” the court here considered both the gravity of the situation and the weather conditions. Having seen a light go out, the officers could reasonably believe that Owens was awake and capable of exiting the house and turning on his vehicle at any moment, “thereby destroying the evidence.”

Moreover, the scope of the search was not intrusive and was limited to verifying the temperature of the vehicle, evidence that would be lost in the time to obtain a search warrant. The court concluded that “it was objectively reasonable for [the officer] to believe the search was necessary to prevent the imminent destruction of evidence.” Next, the court considered Owens’s challenge to all five search warrants issued during the investigation, which he claimed were based on false or misleading information. The

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This finding was echoed by participants in research by Taylor et al., (2019), in which one participant had become so concerned that he described taking steps to protect himself: “My life now revolves around fear of further allegations and I have had to install a GPS tracker app on my phone and video cameras in my car and outside my house, etc., so as to protect myself from further false allegations.” Similarly, another participant described the extent to which his partner would use these social perceptions and inequalities to torment and instill fear: “She said in the beginning that no one is going to believe me. I even have a recording of her saying that I broke your ribs and I’ll do it again because I’ll get away with it. When I showed the courts this it was brushed aside.” The participants’ accounts suggested that their experiences of coercive control and fear of false allegations compounded their feelings of isolation and impotence. Indeed, the legal and administrative aggression reported is not restricted to those remaining in relationships; research shows that it continues following relationship breakdown.

Post-separation abuse is a form of abuse that has been little explored within male victim literature. However, we know that the end of an abusive relationship can be a dangerous time for women in terms of the risk of escalation (Jaffe, Crooks & Poisson, 2003; DeKeseredy, Dragiewicz, & Schwartz, 2017), with continued opportunities for men to abuse through child contact arrangements (Morrison, 2015). National survey data indicates this type of abuse can also be experienced by men. The 1999 Canadian GSS revealed that of those who had identified they had been in a violent relationship, 40% of women and 32% of men reported that some violence occurred post-separation (Hotton, 2001). For 24% of those reporting this post-separation experience, the violence had become more serious than before and for 39% the violence had only begun after the end of the relationship.

In one of the only studies to date that has explored men’s post-separation experience, Bates (2019c) followed up on her original 2019 study and inter-

viewed 13 men in depth. She found that they reported continued harassment by their current or former intimate partners through texts, emails, and other means that had for some gone on for several years. One man was quoted as saying, “I actually ended it, which made her very unhappy. She harassed me for a little over two years, sending me emails. Even once I was in a relationship with somebody else . . . she took every opportunity to tear me down” (p. 344). These men further described experiences of having their intimate partner withhold contact with their children, or impact on this relationship. This included one instance where a man described why his daughter was scared of him: “She is scared of me because she thinks that I have murdered her pet cat, which is not true . . . that I am going to kill her, her sister and her mother, and bury them in the backyard. That’s what this 6 almost 7-year-old has been told, and she believes it” (pp. 346-347).

This latter study provides evidence that men’s experiences of abuse and control can continue past the end of the relationship. The above-mentioned UK legislation around coercive control does not currently fully capture these experiences. Specifically, this law only covers behaviour that occurs within relationships where there is a “personal connection” which means current intimate relationships, currently living together and are members of the same family, or they were previously in a relationship but still live together. For ex-partners who are no longer living together, this type of abusive behaviour is thought to fall instead under the Stalking and Harassment legislation. However, the experiences of some of the men in the above study do not fit within either of these, including the ongoing false allegations and withholding contact from children. The advice from the CPS is: “where there is an ongoing relationship then the offence of controlling or coercive behaviour should be considered”; but separated partners who are parents have still an ongoing relationship through their children.

Despite the clear impact of IPV, the status of victim has not been applied equally to men and women (Seelau, Seelau & Poorman, 2003). Social narratives about IPV construct men as

perpetrators and women as victims, with men’s violence towards women being condemned more than any other gender combination (Felson & Feld, 2009). Our research and the above narrative around men’s experiences of IPV demonstrate that whilst the literature base has presented a range of evidence to support the need for further services and interventions for this vulnerable group, there are also still gaps in our understanding. There is a need, for example, for us to more fully appreciate the barriers men face when seeking help and the availability of services. Moreover, more work is needed to develop our understanding of how post-separation abuse impacts men, how support services and legislation can best support these cases, and how we can work to challenge longstanding, ingrained stereotypes that are pervasive in social narratives and service provision.

*Editors’ Note: In this issue, we are publishing a provocative article that addresses the issue of male victims of domestic violence. We believe that it is important to highlight this issue—both its existence as well as the specific form of victimization (coercive control) that the authors identify. However, we want to emphasize that gender asymmetry is real: most perpetrators of IPV are male and most victims are women. Women are more likely to suffer from multiple forms of victimization and to be victims of more severe physical violence by their intimate partners.*

*We also wish to note the well-accepted phenomenon that abusers minimize, deny, blame and dissemble when asked about their harmful conduct. As a result, research on self-described male victims requires a methodology that does not take at face value male victims’ allegations of victimization at the hands of their female partners. Even though we are not in agreement with some statements of the authors, we believe it is important to present their research and their perspective. We invite readers’ responses.*

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The importance of the new law is that it allows victims to avoid an encounter with their abusers because it would not be safe for them to vote in person in the same county where their abusers reside.

A third measure allows victims to report abuse to any law enforcement agency in New York State, regardless of where the violence took place (S.1243/A.4467A). This law seeks to avoid cases in which victims flee from their community and then try to report their abuse to police in another community to no avail. In these cases, victims risk the police saying that they do not have jurisdiction to address victims' complaints. The new law requires that any police agency take a police report, prepare a domestic violence incident report, and provide the victim a free copy of the report. The police agency would then transmit a copy of the police report and domestic violence report to the police agency in the victim's home community to investigate and take action. In order to file a police report, the victim would have to show that it would be a hardship or a danger to return to his or her home community. The aim of the legislation is to allow victims to promptly leave the area where the abuse took place and to be able to report crimes without fear or intimidation by their abusers.

### NY Contract Law

Another New York law reform was designed to spare victims of domestic violence penalties on some monthly bills. The law allows survivors who are fleeing from their batterers to terminate their multi-year telephone or cable contracts without paying a penalty. The law covers victims who have received an order of protection. The aim of the law is to spare survivors the additional stress and financial worries that stem from contract termination penalties.

### NY Housing Discrimination

New York law reforms also cover housing discrimination against domestic violence victims. New York Governor Andrew Cuomo signed the Right to Call 911 bill (A.2665/S.4657), providing survivors with protection from eviction. The legislation followed years of advocacy from the ACLU Women's Rights Project, the Empire Justice Center,

NYCLU, and the NYS Coalition Against Domestic Violence (NYSCADV). The new law allows survivors to invoke housing protections in the case of overly broad local nuisance ordinances.

Local nuisance ordinances label a property a "nuisance" when it is the site of a designated number of emergency calls (such as calls from a survivor to report an assault) or the site of alleged nuisance conduct (such as an assault). These laws inhibit the ability of victims of domestic violence-related crimes to call the police for emergency medical assistance.

If survivors make too many reports to the police, they risk eviction by their landlords. Landlords have a duty, by law, to "abate [or remedy] the nuisance": otherwise, landlords face fines, loss of their ability to rent the property, and other penalties. Enforcement of these ordinances disproportionately impacts domestic violence survivors, crime victims, communities of color, low-income households, and people with disabilities. Nuisance laws force tenants to choose between their safety and their housing: risking loss of housing if they call the police or risking their safety if they refrain from seeking emergency services that could save their lives.

The New York Right to Call 911 law clarifies that (1) persons in need of emergency assistance (including survivors) have the right to call for such assistance without direct or indirect penalty or reprisal for doing so, and prevent any resident or occupant from impeding the right to seek police or emergency assistance; (2) ensures that when municipalities seek to enforce local nuisance ordinances, they must provide notice and give both the landlord and tenant an opportunity to contest; (3) provides that municipalities cannot impose penalties on a property owner or tenant on the basis of the owner/occupant's exercise of the right to seek or utilize police or emergency aid, and prohibits landlords from taking negative housing actions against individuals for this protected conduct; (4) authorizes tenants and landlords to bring suit for damages, costs, attorneys' fees, and other relief when local nuisance ordinances are enforced against them in violation of the Right to Call 911 law; and (5) gives landlords tools to remove a domestic violence abuser from a property without having to evict the survivor.

### NY Employment Discrimination

New York Governor Cuomo also recently signed legislation that provides survivors with new protections from employment discrimination. The change in Section 296(22)(c) of New York state's Executive Law, effective November 18, 2019, provides, in part, that it shall be an "unlawful discriminatory practice for an employer to refuse to provide a reasonable accommodation to an employee who is known by the employer to be a victim of domestic violence." If the survivor needs to take time off to address domestic-violence related issues, the employer can charge the time off against any paid time off to which the employee may be entitled. If the employee has no paid time off available, such as paid vacation leave, the employer can treat the time off as an unpaid absence. Provisions of the new law include specifications that the leave can be used for seeking medical attention for injuries caused by domestic violence for a child who has been victimized, to obtain the services of a service provider, such as a domestic violence shelter or other provider, to obtain psychological counseling, to participate in safety planning, to obtain legal services, and to appear in court.

Employees must give reasonable advance notice of an absence. If they cannot give such notice, such as in emergency situations, they may provide certification from a police department, medical professional, domestic violence prevention advocate or other source to confirm that abuse occurred. The law was designed to help survivors maintain their jobs while they are suffering from the aftermath of acts of domestic violence.

This law also contains important legal protections that require employers to provide reasonable accommodations to these victims. However, "undue hardship" exemptions are available to employers. That is, the law allows employers to be excused from the obligation to provide reasonable accommodations if the former can demonstrate that the employee's absence would be an "undue hardship" on the business because of its size, the number of employees, and similar factors. It remains unclear how often employers will invoke these exemptions that jeopardize the safety of survivors. ■

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even more skeptical of the assertion that men are widespread victims of women's false allegations—and that these are a form of “coercive control.”

The data on false reports of child abuse actually indicate the opposite. The two largest and most reliable studies have both found not only that false allegations of child abuse are extremely rare in custody litigation, but that custodial parents (*i.e.*, mostly mothers) are the least likely sources; with non-custodial parents (*i.e.*, mostly fathers) the most likely. Thoennes and Tjaden found that only 2% of custody/visitation cases (in a study of 9,000 cases across 12 jurisdictions) contained child sexual abuse allegations; of those, only half were brought by mothers against fathers. (Thoennes & Tjaden, 1990). Roughly half were deemed valid by court evaluators or child welfare personnel. In a large Canadian study of all child welfare reports in 1998, (Trocme & Bala, 2005) roughly 40% were substantiated by the agency. Only 12% of child maltreatment allegations in the context of custody litigation were believed to be intentionally false, and of those, only two out of 308 cases involved mothers' fabrications against fathers. Custodial parents (mostly mothers) and children were the *least likely* to fabricate false claims of child maltreatment (14% custodial parents; 2% children) noncustodial parents (mostly fathers) were the *most likely* (43%). **Id.**

Given that both of these studies relied on the opinions of child welfare workers and court evaluators, both of which are notoriously skeptical of child abuse claims made in the context of custody litigation, the true rates of false allegations are likely even lower.

Thus, since it is well-established that male perpetrators of family abuse regularly deny and minimize their actions and cast themselves as victims of a scheming ex-wife (Bancroft, Silverman & Ritchie, 2012; Edleson, 1984; Hamberger, 1997; Henning & Holdford, 2006; Holtzworth-Munroe & Hutchinson, 1993; Lila, Herrero & Gracia, 2008), no serious academic should take at face value such claims without knowing more about the history of abuse in

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***The two largest and most reliable studies have both found not only that false allegations of child abuse are extremely rare in custody litigation, but that custodial parents (i.e., mostly mothers) are the least likely sources; with non-custodial parents (i.e., mostly fathers) the most likely.***

the family. Without an objective or at least plausible means of differentiating which of the men making these claims are true victims of false claims, and which men are actually perpetrators claiming victimization, such claims should be taken with a large grain of salt.

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court disagreed, finding that Owens failed to show that any such false statement was made intentionally or that such information was necessary to the finding of probable cause. The district court properly found that “the misstatements or omissions were either the result of negligence or innocent

mistakes, or had no bearing on the probable cause determinations.” Accordingly, the court found no error in the district court’s denial of Owens’s motion to suppress the evidence seized pursuant to the search warrants.

Owens also challenged the sufficiency of the evidence on both of his convictions, arguing that the prosecution failed to prove that he was the

intruder and that the victims never identified him as the intruder. The court was unpersuaded, as the jury was presented with a “vast amount of direct and circumstantial evidence identifying Owens” as the intruder, who was covered in dark clothing and wearing a mask. Specifically,

See CASE LAW SUMMARIES, next page

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incriminating evidence presented at trial included a DNA match, a boot print match, blood in his vehicle, and efforts by Owens to manipulate evidence and manufacture an alibi. "This evidence, in conjunction with the rest of the evidence presented at trial, allows a reasonable jury to conclude beyond a reasonable doubt that it was Owens who broke into the [] residence."

Owens also argued that he could not have made the trip from his house to the residence where Rachel was staying in the time frame between his outings to buy coffee, as reflected by two stores' video surveillance footage. The court found ample evidence that Owens could have made the 90 mile trip between houses, and back, in three hours or less, which easily fit into the four hour and 24 minute window between the two security recordings. Lastly, the court weighed the reasonableness of Owens's life sentence. Owens contended that the district court did not consider all of the factors in mitigation of sentence, such as his military accolades, lack of criminal


history, productive work history, and age. The court found that these factors were indeed weighed against the aggravating factors, which included the severity of the crime, Owens's premeditation given that he planned to kill his wife to be able to continue his affair while avoiding the scorn of divorce, the attempted murder of a witness and friend to prevent his identification, and Owen's deceitful character. The district court emphasized Owens's "cold-blooded behavior . . . [and] obvious lack of conscience" as well as the severity of his wife's injuries and the lasting emotional trauma of the victims. "Considering the totality of the circumstances of Owens's crime, we find that the district court's life sentence is a defensible result." The convictions and sentence were affirmed. **U.S. v. Owens**, 917 F.3d 26 (1st Cir. 2019).

*Editors' Note: To attempt uxoricide is to try to kill your wife. The facts in Owens show the extreme lengths that the defendant was willing to go to eliminate her, including breaking into the home where she was staying, shooting her as she slept, shooting the homeowner, and manufacturing a false alibi.* ■

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