A Judicial Guide to Understanding Wife Abuse

By Laura Crites

This once-hidden problem, carefully guarded by family members and shared only in crisis with criminal justice officials and social workers, is now public. Family violence is a national concern.

The U.S. Attorney General’s Task Force on Family Violence, which published its findings in September 1984, recognized this concern. The task force report marked a significant departure from historical policy and practice relating to domestic violence. Heading the task force’s recommendations is that “family violence . . . be recognized and responded to as a criminal activity.” According to the report, “An assault is a crime, regardless of the relationship of the parties. A person beaten in the home is no less a victim than the person beaten on the sidewalk in front of the home. The law should not stop at the front door of the family home.”

Because of the important role the criminal justice system plays in communicating to society the boundaries of acceptable behavior, the task force report calls for a major shift in the attitudes and responses of police, prosecutors, and judges to this serious crime. The attitude of members of the criminal justice system toward family violence in general, and wife abuse in particular, has been heavily influenced by social and religious values as well as by a lack of understanding of the complex psychosocial dynamics involved in this crime.

Studies show that wife abuse is a social problem of epidemic proportions. In 1982, 41 percent of all assaults or weapon-related calls to the San Francisco Police Department were family violence calls, totaling approximately 400 calls for help each week. In California, one-third of the women killed are killed by their spouses. Police in Denver respond to about 90 domestic violence calls a week, resulting in an average of eight arrests a day. According to the Attorney General’s Task Force testimony, wife abuse is a major cause of injury to women in America.

Wife abuse not only results in injury to wives, former wives and lovers, but also results in a high rate of child abuse. Finally, and perhaps of greatest long-term importance, spouse abuse breeds a culture of violence for future generations. Up to 80 percent of men who abuse their wives were victims of violence or witnessed the abuse of their mothers. Abused children grow up to abuse their children. And violent homes
breed violent criminals. A national study of family violence found that 100 percent of the San Quentin inmates had experienced extreme violence between the ages of one and ten.1

During the past decade, shelters for victims of wife abuse have been opened, major research examining the dynamics and effects of this crime has been conducted, movies and television programs on battered wives have been produced, and newspapers have begun to report on cases of domestic homicide.

Such open interest in spouse abuse, especially the plight of the wife, is a recent phenomenon. Historically, the family has been viewed as private and sacrosanct—a closed unit represented to the outside world by the father or husband.

The role of the husband and father in administering discipline within the family is as old as our Judeo/Christian culture. In 1148, the Decretum, the first book of church law, required that "a man must castigate his wife and beat her for her correction, for the Lord must punish his own"—man being the Lord's agent for authority.

During the Middle Ages, "men were exhorted to beat their wives and wives to kiss the rod that beat them."2 Husbands fulfilled their obligation with such fervor and enthusiasm that at one point in the 15th century, a priest was moved to protest and appealed to men to "consider the fruit of the woman, and have patience; not for every cause is it right to beat her."3

The theological basis for the assumption that women were appropriate objects of abuse and in need of control by their husbands was the belief that women, in the form of Eve, had introduced sin into the world and precipitated the fall of the human race. On the basis of this "original sin" by Eve, the role and treatment of women were established by the Bible for all of Western society. "Marriage was to be a condition of bondage, maternity a period of suffering and anguish, and in silence and subjection she was to play the role of a dependent on man's bounty for all her material wants."4

This religious belief has pervaded our social and legal institutions. Early British Common Law authorized a husband to beat his wife with "a rod no thicker than his thumb." Laws in the United States permitted wife abuse until the late 19th century. In 1874, North Carolina withdrew a husband's right to beat his wife but refused to allow the wife the right to prosecute if he did. The reasoning was that "if no permanent damage has been inflicted, nor malice nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forgive and forget."5

A century later, the same attitude often prevails. In 1975, a judge presiding over the case of a high-salaried executive with a history of wife abuse who had been brought to court after breaking three bones in his wife's face, negotiated an informal settlement behind closed doors. In the words of the judge: "This is the best way of handling this type of situation. This is a family matter. They can settle this without airing a lot of dirty linen."

Attitudes from centuries past are still held by many court officials, judges, law enforcement officers, and members of society. As a result, public concern over the nature and extent of wife abuse began to surface within only the last ten years. Erin Pizzarey's 1974 book, Scream Quietly or the Neighbors Might Hear,6 was influential in bringing to public attention the plight of abused women.

The 1984 U.S. Attorney General's Task Force Report on Family Violence, which grew out of the President's Task Force on Victims of Crimes and drew on testimony at hearings across the country, may help transform public concern into public action. Foremost among the task force recommendations is that "the legal response to family violence must be guided primarily by the nature of the abuser or, and not the relationship between the victim and the abuser."

In recommending this new response to family violence, the report acknowledges that:

1. Family violence is widespread;
2. Evidence indicates that family violence plays a significant role in socializing children to view violence as appropriate behavior—thus creating future generations of violent offenders; and
3. The traditional response of the criminal justice system has failed to communicate to violent families and to the community that this is a crime and thereby unacceptable.

The Attorney General's Task Force report identified judges and judicial proceedings as critical components in ending family violence.

Although many individual judges view and respond to wife abuse as a serious crime, judicial response in general has been characterized by what appears to be a belief that wife abuse is not a major problem and by an apparent unwillingness to treat it as a crime. According to a study by the U.S. Commission on Civil Rights:7

1. Many judges doubt that spouse abuse is a major issue.
2. Convicted wife beaters are typically put on probation, fined, or given a suspended sentence.
3. Alleged wife beaters are frequently released on nominal bail or their own recognizance without regard for danger to the wife.
4. Few of the judges interviewed were willing to issue a warrant or convict a man on the evidence of just one beating. The wife is required to show a history of beatings.
5. Judges and prosecutors tend to consider length of time between beatings and the severity of the beatings.
6. Judges are less sympathetic to the victim if the effects of the abuse are not obvious and she did not require immediate medical attention.

Both the victim and offender may view the attitude

Laura Crites is a lecturer at Chaminade University in Honolulu and is an expert on spouse abuse.

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and response of judges as a judicial license to continue
the abuse.

These are practices which lead women's rights ad-
vocates to the conclusion that, although there are no exceptions for spousal violence written into assault and
battery statutes, the courts have decriminalized
wife beating.16

It is important to ask why many judges respond so in-
effectively to spouse abuse and what can be done about
it. In answer to the first question, the following three
factors are offered: (1) judicial gender bias; (2) igno-
rance of the psychosocial dysfunction of the crime; and (3)
lack of awareness of the seriousness of the crime and the
deterrent impact judges might have on offenders.

GENERAL BIAS

Judges, no less than other members of society, are
creatures of their social and cultural environment. In
1921, U.S. Supreme Court Justice Benjamin Cardozo
acknowledged that “deep below consciousness are
other forces, the likes and dislikes, the predilections and prej-
udices, the complex of instincts and emotions and habits
and convictions, which make the man, whether he be lit-
gant or judge…” And more recently, U.S. Supreme
Court Justice Harry Blackmun acknowledged the influ-
ence of “one's religious training, one's attitude toward
life and family and their values, and the moral standards
one establishes and seeks to observe…” on an individu-
al's thinking and conclusions.17

Thus, it would be surprising if judges did not reflect
the historical, social, and religious attitudes toward
women discussed earlier. Limited studies have been
done that provide evidence of judicial attachment to sex
role stereotypes.

In 1971, two white male law professors investigated
the response of American judges to sex discrimination
cases up to that time and wrote:

Our conclusion, independently reached, but
completely shared, is that by and large the perfor-
ance of American judges in the area of sex dis-
crimination can be succinctly described as ranging
from poor to abominable. With some notable ex-
ceptions, they have failed to bring to sex discrimi-
nation cases those judicial virtues of detachment,
reflection and critical analysis which have served
them so well with respect to other sensitive social
issues. . . . Judges have largely freed themselves
from patterns of thought that can be stigmatized
as "racist" . . . [but] "sexism"—the making of un-
justified (or at least unsupported) assumptions
about individual capabilities, interests, goals and
social roles solely on the basis of sex differences—is
as easily discernible in contemporary judicial opin-
ions as racism ever was.18

Subsequent studies have supported this 1971 finding.
In 1977, Beverly Cook of the University of Wisconsin in
Milwaukee analyzed the U.S. Supreme Court decisions
affecting women from 1971 to 1977. She concluded that
members of the Court were more influenced in their de-

"Libel is written and slander is spoken, but
what is it when they hang the guy in effigy?"
will turn to a male judge for understanding when he does lose control. Counselors of abusing husbands agree that deflection of the blame to the victim is typical among men who batter and that, until they are forced to accept responsibility for their own actions, early stages of group therapy involve turning to other males for support and justification for violence against their wives.23

An example of gender bias in judicial decision-making regarding wife abuse is evident in the much-publicized Denver case of a judge who sentenced a man to two years on work release for fatally shooting his wife five times in the face and upper body. The “extraordinary mitigating circumstances” the judge offered for sentencing to less than the period required by law was that the wife had engaged in the “highly provoking acts” of leaving her husband without warning, being loving and caring up to the morning she left, and obtaining a restraining order and proceeding with a separation from her husband without telling him where she was.

The judge’s identification with the husband appears evident in his sentencing statement that this victim’s “highly provoking acts... affected the Defendant sufficiently so that it excited an irresistible passion as it would in any reasonable person under the circumstances” (emphasis added). It should be noted here that the defense psychologist testified that the defendant knew the difference between right and wrong and was not “having any irresistible impulse” at the time of the killing.

PSYCO-SOCIAL DYNAMICS OF WIFE ABUSE

Judges may also respond ineffectively to cases of wife battering because of their lack of understanding of the complex psychosocial nature of this crime. The response of judges as well as police and prosecutors has been influenced by what appears to be the wife’s participation in her own victimization. They question whether any adult who refuses to press charges or later drops them against her assailant, who continues to live with him, who will not testify against him when an abuse case goes to court, and who may attack police officers in their attempt to arrest the abuser is an appropriate subject for sympathy and/or the time and money of the criminal justice system. When a woman appears to seriously seek the support and authority of the criminal justice system, it is often not there for her.

Why She Stays. There are many reasons why a battered wife stays in a violent relationship; none of them is simple. Battered women have cited the following reasons: hope that husband would reform, no place to go, fear of husband, children, financial dependence, afraid of living alone, stigma of divorce.29

• Financial Dependence. The economic motive is a significant one. Women with no skills, work history, or independent source of income view the option of setting out on their own, often with responsibility for children, as one to be exercised only under desperate circumstances. And after the abusive incident, during the period of calm, it is not difficult to convince themselves that their circumstances are not sufficiently desperate. Many women return to their husbands after trying to survive economically on their own. For many women, the economic result of divorce or separation is that they fall below the poverty line. Studies show that a husband’s standard of living typically rises 42 percent after divorce while a wife’s declines by 73 percent.26

• Fear. Fear is also a strong motive. As the violence progresses, a woman comes to see her husband’s power as endless. When he threatens to hunt her down and kill her if she leaves, she believes that he can, in fact, find her wherever she may go. The fear is often a result of threats he has made against family members such as her parents or her children. She reasons that by staying in the home she can anticipate and control to some extent the violent attacks and protect those she loves.

Evidence drawn from domestic homicide statistics adds weight to this fear. In the midst of her fear, she has no reason to believe she can look to the criminal justice system for protection. One police detective recently counseled a severely battered wife, who had come to file a complaint against her husband, to stay with him; otherwise she would just have to continue dealing with his harassment” (emphasis added).

• Belief He Will Change. Belief that he will change is often the strongest motive. The strength of this belief can be fully understood only by examining the role and position of women in our society. Although these roles are traditional in a society moving away from the traditional, they continue to enslave those who accept them. Foremost is the belief that a woman’s value stems from her acceptance by men. While men can measure their value through a variety of areas of achievement, for the traditional woman, the major achievement, the culmination of her “career” expectations, is marriage. This belief keeps even many professionally successful, economically independent women in a violent relationship.

Women have a great deal at stake in believing he will change. Without that belief she may be forced to destroy the family—taking the children away. She may have to face the future without economic resources, and she may have to live the rest of her life without a mate. And so when he promises to stop drinking and never hit her again, she wants desperately to believe him.

• Love. Violence in the relationship often stems from the husband’s jealousy. Women who have not seen themselves as valuable human beings at first find this attention, violent though it is, a heady experience. In addition, when they are not violent, abusive husbands can be extremely loving and caring. A wife who is reluctant to leave the relationship can let that aspect of her husband’s personality dominate and can truly believe that she loves him.

• Low Self-esteem. Women who do not value themselves are also inclined to believe that they somehow caused the violence. Because marriage is a traditional woman’s career, its success is her responsibility. If he abuses her, she reasons, it is because she has not done enough to meet his needs.

• Learned Helplessness. Many women believe, regardless of their capabilities, that they are helpless to take control of their lives. Lenore Walker calls it
"learned helplessness" and Collette Dowling calls it the "Cinderella complex." Both describe a socialization experience for women that results in a retreat from responsibility and control over their own lives, to a powerful, protective relationship with a man. Walker suggests that the socialization experience provides a predisposition to helplessness that makes women particularly vulnerable to being controlled in an abusive relationship. Many women bring to adulthood a limited belief in their own abilities to exercise control over their lives. As they unsuccessfully attempt to reduce or stop the violent episodes, a sense of helplessness grows. After a lifetime of being reinforced for passive behavior and months or years of being unable to control violence in their relationships, many women become convinced of their inability to stand on their own.

For these reasons, the abused wife stays in a violent relationship while she may appear to be able to leave at will.

Why He Abuses Her. The following beliefs and factors influence a man who beats his wife:

1. It is his right to have power over his wife and violence is a legitimate means for asserting it. This belief stems from several sources, including role modeling. The majority of battering husbands grew up in violent homes in which either they were beaten or they witnessed their mothers being abused.

2. She deserves the abuse by not meeting his needs and expectations. This stems from his patriarchal view of women and of his role as head of the household. Men often say they were just teaching her a lesson.

3. Women are inferior to men. Abusing husbands have very traditional views of men and women that assign women to a secondary position and value males more highly than females.

4. He needs her. Men who abuse their wives are often desperately dependent on them psychologically. This dependency drives him to the use of abuse as a means of controlling her and assuring that she will not leave him.

5. He will not be punished. Because of the first three beliefs, as well as the lack of response by the police and other members of the criminal justice system, a battering husband does not believe that his violent behavior should have negative consequences.

Battering husbands typically have low self-esteem. They come from homes that were psychologically unhealthy; they grew up with little or no emotional nourishment. As a result the wife has come to represent the love and validation they did not receive. Husbands seek to maintain that through force and through kind and loving behavior. Her attempt to leave him represents both a betrayal and a challenge to his validity and authority, for abusing husbands view their power and control over their wives as a manifestation of their manliness. Although many may be professionally successful, battering husbands share a sense of inadequacy that they seek to overcome through the forced subordination of their wives.

Many researchers of wife abuse turn to social learning theory to provide a framework for understanding the persistence of violence once it has been initiated and reinforced. An important principle of learning theory is that reinforced behavior is more likely to be repeated. Thus, if the first time a man abuses his wife he receives no punishment but is reinforced by subsequent submissive behavior by his wife and/or a sense of release resulting from the violent outburst, he will likely repeat the abuse. Another factor in learning theory, that of the effect of modeling, may help explain the initial violence. The majority of wife abusers witnessed or experienced physical abuse in their homes; most saw that the abuser was not punished.

SERIOUSNESS OF THE CRIME

Many judges are unaware of the seriousness of the crime of wife abuse, and this limits the effectiveness of judicial response. Sentencing patterns discussed earlier and a Civil Rights Commission study both provide evidence that many judges doubt that wife abuse is a major issue.

One can understand how they have come to that conclusion. First, it is estimated that only one out of 100 cases of wife abuse ever reaches the courtroom. Further, the extent and nature of the problem have only recently begun to surface. Psychologists studying it have discovered the following factors in cases of wife abuse; all clearly illustrate the serious nature of this crime:

1. She cannot control or stop the violence. Battered wives as well as those they turn to have often sought the source of violence in her behavior. Only after repeated abuse does the wife recognize that her careful efforts to do or not do things that seemed to precipitate previous violent outbreaks are to no avail. In short, there appears to be no relationship between her behavior and the abuse. Studies of domestic violence support that. She cannot control or stop the violence.

2. Violence increases in frequency and intensity. Unless the violence is forcefully checked, usually by someone outside the relationship, psychologists agree that the violence will become more severe and frequent.

Abuse will often escalate in the following order: (1) throwing things; (2) pushing, shoving, grabbing; (3) slapping with open hand; (4) kicking, biting; (5) hitting with closed fist; (6) attempted strangulation; (7) beating up (pinned to wall/floor—repeated kicks, punches); (9) threatening with a weapon; (10) using a weapon.

Because abuse typically escalates in this order, the presence of acts at the #5 and #6 level indicates a substantial history of violence and also provides those responding with a means of assessing the dangerousness of the assailant and the victim's need for protection.

3. Violence occurs in cycles. Psychologist Lenore Walker was the first to identify and develop a theory around the cycles of violence. According to Walker, the following are phases in the cycle:

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- **Tension building.** During this phase minor incidents of violence occur. The wife usually attempts to calm him through nurturing, compliant behavior. She denies her anger and rationalizes and minimizes his abuse with the goal of preventing him from hurting her more. As these episodes recur during this phase, the tension builds. As a result of her passive behavior in the face of his abuse, he feels no need to control himself and violence is propelled on to phase two.

- **The acute battering incident.** This phase consists of a massive explosion of violence, which discharges the built-up tension. During this phase, both the batterer and the victim accept that his rage is out of control. She is convinced that he will stop only when he wants and that neither she nor a third party can stop him. She simply attempts to survive until he is spent.

- **Kind, contrite, loving behavior.** Phase three begins shortly after the second phase. He knows he has gone too far and tries to compensate by outpourings of love and promises that he will never do it again. He is his charming and generous self, buying gifts, bringing home flowers, all the time begging for forgiveness.

Because she wants and needs desperately to believe that he will change, she is often able to convince herself, in the midst of the love and contrition of this phase, that this will be the last time. The preponderance of evidence is against her, however. Studies agree that it will recur, beginning again with phase one.

4. **Continued danger to the victim.** The longer she stays in the relationship the more entangled she becomes in the web of violence, and the more dangerous her situation grows. As his control increases, she becomes more of an object to him and he can relate to her less and less as a human being vulnerable to psychological and physical pain.

The danger reaches a peak if she attempts to leave. Bringing the case to court is often seen as highly provocative by the husband—an act of defiance. This is true because criminal prosecution in spouse abuse cases is often seen as a willing act undertaken by the abused wife and not by the state. It is as though a defenseless, vulnerable child has struck back at a disciplining parent. The parent, outraged at this challenge to his legitimate authority, determines to teach the child a lesson that will prevent any future challenge.

Women know the danger is real. Unfortunately, police, prosecutors, and judges remain unconvinced. A letter from a woman in hiding was published in a Longmont, Colorado, paper a year ago: "I do not and did not want to die. I still don't, but I feel I may at my husband's hand... I am hiding for my own safety... I am forced to keep my whereabouts a secret from my own mother and children... for my own safety and perhaps my family's." She was found by her husband and shot in the throat and chest May 7, 1985, as she was putting air in her car's tires at a filling station.

It is essential that judges learn to understand and accept the seriousness of wife abuse. They may be the only persons standing between these terrorized women and the death they are fleeing.

Judges need to recognize both the seriousness of this crime and the potential effects of long-accepted social values on their responses to victims and offenders. They should also be aware of new evidence that shows the justice system can have a deterrent effect on wife abuse.

A recent study with the Minneapolis police department was designed to test the effects on recidivism of three police responses to domestic violence: arresting suspects; ordering suspects to leave the residence for eight hours; or providing in formal mediation to persons involved in a violent domestic dispute. The results of the study showed that "arrested suspects manifested significantly less violence than those ordered to leave and less violence than those who were advised but not separated."**

This study supports the findings of the Attorney General's Task Force Report: domestic violence is a crime and treating it as such will have a deterrent effect on individual acts of violence against women and children.

The principles of learning theory also support the deterrent effect of significant and predictable "punishment" of the offender. The abusive husband who is arrested, charged, convicted of assault, and sentenced to a period of incarceration is much less likely to repeat the abuse than the man who receives no punishment from the criminal justice system and is reinforced by the increased submissiveness of his wife. A judge may be able to stop a pattern of years of abuse by bringing the weight of the criminal justice system and his or her judicial authority down on the battering husband.

In recognition of the significant role judges may play in stopping domestic violence, the Attorney General's Report recommends the following procedures:

1. A wide range of dispositional alternatives should be considered in cases of family violence. In all cases, prior to sentencing, judges should carefully review and consider the consequences of the crime on the victim.
2. Protection orders should be available on an emergency basis in family violence cases.
3. Judges should establish guidelines for expeditious handling of family violence cases.
4. Judges should admit hearsay statements of family violence victims at the preliminary hearing.
5. Expert witnesses should be allowed to testify in family violence cases to familiarize the judge and jury with the dynamics of violence within the family.
6. In granting bail or releasing the assailant on his own recognizance, the judge should impose conditions that restrict the defendant's access to the victim and strictly enforce the order.

Another major recommendation of the Task Force Report is that judges, as well as police and prosecutors, receive thorough training in the complex dynamics of wife abuse so that they may be sensitive to the nature of
the crime and alert to their role in stopping it.

In responding to spouse abuse, judges should be guided by one primary rule: namely, the abuser must receive the message that court action is a result of his offense and not a result of his wife's decision to file charges. By doing so, a judge communicates to both parties that physical abuse of one's spouse is unacceptable in our society. Further, the judge lifts from the wife the responsibility for prosecuting her husband.

Honolulu Family Court Judge Frances Q.F. Wong provides an example of a model judicial response to spouse abuse in my opinion. Judge Wong combines legal response with a sensitivity derived from having studied and come to understand the psycho-social dynamics of spouse abuse. A priority for Judge Wong is forcing the husband to accept responsibility for and face the consequences of his behavior. She is also aware of the conflicted feelings of most battered wives. When a victim before her court requests that a restraining order be dropped in order that the husband may return home, Judge Wong typically denies the request for two reasons. First, she is aware of the three stages of spouse abuse and that during the third stage, following the abuse, the wife is particularly vulnerable to the husband's plea for forgiveness and promises of reform. Second, the restraining order is dropped at the wife's request, this may communicate to the husband that control of prosecution lies not with the court but rather with the wife.

In criminal cases, if the wife refuses to cooperate as a victim, Judge Wong subpoenaed her as a witness, again providing evidence that the court, not the victim, is in charge of the case. Depending on the educational level of the victim and abuser, Judge Wong may order both to read Lenore Walker's book, _The Battered Woman_, in order that both can better understand the nature and pattern of violence in their relationship. She frequently orders husbands into psychotherapy, as well, specifying a minimum number of sessions and a deadline date with a court appearance to assure that her orders have been complied with.

Judges elsewhere in the country have begun to respond seriously to spouse abuse, implementing a system for emergency protection orders, participating in training for police officers to assure them that domestic violence cases will not be treated lightly when they arrive in court, ordering a period of incarceration for the offender, and following that up with an order for psychological counseling.

Judges, as the highest officers of the court, have a responsibility to provide leadership in solving the problem of spouse abuse. They not only communicate to the victim and offender that violence must be stopped but also influence police, prosecutors, and other members of the criminal justice system. For the sake of this and future generations of victims, judges must vigorously adopt that leadership role.

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1. ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE: FINAL REPORT, September 1984, p. 12.


3. Ibid.

4. Report from the Denver-based Justice for Abused Women. The high number of arrests are due to a change in police procedure implemented in late 1984, which requires police to make a written record of all domestic violence calls and justify their decision when arrests are not made.


8. Ibid. at 254.


10. DAVIDSON, supra note 5.

11. Ibid.


13. ATTORNEY GENERAL'S REPORT, supra note 1, at 4.


17. Ibid.


22. For a discussion of the credibility of women in court, see STANKO, WOULD YOU BELIEVE THIS WOMAN, in RAFTER AND STANKO (eds.), JUDGE, LAWYER, VICTIM, THIEF (Boston: Northeastern University Press, 1982).


30. ROY, supra note 22, at 29. See also WALKER, supra note 21.

31. WALKER, supra note 25.
