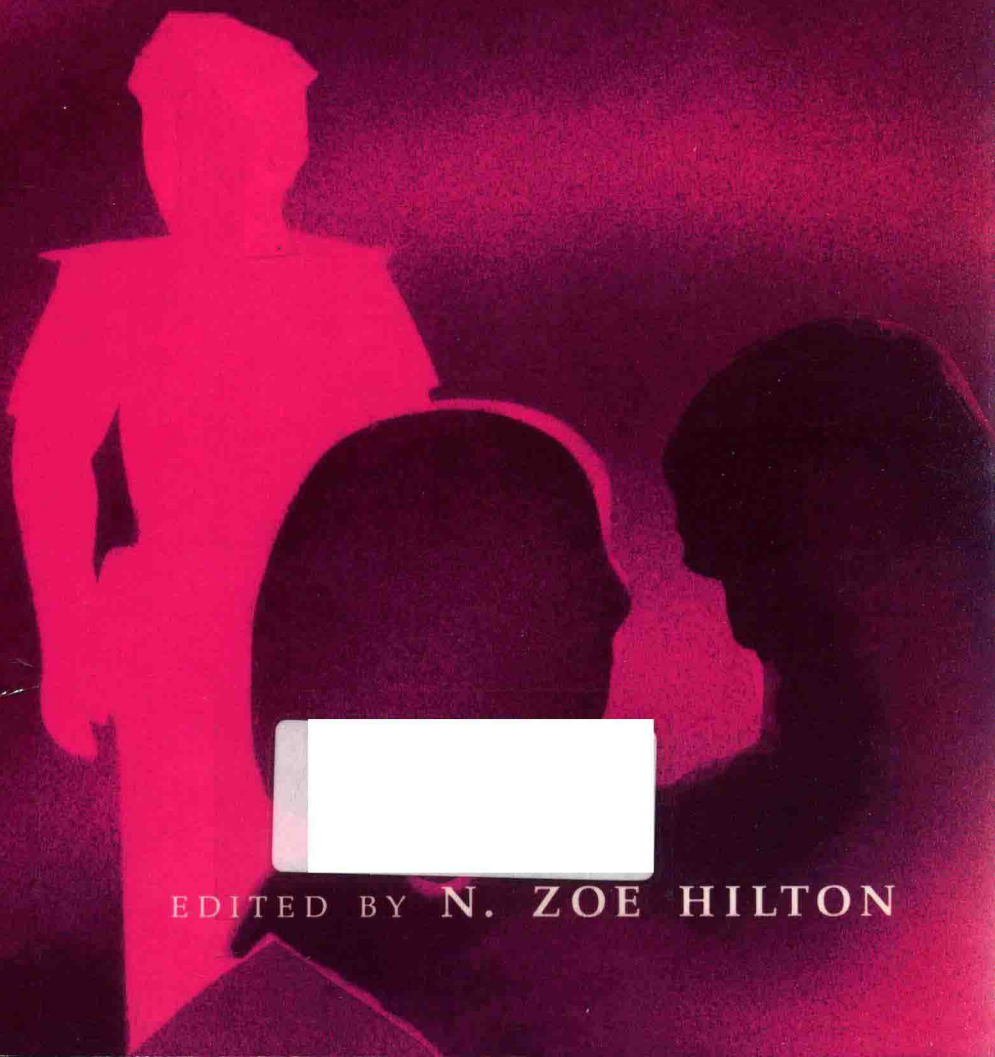


LEGAL RESPONSES TO WIFE ASSAULT

CURRENT TRENDS AND EVALUATION



EDITED BY N. ZOE HILTON

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SAGE Publications

International Educational and Professional Publisher
Newbury Park London New Delhi

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For information address:



SAGE Publications, Inc.
2455 Teller Road
Newbury Park, California 91320

SAGE Publications Ltd.
6 Bonhill Street
London EC2A 4PU
United Kingdom

SAGE Publications India Pvt. Ltd.
M-32 Market
Greater Kailash I
New Delhi 110 048 India

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Main entry under title:

Legal responses to wife assault : current trends and evaluation /
[edited by] N. Zoe Hilton.

p. cm.

Includes bibliographical references and index.

ISBN 0-8039-4552-3 (cl.) — ISBN 0-8039-4553-1 (pbk.)

1. Wife abuse—United States. 2. Abused wives—Legal status,
laws, etc.—United States. I. Hilton, N. Zoe.

KF9322.A75L44 1993

362.82'92—dc20

93-3609
CIP

94 95 96 97 10 9 8 7 6 5 4 3 2

Sage Production Editor: Judith L. Hunter

**LEGAL RESPONSES
TO WIFE ASSAULT**

Legal Responses to Wife Assault
is under the general editorship of
Jon R. Conte, Ph.D.

Preface

In the 1980s and 1990s, legal responses to wife assault have been increasing. Police officers have been encouraged, sometimes required, to take a more interventionist approach when called to scenes of wife assault. No-drop prosecution policies and victim-witness support programs have been implemented to respond to some of the difficulties faced by battered women who must testify against their partner. Both incarceration and court-mandated treatment programs for wife assaulters have also increased over the past 10 to 15 years. These changes have largely occurred as a response to controversy about the legal system's adequacy in dealing with wife assault. The controversy, however, continues. On the one hand, many people believe that the legal system still is not doing enough to fight wife assault. On the other hand, the appropriateness of increasing the powers of the criminal justice system in order to meet the needs of battered women has been questioned.

Often, the questions raised about legal responses to wife assault are based more on ideals than on the demonstrated effectiveness or failure of the recent innovations. This is hardly surprising, as relevant

research has lagged behind program development, and work that has been done to evaluate legal responses to wife assault tends to be published in disparate academic journals or inaccessible government reports. Yet, well-conducted research that is accessible to policymakers and others active in the field is essential to guide our efforts and to channel funding into the most appropriate and effective interventions.

In this book, we aim to promote appropriate and effective legal responses to wife assault by not only exploring the debates surrounding current trends, but also drawing together recent evaluation research in this field. Each chapter begins with a review of the main developments and literature in a specific area, be it police response, mediation, prosecution, treatment for wife assaulters, or legal defenses for battered women who kill their partner. The authors have extensive familiarity with their respective areas as researchers, practitioners, or both. The chapters also highlight the authors' own work, mostly in the form of research that illustrates the points made in the literature review, gives a clear example of the kind of evaluation work that is being done, and describes some of the most recent work in the field in more detail than can be covered in a simple literature review.

Researchers and scholars using this book will find of value the extensive reviews of existing studies, such as in the chapter by Hamberger and Hastings, who point out shortcomings in wife assault treatment research that may be equally applicable to research regarding wife assault in general. The contributors also point to aspects of wife assault requiring more attention in the future; for example, both Jaffe and his colleagues and Roesch and his co-authors make a plea for more preventive efforts, which may be guided by theory-based research.

Knowledge of the existing literature and debates, and an awareness of current evaluation research can also be invaluable to clinicians, battered women's advocates, policymakers, and others whose practice brings them into contact with wife assaulters or their victims. As Roesch and his colleagues show, good research can help improve the circumstances of battered women. Improvement may be brought about when weaknesses of existing services are pointed out, as is done, for example, by Ferraro and Pope in their analysis of problems in communication and service provision between police and battered women, and by Saunders, whose research emphasizes the need for

interventions that are adapted to the characteristics of the wife assaulter. Research and literature summaries can also provide useful information for those whose work necessitates lobbying for government funds. An understanding of the effects of proarrest policies and special instructions to the jury, the kinds of interventions people see as appropriate in wife assault, the outcomes of different approaches to prosecution, and the acceptability of expert witness testimony are offered by the chapters that follow.

In addition to the authors of these chapters, many people have contributed to this book during the course of its development. I wish to thank the Mental Health Centre, Penetanguishene, for providing me with the opportunity to work on this project. Pat Reid and Sandy Tessier provided invaluable library and research assistance, always giving cheerful service. I am very grateful to Sonja Dey, who typed numerous drafts and reformatted tables faster than I could think of new changes to make. Grant Harris's wisdom and humor saw me through all the trials of editing. And as always, I thank Brad Fisher, a loving and gentle husband. This book is dedicated to our baby, in the hope that a peaceful world awaits him.

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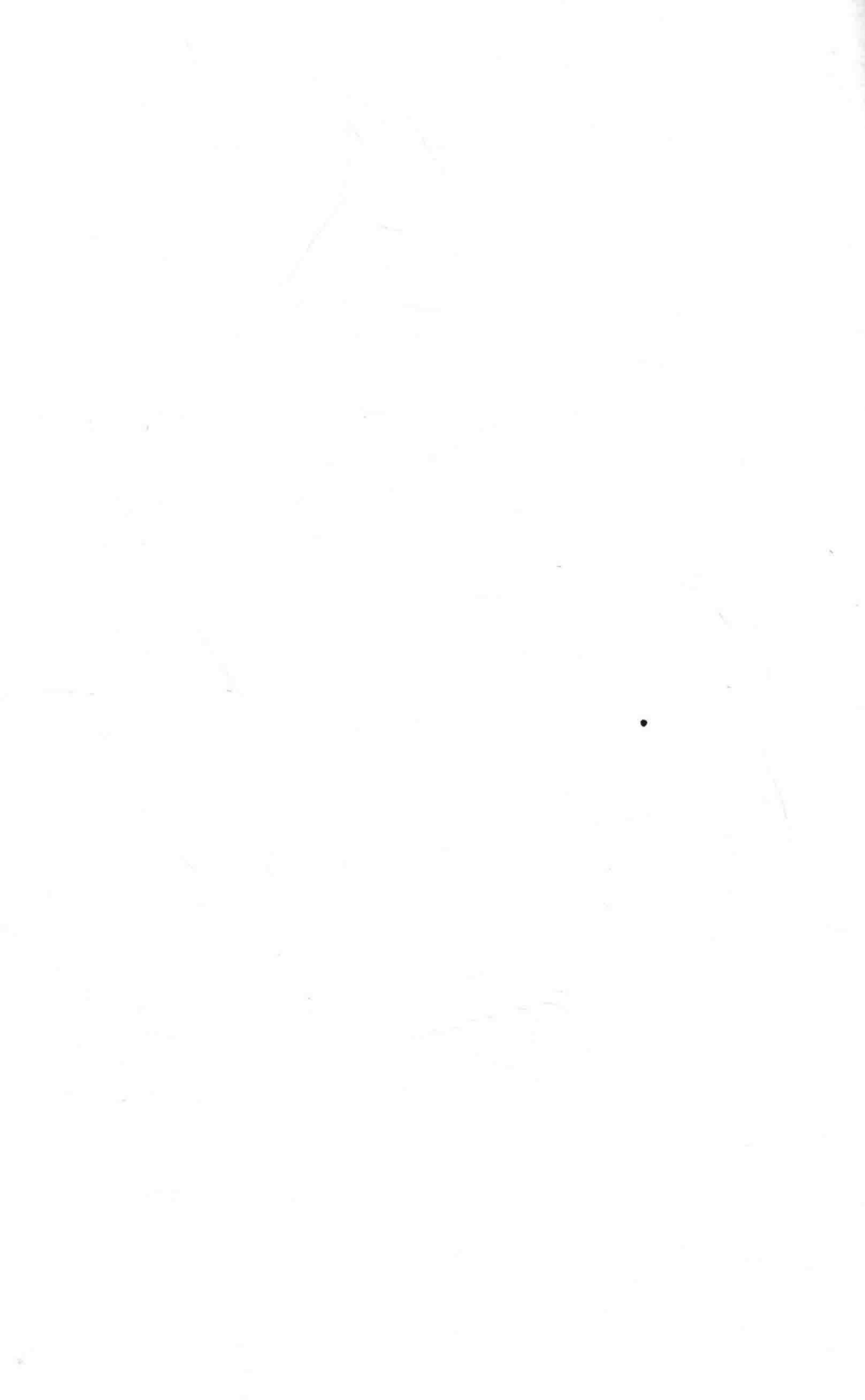
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PART

I

OVERVIEW



1

Introduction

N. ZOE HILTON

Current Trends

When the women's movement first brought wife assault to the forefront of public attention in the 1970s, the police and other agents of the criminal justice system soon came under attack for failing to provide victims of wife assault with adequate protection (e.g., MacLeod, 1987; Schechter, 1982). It was claimed that legal remedies were less accessible to victims of wife assault than to victims of other forms of violence, and that, moreover, the lack of legal response, and the law itself, reflected society's tolerance and even acceptance of wife assault. The 1980s and 1990s, in contrast, have seen a growth in legal responses to wife assault. The use of incarceration for wife assaulters has increased since the 1970s (Endicott, 1987). In addition, there have been moves to create interagency cooperation, the best known examples being in Duluth, Minnesota (Pence, 1989), and London, Ontario (Jaffe & Burris, 1984). Here, the police, the courts, and services for wife assaulters and their victims provide not merely legal intervention but an integrated community response to wife assault. On a smaller scale, the criminal justice system is making use of the treatment programs that are increasingly being offered by mental health and social services, through probation orders or through diversion programs (see Caesar & Hamberger, 1989). And as our

awareness of the dynamics of wife assault and its consequences increases, courts are also beginning to consider the notion of the battered woman syndrome when dealing with battered women who have killed their partner (e.g., Ewing, 1990).

A trend towards increasing legal responses to wife assault, then, is evident in North America, largely in reaction to earlier calls for greater responsiveness by the legal system. Yet, none of these changes has occurred without controversy. For example, some states have enacted mandatory arrest policies for wife assault cases, in part to overcome the reluctance of prosecutors and judges to proceed with victim-initiated complaints (E. S. Buzawa & C. G. Buzawa, 1990). Some authors caution, though, that arrest might not be what all victims want (e.g., MacLeod, 1987; Schechter, 1982); mandatory arrest may be perceived by women as further disempowerment if they have been under the control of their violent partner prior to police intervention. Another example is the "no-drop" policy introduced by some jurisdictions, whereby a victim of wife assault does not have the option of withdrawing charges once the prosecution process is under way. The no-drop prosecution policy has been criticized when it has resulted in contempt of court procedures being invoked to punish battered women who refuse to testify against their partner (e.g., McGillivray, 1987).

Evaluation

Despite the important and politically sensitive debates surrounding responses to wife assault, few legislative or policy changes have been accompanied by large-scale, well-funded evaluation efforts by the governments responsible for their introduction. One exception has been the Sherman and Berk (1984) study of the effectiveness of arrest, followed by the series of replication attempts sponsored by the U.S. National Institute of Justice (Dunford, Huizinga, & Elliott, 1990; Hirschel, Hutchison, & Dean, 1992). Careful evaluation research can help resolve some of the debates over the value of legal and policy reforms, not only in terms of cost effectiveness but also as a measure of their actual as opposed to intended effects. There has been some concern, for example, that funding for treatment programs for wife

assaulters places these programs in competition with existing, non-treatment services for battered women, including shelters (MacLeod, 1987). Also, at the same time that criminal courts are adopting a stronger response to wife assault, mediation services associated with family courts across Canada and the United States are gaining acceptance and authority in dealing with marital disputes, often including wife assaulters and their victims in their negotiations. It has been argued that increased attention to wife assault by the criminal justice system has placed a greater burden on the courts, which has led to an increased reliance on mediation, with negative consequences for battered women (Hilton, 1992).

When evaluating legal innovations, it is important not to lose the voice of the victims. In the field of clinical theories of wife assault, Ptacek (1988) has identified an increase in the use of gender-neutral language such as "spouse assault," which hides the greater risks of violence and nonphysical abuse suffered by women. Evaluations of legal responses that focus on whether a wife assaulter is physically violent to the same partner following intervention also risk obscuring the full picture of victimization. Battered women are not unlike other victims of violence in their recent attempts to play a larger role in decisions about offenders (e.g., Rosenfeldt, 1990). The victims of wife assault, however, face additional difficulties that merit particular attention from the criminal justice system. For example, a battered woman might be continuing her relationship with the offender and might see treatment rather than punishment as offering her a better chance of a violence-free future. On the other hand, a woman who is trying to end a violent relationship might fear having to face the offender in court and risk him knowing of her whereabouts. In this book, an attempt has been made to include research that is sensitive to the needs and wishes of the victims of wife assault.

The term "battered woman" has been used in this volume, not only because it specifies the female as the victim of wife assault, which is the subject of this book, but also because it reflects the repetitive nature of the violence suffered by most of these women (e.g., Straus, 1990). The words "battery" and "batterer," however, have been reserved by this editor for the legal offense of battery. While aware of different opinions including those of some chapter authors, I have changed "battering" and "wife beater" to the terms "assault" and "wife

assaulter," with the intention of including all forms of aggressive physical contact, from the most serious, life-threatening attacks to comparatively minor slaps and shoves. Not all incidents of wife assault constitute severe violence; however, the fear and other psychological effects of each assault are compounded with the repeated, comparatively minor threats, restrictions, sexual assaults, and other degradations suffered by many battered women (e.g., Finkelhor & Yllö, 1985; Follingstad, Rutledge, Berg, Hause, & Polek, 1990; Russell, 1982). The word "abuse" has been used in this book to refer to nonphysical behaviors, such as taunting, isolation, humiliation, and other forms of aggression and control inflicted by wife assaulters on their victims (e.g., Follingstad et al., 1990).

It is hoped that people working in services for battered women will be among those who will find this book valuable. The book draws together new research about legal responses to wife assault in a form more easily accessible than the academic journals in which this information is usually found. Clinicians who work with wife assaulters will find a thorough review of treatment programs for wife assault and the debates surrounding treatment formats and philosophies, as well as chapters on aspects of the criminal justice system that may well affect their clients. Lawyers, judges, police and probation officers, and policymakers may profit not only from the debates and evidence about arrest, prosecution, mediation, and treatment and their effectiveness, but also from the insights offered about battered women as consumers of these services. Students and researchers will also find here critical reviews and new works in this growing area of evaluation research.

The book is divided into five sections. Part I includes a look at the need for different responses to wife assault depending on the profile of the wife assaulter (Saunders), a qualification that the reader should bear in mind when considering the remaining chapters. Part II concerns the police response to wife assault: first, the extent to which members of the public indicate they would like the police to intervene in cases of wife assault (Hilton); second, how effective such intervention is in reducing future violence (Jaffe, E. Hastings, Reitzel, and Austin); and third, how well suited the police response is to the needs and wishes of battered women (Ferraro and Pope). In Part III, the various functions of the courts are addressed. The effectiveness and problems of prosecution (Ford and Regoli) and mediation (Ellis) are

explored, followed by a discussion of court-mandated treatment for wife assaulters and the success of treatment for wife assault in general (Hamberger and J. E. Hastings). Part IV considers the legal response to violence by battered women against their partner. The role of expert testimony about the battered woman syndrome and the dynamics of violent relationships (Walker) and the effects of jury instructions about psychological self-defense (Tomkins, Kenning, Greenwald, and Johnson) are discussed in this section. Part V presents a summary of the preceding chapters, along with an assessment of their contribution to current trends in intervention and evaluation of legal responses to wife assault (Roesch, Hart, and Wilson).

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