

TRIAL COURT FINDINGS OF FACT – SPOUSAL NOTIFICATION

Judge Daniel Huyett

Planned Parenthood of Southeastern Pennsylvania v. Casey

744 F.Supp. 1323
E.D.Pa. 1990.

***1359 (a) Spousal notice required.**--In order to further the Commonwealth's interest in promoting the integrity of the marital relationship and to protect a spouse's interests in having children within marriage and in protecting the prenatal life of that spouse's child, no physician shall perform an abortion on a married woman, except as provided in subsections (b) and (c), unless he or she has received a signed statement, which need not be notarized, from the woman upon whom the abortion is to be performed, that she has notified her spouse that she is about to undergo an abortion. The statement shall bear a notice that any false statement made therein is punishable by law.

(b) Exceptions.--The statement certifying that the notice required by subsection (a) has been given need not be furnished where the woman provides the physician a signed statement certifying at least one of the following:

- (1) Her spouse is not the father of the child.
- (2) Her spouse, after diligent effort, could not be located.
- (3) The pregnancy is a result of spousal sexual assault as described in section 3128 (relating to spousal sexual assault), which has been reported to a law enforcement agency having the requisite jurisdiction.
- (4) The woman has reason to believe that the furnishing of notice to her spouse is likely to result in the infliction of bodily injury upon her by her spouse or by another individual. Such statement need not be notarized, but shall bear a notice that any false statements made therein are punishable by law.

(c) Medical Emergency.--The requirements of subsection (a) shall not apply in the case of a medical emergency.

[18 Pa.Con.Stat. Ann. § 3206\(a\)--\(c\)](#). The husband notification provisions of this section are new to the Act.

268. "Spousal sexual assault" is defined as follows:

(a) Sexual assault.--A person commits a felony of the second degree when that person engages in sexual intercourse with that person's spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
- (3) who is unconscious.

(b) Involuntary spousal deviate sexual intercourse.--A person commits a felony of the second degree when that person engages in deviate sexual intercourse with that person's spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
- (3) who is unconscious. [18 Pa.Con.Stat. Ann. § 3128 \(1990 Supp.\)](#).

269. If the husband notification provisions of the Act were to go into effect, PaDOH has prepared a form to be filled out by married women seeking an abortion prior to performance of the procedure. This form reads as follows:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HEALTH
ABORTIONS: SPOUSAL NOTICE
CERTIFICATION REGARDING SPOUSAL NOTICE

I understand that as a married woman, I am required to notify my spouse of the fact that I am about to undergo an abortion, prior to obtaining such abortion, unless I am exempt from the notification requirements due to one of the reasons set forth below. Pursuant to this requirement, I hereby certify that:

CHECK APPROPRIATE BLANK(S)
I have notified my spouse that I am about to undergo an abortion.

I have not notified my spouse that I am about to undergo an abortion for the following reason(s):

- My spouse is not the father of the child.
- My spouse, after diligent effort, could not be located.
- The pregnancy is a result of spousal sexual assault which has been reported to a law enforcement agency having the requisite jurisdiction.
- I have reason to believe that the furnishing of notice to my spouse is likely to result in the infliction of bodily injury upon me by my spouse or by another individual.

I understand that any false statement made herein is punishable by law.

NOTICE: Signature/Date
ANY FALSE STATEMENT MADE HEREIN IS PUNISHABLE BY LAW.

**1360* [Trial Testimony of Dr. Potrzebowski, Vol. III at 111; Defendants' Exhibit 48].

270. Dr. Potrzebowski was unable to explain why the Commonwealth felt it necessary to include the warning against criminal penalties on the spousal notice twice. [Trial Testimony of Dr. Potrzebowski, Vol. II at 134-35].

271. The woman making a false statement under [section 3209](#) is subject to the penalties for a third degree misdemeanor. The physician is subject to license suspension or revocation and civil or criminal penalties for violation of this provision. See [18 Pa.Con.Stat. Ann. § 3209\(e\)](#).

272. ACOG has taken an official position against forced husband notification. [Trial Testimony of Dr. Allen, Vol. I at 66].

273. The vast majority of women consult their husbands prior to deciding to terminate their pregnancy. [Trial Testimony of Ms. Roselle, Vol. II at 67-68].

274. The requirement that a married woman notify her husband prior to having an abortion will cause delay in performance of the abortion procedure. Those women without full knowledge of the provisions of the Act will be required to make two visits to the abortion provider.

275. The Act does not define the term "after diligent effort" contained in [18 Pa.Con.Stat.Ann. § 3209\(b\)\(2\)](#).

276. The requirement that a woman make a "diligent effort" to locate her husband in order to comply with [section 3209](#) will delay compliance with [section 3209](#). [Trial Testimony of Dr. Walker, Vol. II at 46].

277. The criminal and civil penalties of [section 3209](#) will force physicians and counselors to interpret "diligent effort" in a narrow fashion in order to avoid civil and criminal liability, and to counsel the patient properly so that the patient would not be subject to criminal penalties. [Trial Testimony of Dr. Davidson, Vol. I at 34-35; Trial Testimony of Dr. Bolognese, Vol. I at 143-44].

278. [Section 3209\(b\)\(4\)](#) only permits a woman to claim an exception from husband notification when she has reason to believe she is in danger of the infliction of bodily injury upon her by her husband or by another individual.

279. The "bodily injury" exception could not be invoked by a married woman whose husband, if notified, would, in her reasonable belief, threaten to (1) publicize her intent to have an abortion to family, friends or acquaintances; (b) retaliate against her in future child custody or divorce proceedings; (c) inflict psychological intimidation or emotional harm upon her, her children or other persons; (d) inflict bodily harm on other persons such as children, family members or other loved ones; or (e) use his control over finances to deprive of necessary monies for herself or her children. [Trial Testimony of Dr. Walker, Vol. II at 23, 50].

280. Because of the difference in the definition of abuse, a woman protected from her husband by a restraining order pursuant to the Protection From Abuse Act **1361* or a child protected under the Juvenile Act and Child Protective Services Act may not fall within an exception to [section 3209\(b\)](#).

281. Studies reveal that family violence occurs in two million families in the United States. This figure, however, is a conservative one that substantially understates (because battering is usually not reported until it reaches life-threatening proportions) the actual number of families affected by domestic violence. [\[FN25\]](#) In fact, researchers estimate that one of every two women will be battered at some time in their life. [Trial Testimony of Dr. Walker, Vol. II at 12, 21].

[FN25](#). See also [Hodgson v. Minnesota, 497 U.S. 417, ---- n. 25, 110 S.Ct. 2926, 2939 n. 25, 111 L.Ed.2d 344 \(1990\)](#).

282. A wife may not elect to notify her husband of her intention to have an abortion for a variety of reasons, including the husband's illness, concern about her own health, the imminent failure of the marriage, or the husband's absolute opposition to the abortion. [Trial Testimony of Ms. Roselle, Vol. II at 69-70].

283. The required filing of the spousal consent form would require plaintiff-clinics to change their counseling procedures and force women to reveal their most intimate

decision-making on pain of criminal sanctions. The confidentiality of these revelations could not be guaranteed, since the woman's records are not immune from subpoena. [Trial Testimony of Ms. Roselle, Vol. II at 71-72].

284. Women of all class levels, educational backgrounds, and racial, ethnic and religious groups are battered. [Trial Testimony of Dr. Walker, Vol. II at 14].

285. Wife-battering or abuse can take on many physical and psychological forms. The nature and scope of the battering can cover a broad range of actions and be gruesome and torturous. [Trial Testimony of Dr. Walker, Vol. II at 15; Trial Testimony of Ms. Dillon, Vol. III at 147-48].

286. Married women, victims of battering, have been killed in Pennsylvania and throughout the United States. [Trial Testimony of Dr. Walker, Vol. II at 17, 22].

287. Battering can often involve a substantial amount of sexual abuse, including marital rape and sexual mutilation. [Trial Testimony of Dr. Walker, Vol. II at 12-14, 17; Trial Testimony of Ms. Dillon, Vol. III at 155-56].

288. In a domestic abuse situation, it is common for the battering husband to also abuse the children in an attempt to coerce the wife. [Trial Testimony of Dr. Walker, Vol. II at 12; Trial Testimony of Ms. Dillon, Vol. III at 151-52].

289. Mere notification of pregnancy is frequently a flashpoint for battering and violence within the family. The number of battering incidents is high during the pregnancy and often the worst abuse can be associated with pregnancy. [Trial Testimony of Dr. Walker, Vol. II at 41, 44; Trial Testimony of Ms. Dillon, Vol. III at 144]. The battering husband may deny parentage and use the pregnancy as an excuse for abuse. [Trial Testimony of Ms. Dillon, Vol. III at 144].

290. Secrecy typically shrouds abusive families. Family members are instructed not to tell anyone, especially police or doctors, about the abuse and violence. Battering husbands often threaten their wives or her children with further abuse if she tells an outsider of the violence and tells her that nobody will believe her. A battered woman, therefore, is highly unlikely to disclose the violence against her for fear of retaliation by the abuser. [Trial Testimony of Dr. Walker, Vol. II at 48; Trial Testimony of Ms. Dillon, Vol. III at 150-51, 160-62].

291. Even when confronted directly by medical personnel or other helping professionals, battered women often will not admit **1362* to the battering because they have not admitted to themselves that they are battered. [Trial Testimony of Dr. Walker, Vol. II at 13, 49].

292. Battered women are monitored very closely by their abusers. Battered women are often expected to explain any absence from the home or work. Therefore, the opportunities of battered women to disclose battering to others are few, if any. [Trial Testimony of Dr. Walker, Vol. II at 19, 43; Trial Testimony of Ms. Dillon, Vol. III at 157, 162-63].

293. Battered women would find it extremely difficult to get to an abortion clinic because of the problem of accounting for her time. A 24-hour waiting period would be especially harsh upon battered women, since she would have to make two trips to the clinic. [Trial Testimony of Dr. Walker, Vol. II at 57; Trial Testimony of Ms. Dillon, Vol. III at 157].

294. A woman in a shelter or safe house unknown to her husband is not "reasonably likely" to have bodily harm inflicted upon her by her batterer, however her attempt to

notify her husband pursuant to [section 3209](#) could accidentally disclose her whereabouts to her husband. Her fear of future ramifications would be realistic under the circumstances.

295. Marital rape is rarely discussed with others or reported to law enforcement authorities, and of those reported only few are prosecuted. [Trial Testimony of Dr. Walker, Vol. II at 23, 47, 48; Trial Testimony of Ms. Dillon, Vol. III at 154-55].

296. It is common for battered women to have sexual intercourse with their husbands to avoid being battered. While this type of coercive sexual activity would be spousal sexual assault as defined by the Act, many women may not consider it to be so and others would fear disbelief. [Trial Testimony of Dr. Walker, Vol. II at 22, 47-48, 55; Trial Testimony of Ms. Dillon, Vol. III at 155-56].

297. The marital rape exception to [section 3209](#) cannot be claimed by women who are victims of coercive sexual behavior other than penetration. The 90- day reporting requirement of the spousal sexual assault statute, [18 Pa.Con.Stat.Ann. § 3128\(c\)](#), further narrows the class of sexually abused wives who can claim the exception, since many of these women may be psychologically unable to discuss or report the rape for several years after the incident. [Trial Testimony of Dr. Walker, Vol. II at 13].

298. Because of the nature of the battering relationship, battered women are unlikely to avail themselves of the exceptions to [section 3209](#) of the Act, regardless of whether the section applies to them. [Trial Testimony of Dr. Walker, Vol. II at 46-49].

299. Battered women are often victims of psychological abuse, including verbal degradation, food and sleep deprivation, isolation and monitoring. This psychological abuse would fall within the definition of psychological torture utilized by Dr. Walker and Amnesty International. However, such abuse does not fall within any exception to the husband notification requirement in the Act. [Trial Testimony of Dr. Walker, Vol. II at 18-19].

300. Battered women who experience serious psychological abuse, who are sexually abused by a way not covered by the sexual assault statute, and who are fearful of the physical and sexual abuse of their children would not be covered by the exceptions to the Act. [Trial Testimony of Dr. Walker, Vol. II at 48- 50].

301. Physical and sexual abuse of children is an aspect of the battering relationship in over half of the cases studied by Dr. Walker. In addition, many batterers use economic coercion against women and children. [Trial Testimony of Dr. Walker, Vol. II at 20].

302. Many medical and surgical procedures, including, but not limited to, sterilization, prostate operations and chemotherapy, affect the capacity of males to have children within the marriage. The Commonwealth does not require that a husband **1363* notify his wife of his intent to obtain a vasectomy or other surgical procedure affecting his capacity to be a father. [Trial Testimony of Dr. Allen, Vol. I at 65]. Further the Commonwealth does not require a woman to notify her husband of other surgical procedures, such as a hysterectomy, which would affect her capacity to be a mother.

303. Women unable to reveal the battering or leave a battering relationship suffer from the psychological manifestations of battery called "battered women syndrome." Battered women syndrome is one form of Post-Traumatic Stress Disorder ("PTSD"), as defined in *The Diagnostic and Statistical Manual of Mental Disorders*, 3d edition (revised). [Trial Testimony of Dr. Walker, Vol. II at 30-31; Plaintiffs' Exhibit 89].

304. Among the psychological manifestations of PTSD in the case of battered women are "learned helplessness" and "the cycle of violence." [Trial Testimony of Dr. Walker, Vol. II at 24, 30-31].

305. Under the theory of learned helplessness, the battered woman develops a coping strategy, rather than an escaping mechanism, when she learns that her responses to the random and variable levels of abuse will not make a difference. [Trial Testimony of Dr. Walker, Vol. II at 24-30].

306. The battering ordinarily involves a three-phase recurring cycle of violence. First, there is a period of increasing tension in which the abusive behavior can be classified as mild or moderate on a scale of one to ten. This is followed by a period of acute battering during which the battering can attain life-threatening or endangering proportions. Lastly, the battering relationship enters into a period of "loving contrition." The final stage reinforces and perpetuates the violence and the relationship. [Trial Testimony of Dr. Walker, Vol. II at 30-34; Plaintiffs' Exhibit 88].

307. Due to learned helplessness and the cycle of violence, battered women deny and minimize the abuse in order to avoid the pain associated with discussing it. Most battered women do not have the psychological ability to avail themselves of the exceptions of [section 3209](#). [Trial Testimony of Dr. Walker, Vol. II at 40-41, 49].

308. A woman's personal perception of the consequences which will likely result from notifying her husband is likely to be accurate. [Trial Testimony of Dr. Walker, Vol. II at 45]. Forced husband notification would not improve communication within a battering relationship nor improve the marital integrity. Instead, it would foster negative and abusive communication and increase the likelihood that a woman would be seriously battered. Dr. Walker likened forced husband notification in a battering situation to providing the husband with a hammer with which he can beat his wife. [Trial Testimony of Dr. Walker, Vol. II at 44-46, 50].