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“Wife Beating” and “Uninvited Kisses” in the Supreme Court and Society in the Early Twentieth Century

By Elizabeth Katz¹

Abstract:

This paper challenges the conventional narrative that domestic violence victims were ignored by both law and society in the early 1900s. It begins by questioning the dominant position a single Supreme Court tort case, *Thompson v. Thompson*, holds in the domestic violence discourse. Far from being a strong or unified statement in favor of family privacy or against battered women’s legal rights, the case was decided by a four-Justice majority that pointed victims toward two very public alternative remedies: divorces with alimony and criminal prosecutions. The paper then proceeds to evaluate whether these proffered remedies were available and sufficient. It first concludes that divorce with alimony was a real option but suggests that social and legal impediments made divorce an inferior remedy as compared to tort. It then documents that wife beaters were charged and convicted in criminal courts but details perceived inadequacies of the criminal sanctions. It therefore concludes that the Justices must have been aware that their suggested remedies had shortcomings that could have been addressed by providing a third alternative: interspousal tort suits. The final part of this paper therefore addresses

¹ Law Clerk to the Honorable J. Frederick Motz, United States District Court for the District of Maryland. J.D. and M.A. in American Legal History, University of Virginia School of Law, May and August 2009. I am very grateful to the many mentors and friends who have helped me develop this paper. In particular, I would like to thank Kerry Abrams, who has offered guidance, suggestions, and support since the very beginning of this project. I am always thankful for the encouragement and advice of Risa Goluboff and Charles McCurdy. Several people provided insightful comments on earlier drafts, including Carolyn Ramsey, Kelly Phipps, Sam Ennis, Elliott Karr, and Philip Peisch. This paper has also benefitted from the thoughtful questions and critiques of participants at the Kathryn T. Preyer Panel at the annual meeting of the American Society for Legal History, in particular Susan Appleton, Sandra VanBurkleo, and David Konig, and during a panel at the annual meeting of the Association for the Study of Law, Culture, and the Humanities.

the question of why judges, knowing that divorce and criminal suits had shortcomings, nevertheless refused to allow tort suits. It argues that judges refused to allow interspousal torts for personal harms in part because they worried it would lead to tort suits for marital rape. Such an outcome was unacceptable because sex was seen a marital duty at the time and because awarding damages to wives for unwanted sexual intercourse would make marriage look uncomfortably similar to prostitution.

Introduction

“A fine or imprisonment will do such a brute as you are no good,” exclaimed Alderman D. A. McKelvey to defendant Louis Sambolia after hearing evidence against him in a Hazelton, Pennsylvania court in 1907. “I am going to give you the punishment you deserve.”² The infuriated judge seized Sambolia by the collar, dragged him outside the courthouse, stripped the clothing from his back, and handcuffed him to a post. Using a belt quickly provided by a bystander, the “young and strong” McKelvey vigorously flogged Sambolia until he fell to his knees and cried for mercy.³ Sambolia’s victim stood by with “evident satisfaction” as the crowd applauded the judge’s speedy approach to justice.⁴ The crime that prompted the judge to take justice into his own hands: wife beating.

² Wife Beater Whipped: Handcuffed to Post in Street and Publicly Chastised, *The Washington Post*, Aug. 3, 1907, p. 3

³ *Id.*; Alleged Wife Beater Flogged, Alderman Whips Man in Public—Cries for Mercy, *The Forth Worth Telegram*, Aug. 3, 1907, p. 1; Wife-Beater Given Severe Flogging, *Columbus Enquirer-Sun*, Aug. 6, 1907, p. 7; Publicly Flogged, *San Jose Mercury News*, published as *Sunday Mercury and Herald*, Aug. 4, 1907, p. 3; Judge Publicly Gave Flogging to Wife Beater, *The Macon Daily Telegraph*, Aug. 4, 1907, p. 11; Wife Beater Given a Flogging: Alderman at Hazelton, Pa., Administers Punishment to Brute in Public, *The Idaho Daily Statesman*, Aug. 4, 1907, p. 2; Speedy Justice, *San Jose Mercury News*, Aug. 12, 1907, p. 4. See also, Wife Beater Flogged: Squire McKelvey, of Hazleton, Welts Man for Cruelty, *The Philadelphia Inquirer*, Aug. 3, 1907, p. 9.

⁴ Whipping Post Used at Hazleton, *Wilkes-Barre Times*, Aug. 2, 1907, p. 5; Alderman Flogs Wife Beater, *Chicago Daily Tribune*, Aug. 4, 1907, p. 8; Brief Bits of News, *Aberdeen Daily News*, Aug. 5, 1907, p. 2; Alleged Wife Beater Flogged, *supra* note 3.

While this form of punishment was unusual, McKelvey's sentiment was common and widespread in the early 1900s. Across the country, in cities large and small, judges joined legislators and outspoken citizens in condemning wife beating in strong and unambiguous terms. Wife beaters were seen as "the meanest of cowards"⁵ and were sentenced to considerable fines and months or even years in prison.⁶ In some jurisdictions, legislators seriously considered the enactment of whipping post laws to punish these men,⁷ a development endorsed by President Theodore Roosevelt during his 1904 annual address to Congress.⁸ Newspapers approvingly covered the conviction and sentencing of wife beaters from all walks of life. For instance, the story of Sambolia's punishment was carried by papers across the nation,⁹ and in the words of one newspaper, "the incident gives a fair idea of the popularity of wife-beating in this country."¹⁰

The fact that wife beating was taken seriously at the beginning of the twentieth century may seem surprising in light of the conventional narrative that domestic violence was ignored or even protected during this time period.¹¹ This widely held view, however, is wrong. It is a misconception rooted in the limited sources that scholars have analyzed. Scholars who argue that domestic violence was permitted, or even shielded, by law and society in this time period rely heavily on *appellate-level* assault and battery *tort* cases.

⁵ See, e.g., \$17 Price of Wife Beating, *The Lexington Herald*, Aug. 31, 1910, p. 4. See also Cowardly. Women Beaten by Brutal Men: One Victim is Severely Hurt by Husband, *Los Angeles Times*, April 18, 1910, p. III.

⁶ See Section II.B., *infra*.

⁷ *Id.*

⁸ Theodore Roosevelt's Address to Congress, Dec. 6, 1904, available at <http://www.infoplease.com/t/hist/state-of-the-union/116.html>.

⁹ [No title], *Wilkes-Barre Times*, Aug. 6, 1907, p. 4 ("Squire McKelvey is attracting widespread attention by his application of the unwritten law on the back of a brutal wife-beater.").

¹⁰ Speedy Justice, *supra* note 3.

¹¹ See footnotes 11-14, *infra*.

These cases, while valuable, do not provide an accurate portrayal of the early 1900s attitude toward domestic violence generally.

For instance, one of the most common sources other scholars have used to support their claims is the 1910 case of *Thompson v. Thompson*, in which the United States Supreme Court construed a District of Columbia statute as not allowing a battered wife to sue her husband in tort.¹² Almost a century later, this case has come to stand for the proposition that the Supreme Court, the judiciary, or perhaps society in general did not consider domestic violence to be a significant issue at the turn of the century. Prominent scholars see the case as one of “the most forceful Supreme Court decisions sustaining the power of husbands over their wives well into the twentieth century.”¹³ More specifically, the case has been used as part of a narrative arguing that judges, wishing to “preserve authority relations between husband and wife” in a changing society, shifted their marital hierarchy rhetoric to language about marital harmony and privacy to preserve husbands’ “marital prerogatives” and “relations of domination.”¹⁴ The Court wished to continue husbands’ prerogative to beat their wives because “domestic violence was not regarded as

¹² For a detailed analysis of *Thompson* and the history of spousal tort immunity generally, see Carl Tobias, *Interspousal Tort Immunity in America*, 23 Ga. L. Rev. 359, 399-402, 408 (1989).

¹³ Linda K. Kerber, *No Constitutional Right To Be Ladies: Women and Obligations of Citizenship*, 380 n.5 (1998). See also Nancy F. Cott, *Public Vows: A History of Marriage and the Nation*, 162-63 (2000) (“The conservatism of this decision mirrored and intensified the previous ones. . . . [T]he court acted to preserve both marital unity and the husband’s dominance.”).

¹⁴ Reva B. Siegel, “The Rule of Love”: Wife Beating as Prerogative and Privacy, 105 Yale L.J. 2117, 2120, 2165-67 (1996). Siegel uses a broader range of primary sources in her article generally, but she uses tort cases for the section that corresponds to the time period discussed in this article. Siegel’s domestic violence thesis is routinely incorporated into the work of other scholars. See note X, *infra*. But see Jerome Nadelhaft, “The Public Gaze and the Prying Eye:” *The South and the Privacy Doctrine in Nineteenth-Century Wife Abuse Cases*, 14 *Cardozo J.L. & Gender* 549, 553-54 (2008) (“While Siegel’s lengthy article remains the most cogent and detailed explication of the idea [of privacy], a litany of agreement from legal scholars, historians, political scientists, and feminists—in overlapping groups—has emerged. All trace their ideas back to Siegel.” Siegel bases her conclusions on a number of assumptions, but “none of these assertions is accurate.”). And cf. Carolyn Ramsey, *Intimate Homicide: Gender and Crime Control, 1880-1920*, 77 *U. Colo. L. Rev.* 101, 101 (2006) (“This article dramatically revises feminist understanding of the legal history of public responses to intimate homicide by showing that . . . men accused of killing their intimates often received stern punishment, including the death penalty, whereas women charged with similar crimes were treated leniently.”).

a significant problem—the court considered the specter of ‘frivolous’ litigation to be far more serious—and society retained the attitude that the right to ‘discipline’ the wife was among men’s privileges in marriage.”¹⁵ In sum, *Thompson* has come to stand for the proposition that in the early 1900s the Supreme Court, both echoing and reinforcing public sentiment, placed men’s rights and “privacy” above wives’ physical safety.

By incorporating hundreds of additional primary sources, most of which have never before been cited by domestic violence scholars, a richer and more accurate portrayal of the treatment of domestic violence emerges. This revision is possible largely because of the increasing availability of online searchable historical databases. These databases allow scholars to conduct keyword searches of dozens of newspapers, law journals, and other print sources in a fraction of the time previously possible. It would have been nearly impossible to write this paper when the most influential domestic violence papers were first published.

The first part of this paper challenges the dominant position *Thompson* holds in the domestic violence discourse. Far from being a strong or unified statement in favor of family privacy or against battered women’s legal rights, the case was decided by a four-Justice majority that pointed victims toward two very public alternative remedies:

divorces with alimony and criminal prosecutions. Additionally, as newspaper articles,

¹⁵ Lucinda M. Finley, *A Break in the Silence: Including Women’s Issues in a Torts Course*, 1 *Yale J.L. & Feminism* 41, 46-47 (1989). See also, Marina Angel, *Criminal Law and Women: Giving the Abused Woman Who Kills A Jury of Her Peers Who Appreciate Trifles*, 33 *Am. Crim. L. Rev.* 229, 270-71, n.328 (1995) (citing Finley and Tobias for the proposition that the Court based its holding “on a strained anti-feminist interpretation” of the statute at issue). This view of *Thompson* has not been limited to academia. It has been incorporated into mainstream books and has even been cited in modern court cases. See, e.g., Katha Pollitt, *Virginity or Death!: And Other Social and Political Issues of Our Time* 35 (2006) (Pollitt cites Cott when she uses *Thompson* as her primary example of wife-beating being “treated lightly by the legal system under the rubric of marital privacy.”); *Brennan v. Orban*, 678 A.2d 667, 682 (N.J. 1996) (citing Siegel for the proposition that “Although most states had repudiated the right of ‘chastisement’ by the late nineteenth century, for many years courts were reluctant to accord affirmative relief to women beaten by their husbands.”).

law journals, and state supreme court decisions from the years after *Thompson* document, the three-Justice dissent that wished to add the tort remedy to those already available was widely preferred.

The second part of this paper evaluates whether the alternative remedies suggested by the majority Justices—divorce and criminal prosecutions—were available and sufficient. It first concludes that divorce with alimony was an available remedy for battered wives but suggests that the Justices were aware that social and legal impediments made divorce an inferior remedy as compared to tort. Second, it documents that wife beaters were in fact charged and convicted in criminal courts. Criminal penalties included fines, imprisonment, and even the whipping post. Although these remedies were available, however, they were often viewed as inadequate. Their value as deterrents was frequently questioned, and they indirectly punished the victims by taking family money to pay fines and depriving families of their primary breadwinner while the man served a jail sentence. This section therefore concludes that the Justices must have been aware that their proffered remedies had shortcomings that could have been addressed by providing a third alternative: interspousal tort suits.

The third part of this paper addresses the question of why judges, knowing that divorce and criminal suits had shortcomings, nevertheless refused to allow interspousal civil suits. It concludes that judges refused to allow interspousal torts for personal harms in part because they worried it would lead to tort suits for marital rape, or what was sometimes euphemistically called “uninvited kisses.” Such an outcome was unacceptable because sex was seen a marital duty at the time and because awarding damages to wives

for unwanted sexual intercourse would make marriage look uncomfortably similar to prostitution.

Although this analysis cuts against the traditional feminist narrative, this paper does not mean to suggest that gender stereotypes or patriarchal views about women's roles were irrelevant. To the contrary, wife beaters were vilified in large part because they failed to fulfill the duties of a good husband and violated society's expectations for male behavior. The same sex role expectations made marital rape relatively palatable. Marital sex was perceived to be a husband's right and a wife's obligation, so marital rape did not clearly run counter to society's gender expectations.

I. The Case: Thompson v. Thompson

A. The Lower Court Decision

In June of 1908, the Court of Appeals of the District of Columbia held that Mrs. Jessie Thompson could not maintain a cause of action against her husband, Mr. Charles Thompson, for assault and battery.¹⁶ Although D.C.'s Married Women's Act allowed married women to sue "for torts committed against them, as fully and freely as if they were unmarried," the court determined that Congress had not intended the legislation to allow wives to sue their husbands for personal torts. Rather, the purpose of the act, like legislation passed in many other states, was "to further and promote the property rights of married women, but not to interfere with or undermine conjugal relations."¹⁷ The court continued, "In our desire to accord to woman every right to which she is entitled, let us not undermine the basis of society by disregarding the sanctity of the home." Allowing

¹⁶ Thompson v. Thompson, 21 App. D.C. 557 (App. D.C. 1908).

¹⁷ *Id.*

such an action “would be radically to depart from the rule of the common law” and would contravene public policy.¹⁸

B. The Supreme Court Opinions¹⁹

In 1910 the United States Supreme Court, sitting as the highest court in D.C., affirmed the lower court’s decision.²⁰ Justice Day, writing for a four-Justice majority, asserted that it was “obvious from a reading of the statute in light of the purpose sought to be accomplished” that Congress only intended to give married women “the right to sue *separately* [from their husbands] for redress of wrongs,” not to give them a right of action *against* their husbands.²¹ The majority worried that the contrary construction of the statute would “open the doors of the courts to accusations of all sorts of one spouse against the other.”²² They continued, “Whether the exercise of such jurisdiction would be promotive of the public welfare and domestic harmony is at least a debatable question.”²³ If Congress intended to alter the common law in such a “radical and far-reaching” manner, it should do so “by language so clear and plain as to be unmistakable.”²⁴ Furthermore, the Court noted that the wife was not left without a remedy. She could use the criminal courts to obtain punishment for her husband. She could also sue for divorce or separation with alimony, and the court presiding over her divorce suit could “consider, and, so far as possible, redress her wrongs and protect her

¹⁸ *Id.*

¹⁹ It is worth noting that Mrs. Thompson, like many other women in similar situations, was unable to afford lawyers of the same quality as secured by her husband. Mr. Thompson’s team of four lawyers appeared before the Supreme Court at least a dozen times in addition to the Thompson cases, whereas Mrs. Thompson’s sole attorney never appeared before the Court for any other client. See Westlaw search.

²⁰ Thompson v. Thompson, 218 U.S. 611 (1910).

²¹ *Id.* at 616-17.

²² *Id.* at 617.

²³ *Id.* at 618.

²⁴ *Id.*

rights.” The chancery courts were available to protect her separate property.²⁵ The lower court’s decision was therefore affirmed.

Justice Harlan, joined by Justices Holmes and Hughes, dissented.²⁶ Justice Harlan first supplemented the basic facts provided by the majority. He added that the seven alleged assaults happened on different days and emphasized that several assaults occurred while Mrs. Thompson was pregnant, “as the husband then well knew.”²⁷ After presenting the text of the statute, Harlan determined that Congressional intent to allow such suits was “plainly-expressed.” In fact, the words of Congress were “so explicit” that there was not “any room whatever for mere construction.” Parsing the statutory language sentence by sentence, the dissent maintained that Congress made “[n]o exception [to married women’s ability to sue] . . . in reference to the husband.” Under the majority’s approach, Congress “is put in the anomalous position of allowing a married woman to sue her husband separately, in tort, for the recovery of her property, but denying her the right or privilege to sue him separately, in tort, for damages arising from his brutal assaults upon her person.” Noting that “with the policy, wisdom, or justice of the legislation in question this court can have no rightful concern,” the dissent concluded that the majority’s opinion would “defeat the clearly expressed will of the legislature.”²⁸

C. Public Reaction to *Thompson*

The majority’s holding was far from surprising given that every previous state supreme court faced with the same question had refused to allow such suits.²⁹ The Yale

²⁵ *Id.* at 619.

²⁶ *Thompson*, 218 U.S. at 619 (Justice Harlan dissenting).

²⁷ *Id.* at 620.

²⁸ *Id.* at 621-24.

²⁹ Elizabeth Katz, Note, How Automobile Accidents Stalled the Development of Interspousal Liability, 94 *Va. L. Rev.* 1213, 1224-29 (2008).

Law Journal noted that the case “represents the steady trend of American authority” even though “there have been some expressions of disapproval even when applying it.”³⁰ The unprecedented opinion came from the dissent, which quickly received praise from mainstream newspapers, legal journals, and other courts as the correct approach.

Newspapers began discussing the case immediately after it was argued. Papers across the country described the question presented to the Court in graphic terms: “If a husband beats his wife until she is bruised and bleeding, or even crippled for life, should she be allowed to sue him for damages, or would such suits violate the sanctity of the home and tend to break up civilization?”³¹ Although the decision would only be binding in the District of Columbia, as one newspaper explained, “states having similar laws, such as New York, Maine, Pennsylvania, Illinois, Michigan, Minnesota, and Iowa, will be concerned in the outcome of the suit.”³²

³⁰ Comment, Can a Married Woman Maintain an Action of Tort Against Her Husband for a Tort Committed During Coverture, 22 Yale L.J. 250, 251 (1913) (hereinafter “Can A Married Woman?”).

³¹ The question was phrased almost identically by many newspapers. See, e.g., Wife’s Rights in Court: Supreme Tribunal to Decide if Husbands Can Be Sued for Assault, The Washington Post, Oct. 28, 1910, p. 2; If Husband Beats Wife: Can She Sue Him for Damages?—Supreme Court to Decide, New-York Daily Tribune, Oct. 28, 1910, p. 4 (hereinafter “Supreme Court to Decide”); Must Husband Pay?: Suit May Decide if Abused Wife Can Collect Damages, The Times Dispatch, Oct. 28, 1910; Sues Husband for Damages: Supreme Court Must Decide If Wife Can Sue for Compensation for Assault, New York Times, Oct. 28, 1910, p. 6; Supreme Court to Pass Upon the Question of Wife-Beating: Whether a Wife Shall Be Allowed to Sue Her Husband for the Injuries Received at His Hands Forms the Issue Put Up for First Time to the Highest Tribunal in the Land, Charlotte Daily Observer, Oct. 28, 1910, p. 1; May Beaten Wife Sue Husband for Damages?: Do Such Suits Violate Sanctity of Home? This is the Question Now Before the U.S. Supreme Court, The Macon Daily Telegraph, Oct. 28, 1910, p. 13; Question up to Supreme Court: Should Wife Beaten by Husband Be Allowed to Sue Him for Damages?, The Duluth News Tribune, Oct. 29, 1910, p. 15; Beaten Wife Asked \$70,000: Supreme Court Passes on First Case of Kind in Its Annals, The Columbus Enquirer-Sun, Oct. 30, 1910, p. 2; May A Husband Be a Brute?: Court to Pass on Wife’s Right to College Damages for Inhuman Treatment by Man, The State, Oct. 28, 1910, p. 1. The Bellingham Herald phrased the issue differently: “Whether wife may sue a husband for damages for injuries received in domestic encounters is to be determined by the supreme court of the United States.” Legal to Beat Your Wife?: Lower Court Says So: Now Up to U.S. Supreme Tribunal, The Bellingham Herald, Nov. 1, 1910, p. 12; Question Up to Supreme Court: Should Wife Beaten by Husband Allowed to Sue Him for Damages?, The Duluth News Tribune, Oct. 29, 1910, p. 15 (also noting, “The nature of the alleged assaults and injuries were never brought out in open court, because before the suit came to trial, the court had given judgment in favor of the accused, on the plea that at the time of the alleged assault the parties were husband and wife.”).

³² Supreme Court to Decide, *supra* note X.

About a month before the Court released its decision, The Washington Post, among others, devoted considerable coverage to the “World-Old Problem.”³³ “Attention wives!” one article began, “[t]here is now before the United States Supreme Court a case that is of vital importance to every one of you A wife has appealed to the highest tribunal in the land to know if her husband has a right to beat her.” Although “[t]o the layman, and especially to the laywoman, it would seem that the woman might confidently expect a favorable decision,” precedent from other jurisdictions suggests “she may not succeed.” After noting that “it is not so very long ago that it was considered perfectly right and proper for a husband to beat his wife whenever he happened to think she needed it,” the author continued, “In these days, when women are really privileged beings, having many legal rights that men have not, it is really amazing to look back a few years and see in what abject slavery a woman placed herself when she was wedded.” Women’s rights had changed so drastically from the English common law to the Married Women’s Acts that “[t]he difference between her condition and that of the wife of a century ago is difficult for the woman of today to understand.” While before she was routinely discriminated against, “[n]ow the tendency of the law is to favor her.” Given this trend in the law and the fact that the Supreme Court need not follow precedent, “it is possible that it may, in its wisdom, take another step forward and declare that a woman has a right to sue her husband for damages.”³⁴

After that possibility failed to materialize, The Washington Post article covering the decision was incredulous. “Curiously,” the author began, “it is the alleged wife-

³³ “May a Man Bear His Wife? U.S. Supreme Court to Rule: Washington Woman Asks Solution of World-Old Problem in Suit for Damages for Cruelty—From Early Ages Queer Laws Permitted the Husband to Chastise His Spouse,” The Washington Post, Nov. 14, 1910, p. 8.

³⁴ *Id.* A nearly identical article was published in The Idaho Daily Statesman. Beat His Wife? The Question Now Before U.S. Supreme Court, The Idaho Daily Statesman, Nov. 20, 1910, p. 1 of third section.

beater who makes the first successful stand against the latter-day tendency of lawmakers to enter the house and revolutionize the relations between husband and wife.”³⁵ The author found it “worthy of note” that the Congressional act “tending to promote family division has a similar effect on the United States Supreme Court, which is a house divided against itself.” Explaining further, the article observes, “it is most unusual for the dissenting members of the court to go so far as to say that the majority decision ‘defeats the clear will of Congress,’ and that the court virtually adds to the law as it was passed.” Finally, the article suggests, perhaps “it has come back to the normal point of view that the whipping post is a better institution than the action for damages or alimony.”³⁶

Law journals were similarly critical of the majority’s holding.³⁷ According to a representative article in the Yale Law Journal, the Court “maintained the common law in the teeth of the words of the statute, because they consider it better public policy.” The minority view “that it is in the province of the legislature to determine the question, is the sounder.”³⁸ The writer then posed a question for readers: “Is [allowing interspousal torts] enough against public policy and the modern conception of the marital relation to justify

³⁵ A District Cause Celebre, *The Washington Post*, Dec. 14, 1910, p. 6.

³⁶ *Id.* Other newspapers merely summarized the opinions, suggesting they believed the story would be of interest to their readers. See, e.g., *Wife Can’t Sue Husband: Supreme Court Decides Against Woman in Action for Assault*, *New-York Daily Tribune*, Dec. 13, 1910, p.4; *Wife Cannot Sue Hubby for Assault: Can’t Let the Bars Down, Is Decision In Supreme Court*, *The Washington Times*, Dec. 12, 1910, p. 7; *Wife Cannot Sue Hubby for Assault: Can’t Let the Bars Down is Decision in U.S. Supreme Court*, *The Macon Daily Telegraph*, Dec. 18, 1910, p. 8; *Can’t Sue a Wife Beater: United States Supreme Court Decides Woman Cannot Ask Damages from Irate Husband*, *Bellefonte News-Democrat*, Dec. 14, 1910, p. 6; *Court Says a Man Can Beat His Wife*, *San Jose Mercury News*, published as *The Evening News*, Jan. 7, 1911, p. 4.

³⁷ Case Comment, *Husband and Wife—Domestic Relations—Torts—Right of One Spouse to Sue the Other in Tort*, 11 *Minn. L. Rev.* 79, 80 (1926). Modern scholarship also suggests that Justice Day construed the statute contrary to its plain meaning. See, e.g., Alexander Bickel, *The Judiciary and Responsible Government, 1910-21*, in *The Oliver Wendell Holmes Devises: History of the Supreme of the United States*, Volume IX, Part 1, 66, 315 (1984) (citing the case as an example of Day’s conservatism, in contrast to his general reputation for being progressive); Rebecca S. Shoemaker, *The White Court: Justices, Rulings, and Legacy* 60 (2004) (suggesting that the decision shows Justice Day’s “conservative streak” in some social legislation).

³⁸ *Can a Married Woman? supra* note X, at 255. But see *Right of Wife Under Enabling Act to Sue Her Husband for a Tort*, 72 *Central L.J.* 75, 76 (1910) (finding the majority view more persuasive).

the Court in contravening the plain words of the statute?”³⁹ Another journal was more explicitly critical, observing that the “decision leaves the law in a curious condition” in which the wife has a right to sue her husband regarding her separate property, “[b]ut her person—certainly more sacred and worthy of the care of the law—remains as it was at common law, absolutely the husband’s.”⁴⁰ Finding this result preposterous, the journal continued, “We wonder if the Court approves the doctrine . . . that a husband had the right to moderate chastisement.” It concluded that the legislators who drafted the “broad” statute “never contemplated the construction of the act now placed upon it” by the Court.⁴¹ About a decade later, scholars would point to the dissenting opinion as “[t]he first intimation that the tide was starting to turn” toward allowing the suits.⁴²

State supreme courts also were largely unconvinced by Justice Day’s opinion. For the remainder of the decade, most state supreme courts hearing the issue as a matter of first impression sided with the dissent.⁴³ The Supreme Court of Oklahoma wrote that it was “impelled to say that the philosophy of this great jurist [Justice Harlan] appeals to us with more force and soundness and impresses us as more in harmony with the modern legislative intent.”⁴⁴ In contrast, the majority opinion in *Thompson* was one of “[m]any

³⁹ Can a Married Woman? *supra* note X, at 255. See also, Husband and Wife—Privileges and Disabilities of Coverture—Strict Construction of Statute Giving Separate Rights, 24 Harv. L. Rev. 403, 403-04 (1910).

⁴⁰ Liability of the Husband to the Wife for an Assault Upon Her, 16 Va. L. Reg. 856, 857 (1911).

⁴¹ *Id.*

⁴² Comment, Actions for Personal Tort by Wife Against Husband and Child Against Parent, 32 Yale L.J. 315, 317 (1923).

⁴³ Courts siding with the dissent: *Brown v. Brown*, 89 A. 889 (Conn. 1914); *Fiedeer v. Fiedeer*, 140 P. 1022 (Okla. 1914); *Gilman v. Gilman*, 95 A. 657 (N.H. 1915); *Fitzpatrick v. Owens*, 186 S.W. 832 (Ark. 1916); *Johnson v. Johnson*, 77 So. 335 (Ala. 1917); *Prosser v. Prosser*, 102 S.E. 787 (S.C. 1920); *Crowell v. Crowell*, 105 S.E. 206 (N.C. 1920).

Courts siding with the majority: *Schultz v. Christopher*, 118 P. 629 (Wash. 1911); *Rogers v. Rogers*, 177 S.W. 382 (Mo. 1915); *Lillienkamp v. Rippetoe*, 179 S.W. 628 (Tenn. 1915); *Keister’s Adm’r v. Keister’s Ex’rs*, 96 S.E. 315 (Va. 1918).

See also *Doe v. Doe*, 712 A.2d 132, 144 (Md. App. 1998) (“Numerous courts have followed a dissenting opinion of Mr. Justice Harlan in *Thompson v. Thompson*.”).

⁴⁴ *Fiedeer*, 140 P. at 1025; see also *Crowell*, 105 S.E. at 211 (Brown & Allen concurring).

carefully reasoned *though we cannot say well reasoned*” cases that refused to recognize interspousal suits. Modern legislatures had acted in vain when they “attempted to break away from the common-law rule and to put the courts out of hearing of the still lingering echoes of barbaric days.”⁴⁵ Another court suggested that Justice Day’s opinion showed “the tendency of the [Supreme C]ourt, at least at that time” to restrict statutes enlarging women’s rights as much as possible and “place too narrow restrictions upon the manifest designs of the lawmakers.”⁴⁶

Moreover, even those courts following the majority approach often seemed critical of the majority opinion. For example, in the first case heard after *Thompson*, the Supreme Court of Washington explained that Justice Harlan’s dissent was based on a “special provision” unique to the D.C. statute. The Washington court was justified, therefore, in following the majority’s approach even though the dissent was better reasoned.⁴⁷ Similarly, a judge dissenting from the Arkansas Supreme Court’s decision to allow interspousal tort suits argued that his court’s decision to rely on Justice Harlan’s opinion was mistaken because Harlan’s decision was based on the D.C. statute’s “special provision.”⁴⁸

Most of the criticism and analysis, however, was not statutory; other courts did not find the Supreme Court’s public policy rationales remotely persuasive.⁴⁹ One of the most common critiques of Justice Day’s opinion was that it was nonsensical to disallow

⁴⁵ Fiedeer, 140 P. at 1023.

⁴⁶ Fitzpatrick, 186 S.W. at 834.

⁴⁷ Schultz, 118 P. at 630. Other cases following the majority approach cited *Thompson* without discussing it. See, Rogers, 177 S.W. at 384; Lillienkamp, 179 S.W. at 628.

⁴⁸ Fitzpatrick v. Owens, 187 S.W. 460, 460 (1916) (Hart, dissenting). But see Keister’s Adm’r, 96 S.E. at 319 (“With the utmost respect for the learned judge who delivered such dissenting opinion and the two learned judges who concurred therein, we are of opinion that upon principle, apart from its authority, the opinion of the majority of the Supreme Court in the case is sustained by the better reasoning.”).

⁴⁹ This criticism can also be found in law journals. See, e.g. Casenote, Husband and Wife—Right of Wife to Sue Husband for Assault and Battery, 27 Yale L.J. 1081 (1918).

interspousal tort suits on the basis of privacy and marital harmony while at the same time encouraging public divorce and criminal suits as alternative remedies.⁵⁰ The Supreme Court of Connecticut, the first to allow the suits, determined that “[t]he danger that domestic tranquility will be disturbed” if the suits were allowed “is not serious.” Obviously the parties would not bring suit unless domestic tranquility was already destroyed.⁵¹ The Supreme Court of North Carolina queried, “if the unity does not prevent an indictment why should it prevent a civil action?”⁵² The Supreme Court of Oklahoma wrote, “We fail to comprehend wherein public policy sustains a greater injury by allowing a wife compensation for being disabled for life by the brutal assault of a man with whom she has been unfortunately linked for life than it would be to allow her to go into a criminal court and prosecute him and send him to the penitentiary for such assault.” It continued, “Nor are we able to perceive wherein the sensitive nerves of society are worse jarred by such a proceeding than it would be to allow the parties to go into a divorce court and lay bare every act of their marriage relation in order to obtain alimony.”⁵³

Marital harmony and privacy simply could not justify the denial of interspousal torts given the availability of divorce and criminal prosecutions to address the same

⁵⁰ Fiedeer, 140 P. at 1023; Johnson, 77 So. at 338.

⁵¹ Brown, 89 A. at 891-92.

⁵² Crowell, 105 S.E. at 209.

⁵³ Fiedeer, 140 P. at 1023-24. It was well known that divorce and custody actions, regardless of their ultimate success, frequently involved graphic testimony and were covered by mainstream newspapers. See, e.g., Sued by Fifth Wife: Hotel Keeper Quarreled with Her Over Cost of Her Wine, *The New York Times*, Jan. 22, 1908, p. 2; Mother’s Petition: Sensational Charge Against Former Husband for Son’s Sake, *Morning Olympian*, May 24, 1905, p. 1; Study in Scarlet; A Sermon on Sin, *Chicago Daily Tribune*, Aug. 13, 1905, p. 1. For an example of how much “private” information was revealed during divorce proceedings, see generally Naomi Cahn, *Faithless Wives and Lazy Husbands: Gender Norms in Nineteenth-Century Divorce-Law*, 2002 U. Ill. L. Rev. 651 (2002). Relatedly, for discussion of the “private” information women were frequently forced to reveal in courts, see Julia Simon-Kerr, *Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment*, 117 *Yale L.J.* 1854 (2008).

behavior. Distinguishing between marital torts and other interspousal actions by offering a privacy justification was blatantly inconsistent.

II. Available Remedies for Domestic Violence Victims

The state supreme courts' criticism of the *Thompson* decision was not limited to the observation that forbidding interspousal torts did little to preserve privacy and marital harmony in a world with divorce and criminal prosecutions. Courts also suggested that divorce proceedings and criminal law were insufficient remedies.⁵⁴ The following section evaluates the extent to which these critiques were valid.⁵⁵ It shows that while divorce became easier and more common during the *Thompson* time period, there were nevertheless social and legal impediments that deterred or prevented some women from obtaining a divorce. It then documents that criminal charges and sentences were a real possibility for alleged wife beaters. These criminal punishments, however, provided no direct recovery to the victims, even depriving them of money in many cases. Given these realities, the Justices were reasonable in believing that their suggested remedies were available but must also have recognized that divorce and criminal law had shortcomings as compared to tort.⁵⁶

A. Divorce or Separation with Alimony

According to the *Thompson* Court, Mrs. Thompson was not without remedies in large part because “the perpetration of such atrocious wrongs affords adequate grounds

⁵⁴ See, e.g., Johnson, 77 So. At 338; Crowell, 105 S.E. at 209.

⁵⁵ It is worth noting that the availability of the remedies likely varied significantly by state.

⁵⁶ At least one scholar argues that the Court did not believe these remedies were available or adequate. See Emily J. Sack, The Domestic Relations Exception, Domestic Violence, and Equal Access to Federal Courts, 84 Wash. U. L. Rev. 1441, 1500 (2006) (“Again, the ‘so far as possible’ language [in *Thompson*] reveals that the Court itself is not convinced that its own suggested remedy would be feasible. . . . None of the remedies suggested by the Court, to the extent they were even accessible by a married woman, came close to providing an adequate substitute for a tort action against an abusive husband, from which the Court had barred her.”).

for relief under the statutes of divorce and alimony.”⁵⁷ As this section will detail, divorce was very likely an available option for women in Mrs. Thompson’s situation.⁵⁸ States allowed spouses to end their marriage on grounds such as “adultery, cruelty, desertion, drunkenness, imprisonment or conviction of crime, and neglect to provide for the wife.”⁵⁹ Just like other appellate courts around the country,⁶⁰ the Supreme Court had approved divorce on cruelty grounds. For example, just two years before *Thompson*, it affirmed a divorce for cruelty that awarded the woman alimony, attorney’s fees, and child custody.⁶¹ Despite the technical availability of divorce, however, it was widely known that obtaining a divorce was not an easy route for both social and procedural reasons. As an article in the *Chicago Daily Tribune* observed, “The wife can get a divorce in most states by asking for it, but where she is dependent on her husband she dislikes to do it.”⁶² Furthermore, a wife willing to go through with the divorce proceedings could be blocked by complex legal issues. In fact, when Mrs. Thompson did ultimately seek a divorce with alimony

⁵⁷ *Thompson*, 218 U.S. at 618.

⁵⁸ See generally, Comment, What Constitutes Cruel and Inhuman Treatment, 20 *Yale L. J.* 581 (1911). For two examples of women securing divorces because of their husbands’ physical abuse, see *Wife’s English Bar: Husband Chastises Her*, *Los Angeles Times*, Dec. 25, 1908, p. II2.

⁵⁹ George James Bayles, *American Women’s Legal Status*, in the *Household Library*, Vol. IV, 60 (1905); see also Lawrence M. Friedman, *A History of American Law 377-80* (2005; 3d edition) (hereinafter “*A History*”); Lawrence M. Friedman, *A Dead Language: Divorce Law and Practice Before No-Fault*, 86 *Va. L. Rev.* 1497, 1501-02 (2000).

⁶⁰ For examples of appellate courts affirming divorce decrees granted to women who had suffered physical abuse, see, e.g., *Rolfson v. Rolfson*, 115 S.W. 213 (Ky. App. 1909); *Jones v. Jones*, 91 S.E. 960, 964 (N.C. 1917); *Aylor v. Aylor*, 186 S.W. 1068, 1069, 1072 (Mo. 1916); *Barginde v. Barginde*, 1914 WL 2896 (Ill. App. 1914); *Doose v. Doose*, 1916 WL 1939 (Ill. App. 1916); *Bethel v. Bethel*, 164 S.W. 682 (Mo. App. 1914); *Drake v. Drake*, 131 N.W. 294 (S.D. 1907); *Coito v. Coito*, 21 Haw. 399 (Haw. Terr. 1912); *Milashwskis v. Milashwskis*, 1908 WL 1670 (Ill. App. 1908); *Costell v. Costell*, 60 A. 49 (N.J. Ch. 1905); *Westphal v. Westphal*, 83 N.W. 988 (Minn. 1900). For examples of appellate courts reversing lower courts’ denial of divorce decrees for abused women, see, e.g., *Sharp v. Sharp*, 66 A. 463 (Md. 1907); *Guerin v. Guerin*, 88 P. 928 (Wash. 1907) (involving custody dispute); *Martensen v. Martensen*, 186 S.W. 581 (Mo. App. 1916).

⁶¹ *Bennett v. Bennett*, 208 U.S. 505 (1908) (exercising appellate review over the Supreme Court of the Territory of Oklahoma).

⁶² *The Wife Beater*, *Chicago Daily Tribune*, Feb. 6, 1906, p. 8.

from her husband a few years after the failed tort suit, the Supreme Court denied her action by giving full faith and credit to a judgment previously secured by her husband.⁶³

The decades surrounding *Thompson* were a crucial period for divorce and the American family. Since the mid-nineteenth century, the divorce rate had been steadily increasing.⁶⁴ In 1889, the United States government published a report that included statistics showing that America had the highest divorce rate in the world. These newly available statistics spurred public debate and created “a crisis-like atmosphere” among some groups and in the public at large.⁶⁵ An address delivered to a Bar Association in 1906 warned that the “exceedingly dangerous divorce evil . . . casts its shadow on every community.”⁶⁶ By 1915, one author suggested that “[p]erhaps the characteristic of the twentieth-century family that most sharply challenges the attention of the student of family history is its instability.”⁶⁷ Divorce appeared relatively easy, given that courts granted seventy-five percent of petitions.⁶⁸ The fact that two thirds of divorce petitions were filed by wives suggested that women, gaining increasing equality with men, “do not hesitate to seek a separation from obnoxious husbands.”⁶⁹

⁶³ See X, *infra*.

⁶⁴ William L. O’Neill, *Divorce in the Progressive Era* 1, 47 (1967); Roderick Phillips, *Untying the Knot: A Short History of Divorce* 185 (1991).

⁶⁵ Ronald L. Howard, *A Social History of American Family Sociology, 1865-1940*, 39, 43 (1981); O’Neill, *supra* note X, at 34; Felix Adler, *Marriage and Divorce* 4-5 (1905). See also Laura L. Lovett, *Pronatalism, Reproduction, and the Family in the United States, 1890-1938*, 7 (2007).

⁶⁶ C. LaRue Munson, *The Divorce Congress and Suggested Improvements in the Statutory Law Relating to Divorce. An Address delivered before the Dauphin County Bar Association, March 9, 1906*. Published by the Press of the Gazette and Bulletin, 1906. P. 1.

⁶⁷ Willystine Goodsell, *A History of the Family as a Social and Educational Institution* 456 (1915). For similar statements, see, e.g., James Quayle Dealey, *The Family in Its Sociological Aspects* 99-100 (1912); Ellen Key, *Love and Ethics* (1911); Havelock Ellis, *The Task of Social Hygiene* (1913); J.R. Miller, *The Home Beautiful* (1912); Sally B. Hamner, *One and One Are One* (1907); Henry T. Finck, *Romantic Love and Personal Beauty: Their Development, Casual Relations, Historical and National Peculiarities* (1912); *Quiet Talks of Home Ideals*, S.D. Gordon and Mary Kilgore Gordon (1909).

⁶⁸ Dealey, *supra* note X, at 101-04. Desertion was the popular ground for divorce, comprising 38.5 percent, with cruelty being the second most common at 23.5 percent. Note, however, that the proffered causes may not have been accurate; divorce for desertion was rarely challenged. *Id.*

⁶⁹ *Id.*; see also O’Neill, *supra* note X, at 62; *A History*, *supra* note X, at 377-80.

Divorce was not only worrisome on moral or social grounds. The law regulating divorce, according to a 1905 book about American women's legal status, was in a "deplorable condition" because of inconsistency among the states and "constitutes a grave danger to the family of the American people."⁷⁰ As a result, fifty-five marriage-related amendments to the United States Constitution were proposed in the 1900s and 1910s, attempting to regulate both who could marry and how they could marry.⁷¹ The variation was so troubling that a Divorce Congress, which met in D.C. in February 1906, drew "distinguished" delegates from forty-two states and D.C.⁷² Issues surrounding divorce were contentious enough that the duty of a father to support his minor children after divorce was used as the Yale Moot Court topic in 1912, with a sample brief subsequently published in the Yale Law Journal.⁷³ Variation among the states was the most pressing problem.⁷⁴ Many people worried that spouses were using the lack of uniformity to their advantage by temporarily leaving a domicile with restrictive divorce laws to obtain a divorce in a more liberal state. These "migratory divorces" posed serious and complicated questions such as the necessary notice for personal jurisdiction and the divorce decrees' validity under the full faith and credit clause. These issues received significant attention in legal treatises⁷⁵ and law reviews,⁷⁶ because the area was a "tangled and formalistic mess."⁷⁷

⁷⁰ Bayles, *supra* note X, at 7-8.

⁷¹ Edward Stein, Past and Present Proposed Amendments to the United States Constitution Regarding Marriage, 82 Wash. U. L.Q. 611, 627 (2004).

⁷² Divorce Congress Plans: Will Meet in Washington on Feb. 19 to Organize Permanently, The New York Times, Feb. 11, 1906, p. 2-5.

⁷³ Comment, Father's Duty After Divorce to Support Children in Custody of Mother, 21 Yale L.J. 397 (1912).

⁷⁴ Ernst Freund, Unifying Tendencies in American Legislation, 22 Yale L.J. 96, 107 (1912); A History, *supra* note X, at 577-78.

⁷⁵ See, e.g., Edward W. Spencer, A Treatise on the Law of Domestic Relations 83- 89, 308-24 (1913).

The Supreme Court heard many cases involving divorce before *Thompson* and consequently was well aware of the legal complications.⁷⁸ For example, the application of the full faith and credit clause to migratory divorce judgments first appeared on the Court's docket in 1858⁷⁹ and frequently reappeared.⁸⁰ In the most famous case of this type, *Haddock v. Haddock*, the Justices held 5-4 that under the full faith and credit clause a state did not have to give effect to a divorce decree issued by a court in another state that lacked personal jurisdiction over one of the spouses. Thus, a wife in New York was able to obtain a divorce with alimony in a New York court despite her husband's belief that he had successfully divorced her in Connecticut over a decade earlier. The decision problematically left the divorce at issue valid in one state but invalid in another.⁸¹

The holding in *Haddock* became significant to the Thompsons before the Supreme Court even heard the appeal in their tort suit. In the summer of 1907, Mr. and Mrs. Thompson filed divorce suits in different jurisdictions within days of each other.

⁷⁶ See, e.g., Recent Cases, Divorce—Jurisdiction—Domicile of Defendant, 11 Yale L.J. 264 (1902); Comment, Jurisdiction in Divorce Proceedings, 12 Yale L.J. 385 (1903); Comment, Divorce: Scope of Full Faith and Credit Clause of the Federal Constitution, 15 Yale L.J. 426 (1906); Comment, Injunctions to Restrain Divorce Actions in Other States, 19 Yale L. J. 193 (1910); F.L. McC, Jurisdiction in Divorce—Full Faith and Credit as Regards a Prior Suit, 26 Yale L.J. 319 (1917). The debate continued for decades. See, e.g., Casenote, Constitutional Law—Full Faith and Credit—Injunction Against Foreign Suit, 33 Yale L.J. 95 (1923); Comment, The Extra-Territorial Effect of the Divorce A Mensa Et Thoro and of Statutory Prohibitions on Remarriage, 33 Yale L.J. 426 (1924); Uniformity and the Recognition of Ex Parte Divorces, 44 Yale L.J. 488 (1935).

⁷⁷ Ann Laquier Estin, Family Law Federalism: Divorce and the Constitution, 16 Wm. & Mary Bill Rts. J. 381, 394 (2007).

⁷⁸ See, e.g., *Maynard v. Hill*, 125 U.S. 190 (1888); *Nickerson v. Nickerson*, 127 U.S. 668 (1888); *Young v. Amy*, 171 U.S. 179 (1898); *Simms v. Simms*, 175 U.S. 162 (1899); *Kimball v. Kimball*, 174 U.S. 158 (1899); *De La Rama v. De La Rama*, 201 U.S. 303 (1906); *Wetmore, v. Markoe*, 196 U.S. 196 U.S. 68 (1904).

⁷⁹ Estin, *supra* note X, at 384.

⁸⁰ See, e.g., *Laing v. Rigney*, 160 U.S. 531 (1896); *Atherton v. Atherton*, 181 U.S. 155, 160-62 (1901); *Bell v. Bell*, 181 U.S. 175 (1901); *Streitwolf v. Streitwolf*, 181 U.S. 179 (1901); *Lynde v. Lynde*, 181 U.S. 183 (1901); *Andrews v. Andrews*, 188 U.S. 14 (1903); *Harding v. Harding*, 198 U.S. 317 (1905); *Everett v. Everett*, 215 U.S. 203 (1909); *Sistare v. Sistare*, 218 U.S. 1 (1910).

⁸¹ *Haddock v. Haddock*, 201 U.S. 562 (1906). For discussion, see generally Feigenson, *supra* note X; Estin, *supra* note X, at 381. It did not take long for *Haddock* to be overruled: *Williams v. North Carolina*, 317 U.S. 287 (1942). For some early discussion, see Ernest G. Lorenzen, *Haddock v. Haddock Overruled*, 52 Yale L.J. 341 (1943); J.H.C. Morris, *Divisible Divorce*, 64 Harv. L. Rev. 1287 (1951).

Mr. Thompson's claimed domicile, Virginia, reached its decision first and entered a decree in his favor. Mrs. Thompson's claimed domicile, D.C., later awarded her \$75 per month for maintenance and \$500 for attorney's fees.⁸² Mr. Thompson appealed the D.C. decision, and the Court of Appeals reversed in his favor, analyzing *Haddock* and determining that despite the couple's D.C. marriage and regular residence in D.C., their marital domicile was in Virginia. The Virginia decree therefore was valid and could not be superseded by the D.C. court's grant of alimony.⁸³ In January 1913, the Supreme Court affirmed.⁸⁴ Thus, just a few years after telling Mrs. Thompson that the divorce courts were available to remedy her situation, the Court upheld a judgment depriving her of such a remedy.⁸⁵ Given the Court's precedent and the confusion surrounding the application of the full faith and credit clause, this could not have been very surprising.⁸⁶

B. Criminal Prosecution

“Santa Claus is trying to become modern. He has been arrested down in California for Wife Beating.”⁸⁷

The majority in *Thompson* also suggested that wives like Mrs. Thompson “may resort to the criminal courts, which, it is to be presumed, will inflict punishment commensurate with the offense committed.”⁸⁸ Although modern scholarship suggests that domestic violence was rarely prosecuted during the period surrounding the

⁸² *Thompson v. Thompson*, 1910 WL 20807, *1 (App. D.C. 1910).

⁸³ *Id.* at *4-5.

⁸⁴ *Thompson v. Thompson*, 226 U.S. 551 (1913).

⁸⁵ *Id.* at 562.

⁸⁶ For early criticism of this approach to marital domicile including analysis of *Thompson*, see generally Herbert F. Goodrich, *Matrimonial Domicile*, 27 *Yale L.J.* 49 (1917).

⁸⁷ No Title, *Morning Olympian*, Dec. 22, 1910, p. 2.

⁸⁸ *Thompson*, 218 U.S. at 619.

Thompson case,⁸⁹ a study of primary sources suggests the opposite. Criminal prosecution was a very real and not uncommon remedy for punishing wife beating in the early

⁸⁹ This theory seems rooted in the work of a few respected scholars. See, e.g., Siegel, *supra* note X, at 2118, 2141 (“Jurists and lawmakers emphatically repudiated the doctrine of marital chastisement, yet responded to marital violence erratically—often condoning it, and condemning it in circumstances suggesting little interest in the plight of battered wives.”); Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy Against Violence from Colonial Times to the Present* 7 (1987) (“The single most consistent barrier to reform against domestic violence has been the Family Ideal—that is, unrelated but nonetheless distinct ideas about family privacy, conjugal and parental rights, and family stability.”); Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence, Boston 1880-1960* 255 (1989) (“Although wife-beating was not widely considered legitimate, neither was public discussion of it.”).

These scholars, and those who rely on their articles, are routinely cited for the proposition that domestic violence has historically been seen as private and not subject to criminal prosecution. See, e.g., Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 *Wis. L. Rev.* 1657, 1662, n.15, 1666 (2004) (citing Siegel for the idea that “public policy in domestic violence began to move from overt legal approval to toleration, so that men who assaulted their wives were granted immunity from prosecution on grounds of marital privacy and preservation of domestic harmony” and citing Pleck for the statement, “For all of our history, until approximately twenty-five years ago, the criminal justice system did not recognize domestic violence as an issue of concern, much less focus on methods to attack it.”); Emily J. Sack, *The Domestic Relations Exception, Domestic Violence, and Equal Access to Federal Courts*, 84 *Wash. U. L. Rev.* 1441, 1499 (2006) (citing her earlier in stating, “It has been well documented that prosecution of a criminal case involving domestic violence is at best inconsistent today, would have been unlikely through the mid-1980s, and in 1910, would have been virtually unheard of.”); Melissa Murray, *Strange Bedfellows: Criminal Law, Family Law, and the Legal Construction of Intimate Life*, 94 *Iowa L. Rev.* 1253, 1261 (2009) (citing Siegel for the proposition that, “Even after states formally abolished coverture, the emerging interest in promoting marital privacy and harmony provided the state with new reasons to resist entering the private space of the family to police spousal violence.”); Allison J. Cambria, *Defying a Dead End: The Ramifications of Town of Castle Rock v. Gonzales on Domestic Violence Law and How the States Can Ensure Police Enforcement of Mandatory Arrest Statutes*, 59 *Rutgers L. Rev.* 155, 160 (2006) (citing Sack in writing, “It was not until the late nineteenth century that spousal abuse became legally prohibited. However, these laws were rarely, if ever, enforced. . . . In other words, spousal abuse was not considered a crime.”); Sarah M. Harless, *From the Bedroom to the Courtroom: The Impact of Domestic Violence Law on Marital Rape Victims*, 35 *Rutgers L.J.* 305, 313, n.60 (2003) (citing Siegel and, to a lesser extent Pleck, for the proposition that “judges turned to notions of privacy” because they wanted to “support wife-beating”); Jennifer Wiggins, *Domestic Violence Torts*, 75 *S. Cal. L. Rev.* 121, 180, n.356, n. 354 (2001) (quoting directly from Siegel to incorporate the claim that “courts and lawmakers ‘routinely condoned violence in marriage’”); Jonathan L. Hafetz, *“A Man’s Home Is His Castle?”: Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries*, 8 *Wm. & Mary J. Women & L.* 175, 191, n. 106 (2002) (citing Siegel for the proposition that courts, including the *Thompson* Court, refused to allow interspousal torts because they “feared undermining the prerogatives of middle- and upper-class men,” and citing Pleck more generally); Lori L. Schick, *Breaking the ‘Rule of Thumb’ and Opening the Curtains—Can the Violence Against Women Act Survive Constitutional Scrutiny?*, 28 *U. Tol. R. Rev.* 887, 888 (1997) (quoting Siegel for the proposition that “the legal system ‘treated the crime [of wife beating] as a deviant social act rather than as conduct recently condoned by the law, selecting men for prosecution in ways that suggest that concerns other than protecting women animated the punishment of wife beaters’”); Nicole M. Quester, Note, *Refusing to Remove an Obstacle to the Remedy: The Supreme Court’s Decision in Town of Castle Rock v. Gonzales Continues to Deny Domestic Violence Victims Meaningful Recourse*, 40 *Akron L. Rev.* 391, 392, 398 (2007) (arguing that in *Thompson* the Court “stripped from the victims of domestic abuse a personal remedy against their abusers” and instituted a “mandate” under which “the legal system continued to refrain from raising the curtain on domestic violence” for decades, and citing Siegel for the claim that,

twentieth century. Furthermore, domestic violence was not seen as private: neighbors were often instrumental in reporting the violence and testifying to obtain convictions,⁹⁰ even risking their own safety to protect victims.⁹¹ At the same time, however, there was extreme frustration with the efficacy of the existing criminal sanctions. Judges, legislators, newspaper editors, and even President Theodore Roosevelt questioned whether fines and jail sentences adequately deterred perpetrators and observed that these sanctions punished the victims by depriving families of financial resources.

The fact that wife beaters were subject to criminal prosecutions is perhaps best demonstrated by the frequent newspaper coverage of their arrests and sentences.⁹² A

“the Court refused to provide women with a remedy against their violent partners in order to preserve the spousal dynamic in the household and in society.”); Bernadette Dunn Sewell, Note, History of Abuse: Societal, Judicial, and Legislative Responses to the Problem of Wife Beating, 23 *Suffolk U. L. Rev.* 983, 995 (1989) (citing Pleck in writing, “The battered woman’s situation remained largely unchanged and unnoticed for the first six decades of the twentieth century.”); Clare Dalton & Elizabeth M. Schneider, Battered Women and the Law 24, 26, 564 (2001) (reproducing pages 2118-20 of Siegel’s article and stating in a separate section, “Historically, the criminal justice system has been characterized by its chronic inattention to domestic violence.”).

⁹⁰ See, e.g., Charged with Wife Beating, Charles Owens Confined in County Jail Without Privilege of Making Bond, *The Columbus Enquirer-Sun*, Sept. 24, 1909, p. 1; Wife Beating Charged Against Wilmore Man: He Says He Was Whipped By Tree Unknown Visitors for His Action, *The Lexington Herald*, June 13, 1909, p. 3; Wife Beater Roasted: Howard Judge Scores Man Who Thrashed His Spouse, *Aberdeen Daily News*, July 1, 1909, p. 7; Down Dover Way, *The Philadelphia Inquirer*, August 8, 1906 p. 5; Will Pay High for His Fun, *Morning World-Herald*, Oct. 1, 1906, p. 2; Goes to Prison on Wife Beating Charge, *The Duluth News Tribune*, Feb. 11, 1909, p. 8; Floods the House: Woman, Whose Husband Is Arrested for Wife Beating, Turns on the Faucet, *Morning Olympian*, Sept. 4, 1907, p. 1; Arrested for Beating Wife; She Pays Fine, *The Duluth News Tribune*, Dec. 11, 1907, p. 2; Postoffice Clerk Arrested, *Charlotte Daily Observer*, Aug. 24, 1906, p. 4; Late Local News, *The Bellingham Herald*, Dec. 22, 1910, p. 3; Pastor Whips Jealous Wife: When He Is Arrested She Gives Bond to Keep Him from Jail, *The Washington Post*, April 1, 1907, p. 1; Not Held for Wife-Beating: Evidence Against Millen, Ga., Preacher Adjudged Insufficient, *The Columbus Enquirer-Sun*, April 3, 1907, p. 2. But see Can’t Drink Whisky in Hubby’s Absence, *The Macon Daily Telegraph*, Sept. 30, 1908, p. 4 (“They were all neighbors some of them living in the adjoining rooms, and they seemed to be reluctant to testify against the man.”).

⁹¹ See, e.g., Wife Shows Hair Pulled from Head, *Morning Olympian*, March 25, 1910, p. 1.

⁹² Not a single article was identified that suggested that a wife beating conviction was inappropriate or a punishment was too harsh or otherwise unfair. The fact that some of the articles may have been sensationalized does not cut against the thesis of this article. To whatever extent the reports may be exaggerated, it is significant that they make the judges seem extremely angry, the defendants look like brutal cowards, and the wives look like innocent victims. Newspaper reporters certainly could have written equally sensational articles that made sentences seem unjust or wives seem provoking. Furthermore, there is no reason to believe the statistics detailed here are artificially inflated by disproportionate reporting of harsh sentences. Although some articles noted that a punishment was unusually heavy, a similar number criticized punishments as particularly light. Furthermore, a substantial number of the articles used for these

search just for the exact terms “wife beating” or “wife beater” in a selection of newspapers that were regularly published from 1900 through 1910⁹³ identified nearly 350 articles documenting men being arrested and charged for assaulting their wives.⁹⁴ These reports included the man’s full name and frequently included his occupation and home address. Hundreds of other articles document their punishments, which included long jail terms,⁹⁵ hefty fines,⁹⁶ and even whipping or flogging.⁹⁷ Jail sentences, which often included hard labor on chain gangs or in workhouses, ranged from ten days to ten years. The most common sentences were sixty days or three months, but there were enough lengthier sentences that the average was actually about seven months.⁹⁸ Fines varied wildly, from \$1 to \$1,000. The most common fine was \$50, or \$1,260 today, and the average was approximately \$68, or \$1,710 today.⁹⁹ The court costs added to these fines could be substantial. For example, in one case court costs of \$21.65 were added to a \$50

calculations were routine lists recounting a court’s weekly business. For a typical example, see Salem Evildoers Receive Sentences, *The Philadelphia Inquirer*, Oct. 31, 1903, p. 3; Before the Recorder, *The State*, Aug. 19, 1902, p. 6. It would be interesting to determine to what extent there was regional variation, but that is outside the scope of this paper.

⁹³ These dates were selected because they immediately precede the *Thompson* decision. No articles identified in the search gave reason to believe 1900-1910 was significantly different from surrounding years.

⁹⁴ See Appendix, List A. Some reports specify that the legal charge was disorderly conduct, breach of the peace, or assault and battery, while others simply say “wife beating.” Some men faced charges under a combination of these charges. See, e.g, *Union Picket Beats Wife*, *Chicago Daily Tribune*, June 24, 1906, p. 2 (“charges of disorderly conduct, assault and battery, and wife beating”).

⁹⁵ See Appendix, List B.

⁹⁶ See Appendix, List C.

⁹⁷ See Appendix, List F.

⁹⁸ Calculated using Lists B and D. Months were calculated as 30 days and years as 365 days.

Unfortunately, it is difficult to compare these sentences to those used today because information about the average modern punishments is unavailable.

⁹⁹ Calculated Using Lists C and D. Calculation based on 1905 (the middle of the years used) to 2009 (the latest year available), using the Consumer Price Index because it measures the change in price of goods, which seems important to evaluate the harm these fines might cause to man’s budget. Samuel H. Williamson, “Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1790 to Present,” *MeasuringWorth*, 2010. URL <http://www.measuringworth.com/uscompare/>

fine.¹⁰⁰ Those unable to pay were sent to jail instead.¹⁰¹ For instance, a wife beater who was unable to pay his \$300 fine instead had to serve “one day for each of two dollars of the fine.”¹⁰² Some men went to jail because they were unable to pay fines as light as \$1.¹⁰³ When courts cut fines in difficult economic times, they still gave wife beaters the limit.¹⁰⁴ In the harshest jurisdictions, men were given both a fine and a jail sentence. Many of these sentences involved a year or more in jail and either a \$500 or \$1000 fine.¹⁰⁵

No segment of society was immune from criminal prosecution. Charges were brought against men from all stations of life, including barbers, postal workers, policemen, businessmen, doctors, lawyers, farmers, a famous artist, a Yale professor and former golf champion, a former Vice Presidential candidate for the Socialist Party, “one of the most prominent ministers in Georgia,” a black Democratic leader in New York, a Civil War hero, and even a Browns pitcher.¹⁰⁶ They included men with varying ties to

¹⁰⁰ Wife Beater Must Pay \$50 and Costs, *The Bellingham Herald*, May 8, 1906, p. 5. Because newspapers rarely specified the amount of court costs, I did not include them in calculating the average fine.

¹⁰¹ See Appendix, List D.

¹⁰² Wife Beater Gets His Sentence, *The Idaho Daily Statesman*, Dec. 13, 1907, p. 3. But see , e.g., Fifty Days in Jail on Wife Beating Charge, *The Lexington Herald*, July 19, 1907, p. 6 (“Squire Oldham would not give Watson the alternative of a fine, and after listening to the testimony sentences him to fifty days in jail.”).

¹⁰³ See, e.g., Negro-Wife Beater Jailed, *The Lexington Herald*, March 22, 1910, p. 12.

¹⁰⁴ Cuts Fines in Hard Times, *New York Times*, June 12, 1908, p. 1.

¹⁰⁵ See Appendix, List E. Note that these sentences were not used in calculating the averages.

¹⁰⁶ Fined a Wife Beater, *The Grand Forks Daily Herald*, Sept. 24, 1909, p. 2 (a barber); Policeman Held for Wife Beating, *The Philadelphia Inquirer*, Nov. 21, 1906, p. 1 (policeman); Lawyer Shaw Guilty of Wife-Beating, *Los Angeles Times*, Oct. 25, 1901, p. 10; Charged with Wife Beating: J.W. Lynch, a Traveling Optician, Arraigned in Police Court, *The Kansas City Star*, Sept. 6, 1905, p. 5 (“a traveling optician”); Postoffice Clerk Arrested, *Charlotte Daily Observer*, Aug. 24, 1906, p. 4 (“a night clerk at the city postoffice”); In Police Court, *The Lexington Herald*, Dec. 15, 1909, p. 8 (“Dr. Walker”); “Used Singletree” Is Wife’s Charge: Owen White Gives Bond to Answer Wife Beating Complaint, Nov. 11, 1909, p. 8 (“a farmer residing on the Richmond pike”); Sussex County Snapshots, *The Philadelphia Inquirer*, Oct. 5, 1909, p. 6 (“a business man”); Socialist Maquire a Wife Beater, *New York Times*, Sept. 30, 1906, p. 9; Waddell Signs Pledge: Promises Judge Pollard to Abstain from Use of Liquor, *The Philadelphia Inquirer*, June 28, 1910, p. 10 (“the suspended pitcher of the Browns”); Farmer in Jail for Wife Beating, *New York Times*, Jan. 7, 1909, p. 18 (“a well-to-do retired farmer”); Golf Marriage Fails: Yale Professor’s Temper Not Improved by Exercise, *Morning Oregonian*, Sept. 18, 1910, p. 12 (“Professor William Kent Shepard, of

the prosecuting community, from immigrants and men who traveled from town to town to those who were “well-known,” had been longtime members of their communities, and were even “well-to-do.”¹⁰⁷ In the words of a Los Angeles prosecutor, “men in almost every walk of life” beat their wives, and “[t]hey ought to be served alike and given the lash.”¹⁰⁸ Although it is possible that systemic biases resulted in disproportionate charges or sentences based on race or class,¹⁰⁹ more research is needed to substantiate that theory.¹¹⁰

Yale, twice golf champion of Connecticut); Defends Self, *The Washington Post*, Dec. 14, 1910, p. 4; Pastor Whips Jealous Wife: When He Is Arrested She Gives Bond to Keep Him from Jail, *The Washington Post*, April 1, 1907, p. 1 (“one of the most prominent ministers in Georgia”); Given Fine and Jail Sentence: H.G. Bostwick Ordered to Pay \$200 and Serve 60 Days for Wife Beating, *The Idaho Daily Statesman*, Nov. 1, 1910, p. 6 (“the ex-policeman”); Negro Leader Jailed for Wife Beating, *New York Times*, Nov. 3, 1910, p. 3 (“the colored Democratic leader in the Twentieth Assembly District”); Artist Earle Beats Soul Mate, *The Bellingham Herald*, Aug. 26, 1908, p. 1 (“artist”); Old Soldier Charged with Wife Beating, *The Philadelphia Inquirer*, March 23, 1908, p. 3 (“Hero of Civil and Boer Wars”). The Browns was a St. Louis baseball team at the time.

http://www.baseballlibrary.com/ballplayers/player.php?name=st_louis_browns

¹⁰⁷ See footnote above. See also, I.W.W. Talker in Law’s Grip: Part of “Ceremony,” *Los Angeles Times*, Feb. 17, 1910, p. III1 (“a stolid and dull countenanced Russian”); Model Man When Sober May Go to Penitentiary, *The State*, Nov. 5, 1909, p. 4 (“prominent young man of Warrentown and is exceptionally bright”); Charged with Wife Beating, *The Philadelphia Inquirer*, Feb. 19, 1908, p. 14 (“Two well-known Dover men, Robert W. Ewing, a jeweler, and Joseph Smith, a can-maker, were called before the Court of General Sessions today to answer to the charge of wife beating.”); Accused of Wife Beating: Thomas Godin Was Arrested Yesterday Afternoon for Beating His Wife, *The Grand Forks Daily Herald*, Dec. 24, 1910, p. 3 (“who has been a resident of this city for some time”).

¹⁰⁸ Give Lash to Such Brutes, *Los Angeles Times*, Sept. 27, 1908, p. II9. Newspapers had varied views on whether certain groups were more common offenders. See, e.g., Give Lash to Such Brutes, *Los Angeles Times*, Sept. 27, 1908, p. II9 (“Foreigners have formed the minority of offenders, most of whom have been Americans.”).

¹⁰⁹ For example, many scholars cite Siegel for the proposition that punishments for wife beaters, and especially the whipping post laws used in some states, were disproportionately used against black men and poor men. See, e.g., Dennis Feeney, Jr., Note, Ensuring the Domestic Violence Victim a Means of Communication: Why Passing Legislation that Criminalizes Impairing Another’s Communication is the Next Logical Step in Combating Domestic Violence, 32 *Seton Hall Leg. J.* 167, 184, n. 75 (2007); Cynthia Grant Bowman & Ben Altmann, Wife Murder in Chicago: 1910-1930, 92 *J. Crim. L. & Criminology* 739, 756 n.90 (2002); Hafetz, *supra* note X, at 189 n. 94. See also, Gordon, *supra* note X, at 253 (suggesting wife beaters were perceived to be “the drunken, brutal, poor immigrant male”); Elizabeth Pleck, *supra* note X, at 109 (1987) (“Of all the reform campaigns against family violence in the late nineteenth century, [whipping post laws] most clearly expressed the desire to control the lower classes.”).

¹¹⁰ Newspapers from the time offer some preliminary suggestions about the identity of wife beaters. For example, one newspaper reported, “As to the nationality of the offenders, the statistics are incomplete, but Americans, Irish, Germans, Englishmen, negroes, Hungarians, Welshmen and Scotch-Irishmen figure in the list. It is a pleasure to learn, on the authority of the district attorneys, that native Americans are less given to wife beating than the men of other nationalities.” A Wife-Beater Bill, *The Macon Telegraph*, Jan. 21, 1905, p. 4. However, according to *The Washington Post*’s report on Washington D.C. statistics, “fully

Although criminal suits were sometimes limited by wives' refusal to testify against their abusers,¹¹¹ this reality is a far cry from the allegation that judges did not wish to protect battered wives. Rather, it left judges frustrated by their inability to help. As one judge complained, "From ten to fifty badly whipped wives come here daily for warrants for their husbands, and then, when the brutes are arraigned, the women plead for forgiveness for them, refuse to prosecute and all I can do is turn them loose." His proposed solution, far from attempting to keep these suits out of his court, was to introduce a whipping post.¹¹² Other judges refused to suspend the sentence of a wife beater despite the wife's request.¹¹³ Police reacted to wives' refusal to testify by charging wife beaters with other crimes. For example, when a wife refused to testify against her husband after he was arrested for wife beating, he was instead charged and convicted of being drunk and disorderly.¹¹⁴

Judges and other law enforcement officials expressed no sympathy for these men. In the words of one sheriff, "I think a man who beats his wife is one of the most despicable of God's creatures, and no punishment can be too severe for him."¹¹⁵ A

95 per cent. of the cases of assaults upon women are those of negroes." Who Is Wife-Beater: Difficult Task Looking Up Police Court Records, *The Washington Post*, Jan. 30, 1905, p. 4.

¹¹¹ See, e.g., *Wife Beating Charged, Druggist Was Released in Similar Case on Wife's Denial of Assault*, *The Washington Post*, Aug. 15, 1906, p. 4; *Favors a Whipping Post: Magistrate House Says One Is Needed in Harlem—Warns Wifebeater*, *The New York Times*, Aug. 9, 1909, p. 4; *Not Held for Wife-Beating: Evidence Against Millen, Ga., Preacher Adjudged Insufficient*, *The Columbus Enquirer-Sun*, April 3, 1907, p. 2; *Give Lash to Such Brutes*, *Los Angeles Times*, Sept. 27, 1908, p. II9 (Attorney for city prosecutor's office: "The woman is always ready to forgive the beast who beats her. We have complaints from women about their husbands and these women later get down on their knees and beg that their husbands be kept out of jail.").

¹¹² *The Need of a Whipping Post*, *The Kansas City Star*, Aug. 9, 1909, p. 3. See also *Favors a Whipping Post: Magistrate House Says One Is Needed in Harlem—Warns Wifebeater*, *The New York Times*, Aug. 9, 1909, p. 4.

¹¹³ *A Whipping Post: John Lavander Told That It Was Just What Was Needed in His Case*, *The Grand Forks Daily Herald*, May, 4, 1906, p. 6; *Regret Lash Is Obsolete; Rawhide for Wife Beaters*, *Chicago Daily Tribune*, Aug. 31, 1907, p. 7.

¹¹⁴ *Arrested for Beating Wife; She Pays Fine*, *The Duluth News Tribune*, Dec. 11, 1907, p. 2.

¹¹⁵ *Wifebeaters: Will be Punished by Their Own Victims*, *Biloxi Daily Herald*, May 23, 1905, p. 5.

Missouri judge told a wife beater who pled for leniency, “The wife beater gets the highest fine in this court the very first time he comes in, and no promises taken. . . . It’s mistaken kindness to show mercy to a man who hits the woman he ought to protect.”¹¹⁶ An Idaho judge sentencing a wife beater delivered “[t]he most scathing rebuke ever administered to a guilty man,” according to one newspaper. After expressing his regret “that the state has no statute that fixes a commensurate sentence for wife beating,” the judge said to the man,

You took a solemn vow that you would protect and shield her and yet your wife is today in the home of a stranger, where, wounded, crippled and bleeding, she crawled for protection from you, and while she is lying there I apprehend that her bodily pains sink into insignificance in comparison with the mental anguish she suffers from the fact that this protection you promised has ceased.

He announced to the room full of onlookers, “The commonwealth of Idaho is proud of the valor of its men, but it loathes and despises such as you.”¹¹⁷

These sentiments were not limited to the oral proclamations of judges in local trial courts. In writing its opinion in a divorce case, a Missouri appellate court noted, “our law looks with deep aversion upon the wife beater.” It continued, “No decent husband would strike his wife in anger except in necessary self-defense, and the courts of this state always have pronounced recreant the violator of this inflexible rule.”¹¹⁸ Another Missouri appellate court hearing a divorce case declared, “American manhood abhors the wife beater, and by this act plaintiff grossly offended the dignity and proprieties of the marital relation.”¹¹⁹ According to a federal district court judge in New Jersey, “What in

¹¹⁶ “Fixed the Wife Beater”: A Macon, Mo., Judge’s Remarks to a Culprit, *The Kansas City Star*, Nov. 22, 1905, p. 2.

¹¹⁷ *Wife Beater Gets His Sentence*, *The Idaho Daily Statesman*, Dec. 13, 1907, p. 3.

¹¹⁸ *Dimmitt v. Dimmitt*, 150 S.W. 1107, 1110 (Mo. App. 1912).

¹¹⁹ *Libbe v. Libbe*, 138 S.W. 685, 687 (Mo. App. 1911).

the old common law would be termed moderate correction of the wife by the husband is now execrated as wife-beating, and punished as a despicable crime.”¹²⁰ A judge on the North Carolina Supreme Court, remarking on the change from the common law right of men to chastise their wives quipped, “And thus passed away another vested right or rather *another vested wrong*.”¹²¹

In the opinion of many, however, this widespread condemnation of wife beating was not adequately reflected in the authorized criminal sentences. For example, a judge who committed a wife beater to ten years at hard labor “took occasion to say that he was sorry the law did not provide proper punishment . . . that he ought to be hanged instead.”¹²² After a wife beater alleged “he had to strike his wife or take a beating himself,” a Kansas City judge told him he “ought to be sent to jail for life. . . . But unfortunately I can only send you for 130 days.”¹²³

It was unclear, however, whether increasing fines and jail time was the best option. Newspapers emphasized that many of these criminals were repeat offenders; fines and jail time did not seem to deter them. Furthermore, increasing the severity of the existing sentences would harm families by depriving them of more financial resources. “What a tragico-farcical law it is,” one newspaper editor observed, “which sends the wife beater to idle away weeks or months in jail, supported by the community, while the helpless victims of his brutality are left to starve.” The victimized wife was required to work to support the family; “She actually pays for her own beating!”¹²⁴ In the absence of

¹²⁰ Sipp v. Coleman, 179 F. 997, 998-99 (C.C. N.J. 1910) (emphasis added).

¹²¹ Price v. Charlotte Electric Ry. Co., 76 S.E. 502, 504 (N.C. 1912) (Clark, concurring).

¹²² Ten Years for Wife Beating: In Passing Sentence Upon Joe Wade Judge Gage Said Wife Beaters Should Be Hanged, *The State*, Jan. 28, 1905, p. 1.

¹²³ “Man-Afraid-of-His-Wife: The Excuse a Kansas City, Kas., Husband Gave for Wife Beating, *Kansas City Star*, Jan. 19, 1909, p. 7.

¹²⁴ The Premium on Wife-Beating, *Dallas Morning News*, Jan. 12, 1904, p. 6.

better alternatives, a feeling of extreme frustration pulses through many of the primary sources. As one judge expressed to a victim, “I am sorry for you, but what can I do? If I send your husband to jail you and your family will starve. He is a brute and we want to punish him, but how can we without making you and the children suffer?”¹²⁵

Some jurisdictions experimented with other remedies. One of the more popular alternatives was to banish wife beaters from the city.¹²⁶ Another option was to make jail time harsher, rather than longer. For example, in Plainfield, New Jersey, wife beaters were “placed in an iron cage in a deserted stable . . . and sentenced to seven days of solitary confinement on a diet of bread and water.”¹²⁷ Jurisdictions that did not already put prisoners to work proposed building a city workhouse,¹²⁸ or decided to “shackle [wife beaters] with ball and chain and put them to work on the streets.”¹²⁹ It was frequently suggested that when men were forced to work during their jail time, “every dollar of the earnings [should be] turned over to their families.”¹³⁰ Similarly, some judges directed that men’s fines be given to their victims, rather than to the court.¹³¹ Another way to avoid depriving families of their primary breadwinners was for perpetrators to sign

¹²⁵ Hard Labor for Wife Beaters, *The New York Times*, Jan. 25, 1903, p. 25. See also, e.g., This Wife-Beater Puzzles Justices, *The Philadelphia Inquirer*, March 9, 1903, p. 3; Judge Regrets No Whipping Post, *Olympia Daily Recorder*, Feb. 3, 1909, p. 1; Would Whip Wife Beater, *Chicago Daily Tribune*, Jan. 24, 1907, p. 18.

¹²⁶ See, e.g., A Wife Beater Banished, *The Kansas City Star*, March 15, 1904, p. 5; City Wins by His Move, *The Idaho Daily Statesman*, Nov. 19, 1910, p. 6; Husband Frees Dove of Peace, *Duluth News Tribune*, April 7, 1908, p. 5; Methodism is Blamed, *The Duluth News Tribune*, Oct. 24, 1907, p. 2 (also published in *The Grand Forks Daily Herald*, Oct. 24, 1907, p. 2); Nubs of News, *Grand Forks Daily Herald*, Aug. 8, 1905, p. 4; Ordered to Leave Town, *Aberdeen American*, published as *Aberdeen Weekly News*, July 22, 1909, p. 6; Scored a Wife Beater, *The Duluth News Tribune*, Sept. 24, 1902, p. 6; Wife Beater Released, *Aberdeen Daily News*, Oct. 22, 1909, p. 2.

¹²⁷ Diet of Bread and Water for Wife Beater, *The Evening News*, Jan. 22, 1904, p. 8.

¹²⁸ See, e.g., City Needs a Workhouse, *Omaha World Herald*, published as *Morning World Herald*, Sept. 14, 1903, p. 2.

¹²⁹ For Kansas Wife Beaters, *The Kansas City Star*, Feb. 17, 1904, p. 10.

¹³⁰ The Champion Wifebeater, *Fort Worth Telegram*, Feb. 21, 1904, p. 14; TD Burley, Make Wife Beaters Work Out Fines, *Chicago Daily Tribune*, Oct. 25, 1903, p. 21; “More Men Beat Their Wives”; *The Kansas City Star*, April 23, 1910, p. 1; The Premium on Wife-Beating, *Dallas Morning News*, Jan. 12, 1904, p. 6.

¹³¹ Turns Fine Over to Wife, *The Philadelphia Inquirer*, Dec. 9, 1910, p. 1; Wife Beater’s Fine Put to Wife’s Credit in Bank, *The Duluth News Tribune*, Nov. 5, 1909, p. 12.

pledges promising better conduct. These pledges were seen as effective because the men “kn[e]w that if they violate[d] their parole a word from their wives or neighbors [would] bring them back in within an hour to serve out suspended sentences in solitary cells.”¹³² A few other punishments were tried sporadically. One newspaper reported that judges in McKeesport, Pennsylvania had found a “novel and effective method” of dealing with wife beaters: “In brief, it consists of making the wife the treasurer of the family.”¹³³ Several Nevada wife beaters were sentenced to “[s]tanding tied to a post for two hours each day for the next month, with a placard bearing the announcement, ‘Wife beater,’ hung from [their] neck[s].”¹³⁴ Immigrant perpetrators were denied citizenship because “the public generally [was] growing tired of the imported wife beaters.”¹³⁵ These alternatives to standard fines and jail sentences were sparsely used, however, and all had their own shortcomings.

Dissatisfaction with the statutory sentences led judges to condone extralegal violence against wife beaters, even occasionally participating in such violence themselves.¹³⁶ This hands-on approach was celebrated. For example, Alderman John F. Donahue, a judge in Wilkes-Barre, Pennsylvania, became famous “all over the country and in Europe, too” beginning the day he first “descended from the bench, tore off his

¹³² Pledge Paroles Adopted at Bridewell—Good Results Follow, *Chicago Daily Tribune*, Jan. 26, 1902, p. 8. This option of signing a pledge in lieu of prison was available to other types of criminals, too. *Id.*

¹³³ Edwin A. Nye, Heart to Heart Talks, *The Biloxi Daily Herald*, Oct. 26, 1909, p. 8. Also published in *The Evening News*, Nov. 18, 1909, p. 2.

¹³⁴ Wife Beating Penalty: Culprit Must Stand Tied to Post Bearing Placard Each Day for a Month, *The Fort Worth Telegram*, Aug. 3, 1906. See also, Indian Is to Be Tied to a Post for Wife Beating, *The Evening News*, Dec. 31, 1903, p. 6 (noting that the sentence was based on a law enacted in 1871); No Title, *Massachusetts Ploughman and New England Journal of Agriculture*, Aug. 11, 1906, p. 4; Pillory for Wife Beater, *Morning Olympian* Aug. 12, 1906, p. 3; Wife Beating Penalty, *The Fort Worth Telegram*, Aug. 3, 1906, p. 10.

¹³⁵ See, e.g., Citizenship Is Denied, *Los Angeles Times*, May 28, 1910, p. 11; Commendation, *The Idaho Daily Statesman*, Feb. 12, 1909, p. 11; Wife Beaters Not Wanted, *Chicago Daily Tribune*, May 28, 1910, p. 3; Wife Beating Aliens May Be Banished Home, *The Duluth News Tribune*, Aug. 20, 1909, p. 1.

¹³⁶ See, e.g., the story about Sambolia introduced at the beginning of this paper.

coat, and soundly thrashed a chronic wife beater.” He “received scores of letters from men and women thanking him for what he has done for oppressed and abused wives,” and even received numerous awards from humane societies. In Donahue’s view, “You can usually knock all ideas of violence out of a man’s head by treating him violently, and if every wife beater was thrashed, was bruised and pained to the same extent as he bruised and pained his wife, and a little more for good measure, there would be less wife beating.” Acknowledging that his approach was illegal and that he could be arrested, Donahue pointedly asked, “where is the judge or jury who would convict a man for thrashing a wife beater?” Far from being indicted, after twenty-eight years on the bench, he was elected to another five year term.¹³⁷ Many other judges followed his lead.¹³⁸

Some judges thought that justice demanded that the victim or her family be allowed—or perhaps even instructed—to give wife beaters “some of their own

¹³⁷ A Justice Who Whips Wife Beaters in Court, Fort Worth Telegram, March 11, 1904, p. 7. See also, Cure for Wife Beating, Dallas Morning News, May 5, 1901, p. 6; Justice Versus Law, The Biloxi Daily Herald, March 30, 1902, p. 7; The Donahue Treatment for Wife Beating, Dallas Morning News, March 11, 1902, p. 6.

¹³⁸ See, e.g., A Righteous Judge, Los Angeles Times, Dec. 25, 1910, p. VIII (judge beat defendant); Blacksnake Whip for Wife Beater, The Biloxi Daily Herald, Sept. 13, 1907, p. 2 (judge ordered police to whip wife beater outside of court); Competition for Donahue’s Glory, Wilkes-Barre Times, July 28, 1904, p. 3 (judge threatened to throw wife beater out the second-story window of his office); Husband Spanked for Wife Beating, New York Times, Sept. 28, 1907, p. 9 (judge ordered policeman to spank defendant); Judge Horsewhips Alleged Wife Beater, The Philadelphia Inquirer, Nov. 29, 1910, p. 1; Justice Piles Lash on a Wife-Beater, The Macon Daily Telegraph, Dec. 4, 1910, p. 2; Lashed by a Magistrate, The Washington Post, Nov. 29, 1910, p. 5; No Title, Los Angeles Times, March 22, 1901, p. 8 (judge beat defendant); No Title, Grand Forks Daily Herald, March 17, 1901, p. 4 (judge whipped defendant); Spanks Tiny Wife-Beater, The Bellingham Herald, Oct. 5, 1907, p. 8 (judge spanked defendant); ‘Squire Hayden Didn’t Use Whip on Wife Beater, Wilkes-Barre Times Leader, Dec. 9, 1910, p. 20 (judge shook and kicked defendant); Summary Pennsylvania Justice, Chicago Daily Tribune, March 18, 1901, p. 6 (reporting that a judge beat a wife beater and “deserves a banquet and a monument”); Wanted to Throw Prisoner Through Court Window, The Philadelphia Inquirer, July 28, 1904, p. 3; Wife Beater Given His Own Medicine, The Philadelphia Inquirer, Nov. 13, 1907, p. 3 (judge beat defendant with a paddle); Wife Beater Horsewhipped, The Evening News, Dec. 8, 1910, p. 5 (judge instructed constable to beat wife beater); Wife-Beater “Licked” by Judge in Court, The Columbus Enquirer-Sun, Nov. 9, 1906, p. 2; Wife-Beater Is Spanked, Los Angeles Times, Sept. 28, 1907, p. II; Wife-Beater Spanked, The Washington Post, Sept. 28, 1907, p. 3; Would Thrash Wife-Beater, The Philadelphia Inquirer, Oct. 13, 1906, p. 6 (judge threatened to thrash wife beater); Husband Spanked for Wife Beating: “I’ll Never Do It Again,” He Wails Under the Stalwart Policemen’s Arm, The New York Times, Sept. 28, 1907, p. 9.

medicine.”¹³⁹ Several articles document judges in New York, New Jersey, and Illinois ordering wives to “go into the ante-room and hit your husband as often and hard as he hit you.”¹⁴⁰ As *The American Lawyer* astutely observed, “Whether this will promote the future domestic harmony of the couple is, however, another question.”¹⁴¹ In Portland, Oregon, where the whipping post was an available remedy, the sheriff announced he would deputize any woman maltreated by her husband to do the whipping.¹⁴² Another judge ordered a wife beater to be “released from jail and sent home to his mother-in-law” after being told by the wife that she and her mother “could look after the offender.” The article noted that the man “left the court with extreme reluctance, not knowing, but dreading what ‘Ma’ had in store for him.” He was so worried that “[h]e mumbled that he’d rather stay in jail, but an unfeeling policeman said: ‘Move on now, Ma’s waiting for you.’”¹⁴³ These judges were ready and willing to get justice for battered women, even at the expense of familial harmony.

Courts and law enforcement turned a blind eye, or even explicitly approved, when family members took justice into their own hands. A “fiendish husband” who beat his wife in Wisconsin was “the most badly beaten up specimen of mankind the local police have ever seen” after his brother-in-law got his hands on him. Nevertheless, the police “refuse[d] to arrest” the brother-in-law and still planned to charge the wife beater “as

¹³⁹ Jersey Wife-Beating Case: The Court Orders Mrs. Demetris to Slap Her Husband’s Face, *The New York Times*, July 12, 1906, p. 7 (quoting Recorder Hyman Lazarus).

¹⁴⁰ Wife Betear [sic] Had Tables Turned, *Wilkes-Barre Times*, July 12, 1906, p. 2; Jersey Wife-Beating Case: The Court Orders Mrs. Demetris to Slap Her Husband’s Face, *The New York Times*, July 12, 1906, p. 7; Beat Her Husband at Court’s Order, *Lexington Herald Leader*, published as *The Lexington Herald*, July 15, 1906, p. 2; Jersey Wife-Beating Cure, *New York Times*, July 12, 1906, p. 7; Wife Beater is Given Beating, *The Fort Worth Telegram*, Aug. 26, 1906, p. 13; Wife Whipped Husband by Order of Court, *The Evening News*, July 18, 1906, p. 5.

¹⁴¹ A New Punishment for Wife Beaters, *The American Lawyer*, Aug. 1906, 14, 8, p. 345.

¹⁴² Wife Beaters Will Be Punished by Their Own Victims, *The Biloxi Daily Herald*, May 23, 1905, p. 5.

¹⁴³ Stiff Sentence Is Given Wife Beater, *San Jose Mercury News*, published as *The Evening News*, Nov. 8, 1909, p. 1. See also, Ma-in-Law Gets Man from Jail, *The Bellingham Herald*, Nov. 4, 1909, p. 4 (“The mother-in-law is at last a legally recognized instrument of punishment in New Jersey.”).

soon as he is able to be moved from his cell.”¹⁴⁴ After a wife beater in Delaware was injured so badly by his 82-year-old father-in-law that he had to go to the hospital, the judge told the wife beater that the father-in-law “did right.” He continued, “He ought to have beaten you within an inch of your life. I have no patience with a hound like you.” The judge sentenced him to a year in the workhouse for assaulting the elderly man and held him on \$1000 bail until the appropriate court could hear the wife beating charge. “I wish that I could give you more,” the judge concluded.¹⁴⁵ As explained by the Yale Law Journal, “the man who beats his wife and is cowhided for it by her father or brother is thought by all to have received his just reward.”¹⁴⁶

Vigilante violence was not limited to family members—some wife beaters were attacked by furious mobs of anywhere from half a dozen to hundreds of people.¹⁴⁷

Neighbors, posses, and crowds faced with a wife beater “thumped” him,¹⁴⁸ whipped

¹⁴⁴ Fiendish Husband Beaten: Frightful Story of Abuse Told by La Crosse Woman, *The Duluth News Tribune*, Aug. 30, 1907, p. 9.

¹⁴⁵ Wife-Beater Thrashed by 82-Year-Old Man: Father-in-Law Sends Brutal Husband to Hospital and Appears Against Him in Court, *The Philadelphia Inquirer*, April 24, 1909, p. 3. See also His Father-In-Law Was by Far Better Man, *The Columbus Enquirer-Sun*, April 25, 1909, p. 1.

¹⁴⁶ Whipping and Castration As Punishments for Crime, 8 *Yale L.J.* 371, 377 (1899).

¹⁴⁷ See, e.g., Veterinary Surgeon Waylaid by Whitecaps, *The Duluth News Tribune*, Jan. 24, 1908, p. 9; Wife Beating Charged Against Wilmore Man: He Says He Was Whipped By Tree Unknown Visitors for His Action, *The Lexington Herald*, June 13, 1909, p. 3 (“He said he was whipped by three unknown men last night for mistreating his wife.”); Waylaid by Whitecaps, *The Biloxi Daily Herald*, Jan. 25, 1907, p. 8; (same); Punishment for Wife Beater: George Corey Forced to Run Gauntlet of Whips at Terry, S.D., *The Idaho Daily Statesman*, Aug. 2, 1908, p. 1 (same). See also Cowardly. Women Beaten by Brutal Men: One Victim is Severely Hurt by Husband, *Los Angeles Times*, April 18, 1910, p. III (“The Agilos case created a small riot in the Howard street neighborhood.”); *Dauids v. People*, 61 N.E. 537, 538 (Ill. 1901) (“The evidence tends to show that they were masked; that they blindfolded him; that he was knocked down and beaten; that tar was poured over him; and that these masked men threatened that, if he did not take his wife back, or give her his property, they would kill him.”); Crowd Maddened by Wife Beater, *The Duluth News Tribune*, Aug. 23, 1908, p. 9; Crowd Threatens to Lynch a Wife-Beater, *Morning Olympian*, Feb. 1, 1906, p. 1; Escaped From Mob in Auto, *The Evening News*, July 31, 1905, p. 7; “Hang Him” Cried the Vengeance-Bent Crowd Following Alleged Wife Beater, *The Morning Herald*, May 6, 1902, p. 5; Mob Alleged Wife Beater, *The Philadelphia Inquirer*, July 7, 1905, p. 3; This Wife Beater Beaten, *The Kansas City Times*, June 30, 1908, p. 1.

¹⁴⁸ Wife-Beater Is Thumped, *Morning Oregonian*, May 24, 1910, p. 6.

him,¹⁴⁹ or lashed him and dunked him in water.¹⁵⁰ They attempted to tar and feather him and drown him in his jail cell;¹⁵¹ horsewhipped and shot him;¹⁵² and attempted to lynch him.¹⁵³ They took eggs to the jail and “belied him with spoiled hen fruit.”¹⁵⁴ They rolled him in snow and then “took a red hot poker and seared his body, drawing it across in parallel lines.”¹⁵⁵ They forced him to “run a gauntlet of men with blacksnakes”¹⁵⁶ and drove him to the outskirts of town “and told him to keep going.”¹⁵⁷ They stripped him and doused him “in the icy waters” of a local river.¹⁵⁸ They “battered down the door” of his home and “threw a noose about his neck and after dragging him a block thru the streets tossed the rope over the cross arm of a telegraph pole and started to hang him,” releasing him to policemen only after “he had been choked into unconsciousness.”¹⁵⁹

¹⁴⁹ Women Scourge His Bare Back, Los Angeles Times, Feb. 28, 1907, p. 11; Women Lash a Wife-Beater, The Columbus Enquirer-Sun, March 2, 1907, p. 3. See also, Wife-Beater Badly Beaten, Los Angeles Times, March 20, 1907, p. 11; Wife Beater Whipped by Irate Citizens, The Duluth News Tribune, Dec. 13, 1907, p. 2; Wife Beater Is Whipped, The Helena Independent, March 15, 1900, p. 7; Wife Beater Is Whipped, Olympia Daily Recorder, Oct. 5, 1904, p. 1; Wife Beater Gets Fifty Lashes, The New York Times, Oct. 21, 1901, p. 1; Whitecaps Flog Alleged Wife-Beater, The Philadelphia Inquirer, June 16, 1900, p. 4; Beat a Wife Beater, Morning World-Herald, Sept. 3, 1900, p. 1; Horsewhip a Wife Beater, Chicago Daily Tribune, Oct. 21, 1901, p. 1; Lashes for Wife-Beater, The Washington Post, Dec. 17, 1900, p. 9; Mitchell Women Beat Wife Beater, The Grand Forks Daily Herald, July 1, 1908, p. 1.

¹⁵⁰ Women Tar and Duck, The Fort Worth Telegram, May 26, 1908, p. 10. See also, Wife Beater Is Ducked, Morning World-Herald, July 24, 1900, p. 7; Man Fined for Wife Beating, Dallas Morning News, Sept. 12, 1908, p. 1; Telegraphic Notes, Belleville News-Democrat, March 2, 1905, p. 2.

¹⁵¹ Would Drown Wife Beater, The Bellingham Herald, July 13, 1905, p. 2.

¹⁵² Wife-Beater Whipped and Shot, Morning Oregonian, Feb. 13, 1908, p. 3.

¹⁵³ Y.M.C.A. Members Would Be-Lynchers, The Columbus Enquirer-Sun, June 21, 1908, p. 2; Broke His Wife's Leg and Was Nearly Lunched, Wilkes-Barres Times, July 16, 1904, p. 2; Mob Beats a Wife-Beater: Police Narrowly Avert Lynching at South Cumberland, The Washington Post, June 17, 1908, p. 12.

¹⁵⁴ Accused Wife Beater Egged, Aberdeen Daily News, May 11, 1910, p. 4; Northwest Briefs, The Duluth News Tribune, May 10, 1910, p. 2.

¹⁵⁵ Wife Beater Branded with Red Hot Iron, The Evening News, Jan. 15, 1903, p. 1.

¹⁵⁶ Wife Beater Nearly Lynched by Miners, Aberdeen Daily News, Aug. 13, 1908, p. 1. See also Mob Attacks Wife Beater: Dakota Miners Force Him to Run Gantlet of Blacksnake Whips, The New York Times, Aug. 2, 1908, p. 10.

¹⁵⁷ Banished for Wife Beating, Omaha World Herald, published as Morning World-Herald, July 1, 1904, p. 2.

¹⁵⁸ Wife Beater Whipped by Mob of Citizens, The Grand Forks Daily Herald, Dec. 12, 1906, p. 1; Lyons Wife Beater Is Whipped, Stripped, and Then Doused in Ice Cold River, Omaha World Herald, published as Morning World-Herald, Dec. 10, 1906, p. 1. See also, Duck Wife Beater In River, The Evening News, Feb. 22, 1905, p. 7.

¹⁵⁹ Mob Wife Beater: Police Rescue Man From Enraged Neighbors Bent on Lynching, The Forth Worth Telegram, Sept. 22, 1907, p. 3; Wife-Beater Strung Up, The Washington Post, Sept. 16, 1907, p. 4.

They drove him “like a beast” for four miles by kicking and pounding them with “fists and clubs,” broke his nose and jaw, tore his hair from his scalps, and left him naked, bloody, and blinded “to die by a lonely road.”¹⁶⁰

Mob violence against wife beaters was generally seen as acceptable and even “heroic.”¹⁶¹ Likely the most famous example of this approval came directly from President Theodore Roosevelt. When a reporter came to interview Roosevelt shortly after he left office, the man had bandages on one of his hands. Upon asking how the man was injured, Roosevelt “was told that the reporter had sprained his hand whipping a foreigner who had struck his wife.” President Roosevelt responded, “That’s an honorable wound. I’m proud of you American men, who will not permit wife beating.”¹⁶²

For those who preferred not to take the physical punishment of wife beaters into their own hands, one popular alternative was to advocate for the introduction of whipping post laws.¹⁶³ A dozen states considered enacting such legislation between 1876 and 1906. Although the bills were ultimately only adopted in Maryland (1882), Delaware

¹⁶⁰ Wife-Beater the Victim of a Mob in Nebraska, *The Lexington Herald*, Dec. 23, 1905, p. 6; Mob Flails Wife Beater, *The Kansas City Star*, Dec. 21, 1905, p. 3. For other extreme examples, see, e.g., Wife Beater Soaked and Whipped, *Wilkes-Barre Times*, July 22, 1905, p. 9; Wife Beater Is Ducked by Posse, *The Duluth News Tribune*, July 24, 1905, p. 2; Posse Ducks Wife Beater, *The Bellingham Herald*, July 29, 1905, p. 12; His Neighbors Intervene, *Omaha World-Herald*, published as the *Sunday World-Herald*, Dec. 6, 1903 p. 7; Strech [sic] the Neck of Wife Beater, *Olympia Daily Record*, Dec. 10, 1903, p. 1. See also, Man Who Beat Mother of His Twenty-two Children Gets Deserved Whipping, *Grand Forks Daily Herald*, Sept. 9, 1908, p. 1; Wife Beater Thrashed, *The Philadelphia Inquirer*, May 24, 1908, p. 5; Wife Beater Is Tarred and Feathered and Ridden Out of Town by Women, *The Grand Forks Daily Herald*, May 22, 1908, p. 1; Posse Flogs Wife Beater, *Los Angeles Times*, Feb. 5, 1907, p. 14; Tar and Feathers for Wife Beater, *The Evening News*, Dec. 29, 1905, p. 8.

¹⁶¹ Women Whip Cruel Husbands, *Chicago Daily Tribune*, March 29, 1902, p. 10. Participants in vigilante violence were generally only punished when the result of their actions was murder. See, e.g., Beat Wife Beater to Death, *The New York Times*, July 10, 1906, p. 2; Mob Killed Wife Beater, *The Washington Post*, July 10, 1906, p. 1; Neighbors Kill a Wife Beater, *The Evening News*, July 18, 1906, p. 5.

¹⁶² Roosevelt Proud of Him, *Aberdeen Daily News*, July 7, 1910, p. 2; Teddy Praises Reporter Who Hits Wife Beater, *Wilkes Barre Times-Leader*, July 6, 1910, p. 5.

¹⁶³ I identified over 150 articles from the decade before Thompson discussing whether wife beaters should be whipped.

(1901), and Oregon (1906),¹⁶⁴ the discussion surrounding the possibility elsewhere shows the seriousness with which wife beating was addressed. Concerned citizens wrote letters to the editor urging the adoption of the laws,¹⁶⁵ newspaper editors expressed support,¹⁶⁶ police officers and prosecutors advocated for the harsher remedy,¹⁶⁷ and many legislators acted diligently on their constituents' behalf to propose the legislation.¹⁶⁸ Even *The American Lawyer* called for the enactment of such laws.¹⁶⁹ The existing punishments, these groups argued, were insufficient: "The police have arrested these men, the justices have fined them, or sent them to prison, the newspapers have denounced them as ruffians and in many cases they have lost their positions, but their punishment has not been a lesson to others." Fines and jail time simply deprived the man's family of needed financial support. Wife beaters could only be reached "through their hides." The goal was to "strike fear into the hearts of others who are in the habit of abusing their wives."¹⁷⁰

The possibility of using the whipping post for wife beaters was discussed in D.C., particularly after President Roosevelt requested the enactment of a whipping post law

¹⁶⁴ Siegel, *supra* note X, at 2137.

¹⁶⁵ See, e.g., W.A. Jarrel, Open Letter to the Legislature, Dallas Morning News, Jan. 20, 1907, p. 18; J.E. Brown, Spare Not the Lash: Abolition of the Whipping Post Declared to Be a Mistake, The Washington Post, Jan. 9, 1905, p. 9.

¹⁶⁶ See, e.g., The State of Oregon, The Forth Worth Telegram, May 31, 1905, p. 4; A Son of "Bloody Bridles" Waite, Morning Olympian, Feb. 13, 1906, p. 2; Seven Thousand Wives Beaten in Pennsylvania, Olympia Daily Recorder, Jan. 27, 1905, p. 2; A Wife-Beater Bill, The Macon Telegraph, Jan. 21, 1905, p. 4.

¹⁶⁷ See, e.g., Give Lash to Such Brutes, Los Angeles Times, Sept. 27, 1908, p. II9 (quoting numerous officials in Los Angeles); A Whipping Post: John Lavander Told That It Was Just What Was Needed in His Case, The Grand Forks Daily Herald, May, 4, 1906, p. 6.

¹⁶⁸ See, e.g., 50 Lashes for Wife Beaters: Senator Henson to Introduce Bill Establishing Whipping Post for Offenders, Jan. 16, 1907, p. 7; Has a Whipping Post Bill: Minnesota Legislator Favors Lashing for Those Guilty of Wife Beating or Nonsupport, Chicago Daily Tribune, Jan. 31, 1905, p. 1.

¹⁶⁹ Work for the Legislature, 9 The American Lawyer 101, 102 (1901).

¹⁷⁰ See, e.g., Give Lash to Such Brutes, Los Angeles Times, Sept. 27, 1908, p. II9 At least some wife beaters preferred the whipping post so they could continue to provide for their families. See, e.g., Prefers Whipping Post, The Washington Post, April 28, 1909, p. 9.

during his December 6, 1904, address to Congress.¹⁷¹ Roosevelt declared, “There are certain offenders, whose criminality takes the shape of brutality and cruelty toward the weak, who need a special type of punishment.” He continued, “The wife-beater, for example, is inadequately punished by imprisonment; for imprisonment may often mean nothing to him, while it may cause hunger and want to the wife and children who have been victims of his brutality.” He therefore suggested, “Probably some form of corporal punishment would be the most adequate way of meeting this kind of crime.”¹⁷²

Following the President’s recommendation, Congress asked the D.C. police court to compile statistics about the wife beating cases in the District. The police court’s report showed an increase in wife beating cases that led The Washington Post to name 1905 the “Year of Wife-Beaters.”¹⁷³ A bill was then proposed in Congress and widely debated. Although it originally was met with enthusiasm,¹⁷⁴ a year later the discussion inexplicably deteriorated into “the funniest ‘stunt’ pulled off in the hall of the House in many a long day,” with Congressmen openly mocking the bachelor-Congressman who had introduced the bill.¹⁷⁵ Although the bill was not successful, the discussion it generated around the country shows that these politicians were not representative of their constituents’ attitudes. Congress’s levity in discussing the bill and the “personal remarks” about the bill’s sponsor “were in very bad taste,” according to one

¹⁷¹ See, e.g., Whipping Post for the Wife Beater: Indorsed by Officials; Opposed by Women, The Washington Post, Jan. 28, 1906, p. SM2.

¹⁷² Theodore Roosevelt’s Address to Congress, Dec. 6, 1904, available at <http://www.infoplease.com/t/hist/state-of-the-union/116.html>.; Whipping Post for the Wife Beater: Indorsed by Officials; Opposed by Women, The Washington Post, Jan. 28, 1906, p. SM2.

¹⁷³ Year of Wife-Beaters, The Washington Post, Feb. 1, 1905, p. 10.

¹⁷⁴ Discussed by House: Whipping-post Bill Causes Interest Among Members, The Washington Post, Jan. 7, 1905, p. 4; Wants the Whipping Post, The Washington Post, Jan. 6, 1905, p. 4.

¹⁷⁵ Whipping Post Bill Sidetracked, The Philadelphia Inquirer, Feb. 13, 1906, p. 11; House Hazes Bachelor on Whipping Post Bill, The New York Times, Feb. 13, 1906, p. 5; Lashes for Adams: Tongue Variety Dealt in House Proves Stinging, The Washington Post, Feb. 13, 1906, p. 4; Wife Beaters Are Safe, Chicago Daily Tribune, Feb. 13, 1906, p. 4.

newspaper.¹⁷⁶ Most newspapers treated the possibility of a whipping post as a serious possibility worthy of evaluation, even if they ultimately thought it was not a good solution.¹⁷⁷ Similarly, law review editors weighed the benefits and disadvantages of corporal punishment for wife beaters fairly, even if they concluded that use of whipping posts should be limited.¹⁷⁸

Many judges expressed support for the whipping post.¹⁷⁹ A trial judge hearing a wife beating case in Harlem delivered “a caustic lecture on the subject of wife-beating,” in which he said that “a whipping post was sorely needed in [New York], as that form of punishment is about the only one he can think of that will stop such brutality.”¹⁸⁰ Illinois Circuit Judge Murry F. Tuley felt strongly enough that the whipping post was “the only true remedy for the habitual wife beater” that he published an article advocating for the whipping post in the Biloxi Herald. In Tuley’s opinion, “The man who commits this crime is a vile coward at heart and only does so because he is the stronger of the two, and because his wife is unable to resist his brute strength.” Although he was against capital

¹⁷⁶ Wife Beating in The District of Columbia, *The Philadelphia Inquirer*, Feb. 15, 1906, p. 8.

¹⁷⁷ See, e.g., A Wife-Beater Bill, *The Macon Telegraph*, Jan. 21, 1905, p. 4; The Wife Beater, *Chicago Daily Tribune*, Feb. 6, 1906, p. 8. The events in Congress were widely covered. See, e.g., Col. Adams Urges Use of the “Cat,” *Philadelphia Inquirer*, Jan. 7, 1905, p. 9; House Plea for Whipping Post, *Chicago Daily Tribune*, Jan. 7, 1905, p. 4; Routine Proceedings in the Senate, *The Philadelphia Inquirer*, Jan. 25, 1905, p. 6; Would Lash Wife Beaters, *The New York Times*, Feb. 3, 1905, p. 6; To Establish Whipping Post, *Aberdeen Daily News*, Feb. 3, 1905, p. 1; The President for the Bill, *The Kansas City Star*, Dec. 15, 1905, p. 15; Lash for Wife-Beaters Is Congressman’s Remedy, *The Forth Worth Telegram*, Feb. 1, 1906, p. 6; To Beat Wife Beaters, *The State*, March 4, 1906, p. 23.

¹⁷⁸ See, e.g., *The Whipping Post*, 10 *Virginia L. Reg.* 735, 735-36 (1904) (“We agree that the whipping post should be used only in extreme cases an after milder means have been exhausted”); *Whipping and Castration As Punishments for Crime*, 8 *Yale L.J.* 371, 377 (1899) (observing that the whipping post would degrade criminals).

¹⁷⁹ See, e.g., *Regret Lash Is Obsolete; Rawhide for Wife Beaters*, *Chicago Daily Tribune*, Aug. 31, 1907, p. 7.

¹⁸⁰ *Favors a Whipping Post: Magistrate House Says One Is Needed in Harlem—Warns Wifebeater*, *The New York Times*, Aug. 9, 1909, p. 4. See also *Harlem Magistrate Urgees [sic] Whipping Post as Being Proper Punishment for Wife-Beaters*, *San Jose Mercury News*, published as the *Evening News*, Aug. 25, 1909, p. 8. Another newspaper reported that this judge declared, “What this state needs is a whipping post for wife beaters, and I am willing to head a movement to establish it.” *The Need of a Whipping Post*, *The Kansas City Star*, Aug. 9, 1909, p. 3. See also *Whipping Post Sorely Needed*, *The Columbus Enquirer-Sun*, Aug. 10, 1909, p. 6.

punishment, a man so “low and vile” as a wife beater deserved “anywhere from 10 to 50 lashes on his bare back, at least after the second or third offense.”¹⁸¹

A Cook County, Illinois, judge writing a counterpoint to Tuley’s article did not differ in his contempt for wife beaters. Rather, he opposed the whipping post for *any* crime.¹⁸² Indeed, those who opposed the whipping post for wife beaters did so because they were against the whipping post in general, not because they did not take wife beating seriously.¹⁸³ For example, upon returning from the international convention of chiefs of police, where the whipping post for wife beating was widely debated, a Texas police chief told a newspaper, “Because it savors of the nature of slavery the whipping post is not in favor, though it is effective.”¹⁸⁴ Others suggested that the whipping post was just a substitute for identifying and solving the real underlying problems: poverty and alcohol¹⁸⁵ or “the marriage of people tainted with disease.”¹⁸⁶ Ultimately, the view that the President’s suggestion was “cruel” persevered. “To a great many people here,” one newspaper astutely observed, “the presence of the whipping post seems a deeper disgrace than the presence of wife-beaters.”¹⁸⁷

¹⁸¹ For and Against the Whipping Post as a Corrective Measure: For by Judge Murry F. Tuley, *The Biloxi Daily Herald*, Feb. 14, 1905, p. 2.

¹⁸² For and Against the Whipping Post as a Corrective Measure: Against by Judge Orrin N. Carter, *The Biloxi Daily Herald*, Feb. 14, 1905, p. 2.

¹⁸³ See, e.g., Whipping Post for the Wife Beater: Indorsed by Officials; Opposed by Women, *The Washington Post*, Jan. 28, 1906, p. SM2.

¹⁸⁴ Police Discuss Whipping Post: Method of Punishment Urged in Convention, *The Fort Worth Telegram*, April 14, 1906, p. 8.

¹⁸⁵ Mrs. M.A. Turner, Causes of Wife Beating, *The Washington Post*, Feb. 6, 1905, p. 9; Clarence W. Mead, The Black Bottle and Wife Beating, *The Biloxi Daily Herald*, May 30, 1902, p. 2 (“IT IS LIQUOR THAT IS THE WIFE BEATER AND NOT THE MAN.”).

¹⁸⁶ Mme. L. MacDonnall, Editor Post, Jan. 16, 1905, p. 5.

¹⁸⁷ Wife-Beating the Topic: President Stirs Washington, *Charlotte Daily Observer*, Jan. 9, 1905, p. 7.

Finally, it should be noted that in addition to formal punishments and physical violence, wife beaters suffered from severe harm to their reputations.¹⁸⁸ As editors at The Yale Law Journal noted, “The social sting often goes the deepest.”¹⁸⁹ Primary sources tell numerous stories that show the deep shame that surrounding wife beating allegations. In one instance a man found guilty of wife beating tried to bribe the presiding judge to order newspaper reporters not to cover his conviction.¹⁹⁰ Being falsely labeled a wife beater was so harmful that men brought libel actions against newspapers that publicly accused them of such behavior,¹⁹¹ and in one case, the jury awarded the man \$10,000.¹⁹² Wife beating was seen as so despicable that it was used in attempts to discredit male witnesses in cases that had nothing to do with domestic violence.¹⁹³ Most poignantly, it was not unusual for newspapers to report that wife beaters, overcome with remorse, had attempted suicide¹⁹⁴ and sometimes succeeded.¹⁹⁵ As one newspaper reported, “the humiliation is evidently what caused him to take his life.”¹⁹⁶

¹⁸⁸ Most men who beat their wives “though thinking it no degradation to strike a woman who submits, would be bitterly ashamed to have it said by the neighbors that, ‘Him and his wife gets fighting.’” *Husband and Wife Among the Poor*, M. Loane, *Eclectic Magazine of Foreign Literature*, April 1905, 144, 4, p. 431, 432.

¹⁸⁹ *Whipping and Castration As Punishments for Crime*, 8 *Yale L.J.* 371, 378 (1899).

¹⁹⁰ *Would Silence the Press*, *Morning World-Herald*, Aug. 14, 1901, p. 3.

¹⁹¹ *Drebin v. Jewish World Pub. Co.*, 105 A. 58, 58 (Pa. 1918).

¹⁹² *Stokes v. Morning Journal Ass’n*, 73 N.Y.S. 245 (Supreme Court, Appellate Division NY 1901); *Stokes v. Morning Journal Ass’n*, 76 N.Y.S. 429, 436 (Supreme Court, Appellate Division, NY 1902).

¹⁹³ *Malone v. Stephenson*, 102 N.W. 372, 373 (Minn. 1905); *People v. Gotshall*, 82 N.W. 274, 276 (1900). See also *Canfield Lumber co. v. Kint Lumber Co.*, 127 N.W. 70 (Iowa 1910).

¹⁹⁴ *Tried to Leap to Death in Prison*, *The Philadelphia Inquirer*, Sept. 7, 1910, p. 3; *Summary of Pennsylvania News*, *The Philadelphia Inquirer*, March 17, 1901, p. 4; *Tried to Die by Biting Wrist*, *New York Times*, July 4, 1904, p. 3; *Tried to End Life in Cell*, *The Philadelphia Inquirer*, Sept. 13, 1904, p. 3.

¹⁹⁵ See, e.g., *Killed-Himself*, *Grand Forks Daily Herald*, Oct. 28, 1905, p. 2; *Wife Beater a Suicide*, *Belleville News-Democrat*, May 4, 1909, p. 5; *Wife Beater Is Murdered*, *Grand Forks Daily Herald*, Sept. 20, 1908, p. 6; *Wife Beater Takes Poison Before Arrest*, *Morning Olympian*, Oct. 19, 1910, p. 2 (also published in *Olympia Daily Recorder*, Oct. 18, 1910, p. 6); *Wife Beater a Suicide*, *The New York Times*, Aug. 18, 1908, p. 9; *Wife Beater Blows Off Half His Head*, *Duluth News Tribune*, published as *The Sunday News Tribune*, May 29, 1904, p. 13; *Wife Beater Peterson Dies at the Poor-Farm*, *Duluth News Tribune*, Jan. 4, 1907, p. 2; *A Cowardly Wife Beater*, *Wilkes-Barre Times*, Jan. 13, 1905, p. 11; *Killed Himself*, *Grand Forks Daily Herald*, Oct. 28, 1905, p. 2.

¹⁹⁶ *Wife Beater Ends Life Rather Than Serve Sentence*, *The Macon Daily Telegraph*, July 15, 1908, p. 1.

Far from being hidden from view in a man's castle, wife beating was seen as a socially unacceptable act committed by "none but the meanest of cowards."¹⁹⁷ The "classic feminist critique charg[ing] that privacy doctrines powerfully facilitated the abuse and subordination of women"¹⁹⁸ is thus due for a serious revision. Men of all classes and races were charged and held liable for beating their wives. Not only did society approve of these punishments, many advocated for more. The Supreme Court's contention in *Thompson* that Mrs. Thompson could secure punishment for Mr. Thompson in the criminal courts was therefore not unfounded. Crucially, however, they must have realized that criminal prosecutions did not compensate victims as tort suits would.

C. Summary: Remedies Available but Insufficient

From this study of divorce and criminal law in the early 1900s, it becomes clear that the majority Justices in *Thompson* and judges in other interspousal tort cases had good reason to believe that wives could secure divorces from cruel husbands and obtain punishments from the criminal courts. These remedies were not illusory. At the same time, however, the judges must have recognized that these alternatives did not guarantee women financial recovery the way a tort suit might.¹⁹⁹ Obviously criminal law did not provide women with damages;²⁰⁰ ironically, some women actually paid criminal fines for their husbands.²⁰¹ Divorce suits did not guarantee recovery either, as the Court well

¹⁹⁷ \$17 Price of Wife Beating, *The Lexington Herald*, Aug. 31, 1910, p. 4. See also Cowardly. Women Beaten by Brutal Men: One Victim is Severely Hurt by Husband, *Los Angeles Times*, April 18, 1910, p. III.

¹⁹⁸ David D. Meyer, *The Constitutionalization of Family Law*, 42 *Fam. L. Q.* 529, 554, n.140 (2008) (citing Catherine MacKinnon, Katherine Bartlett, Elizabeth Schneider, and Siegel).

¹⁹⁹ Johnson, 77 *So.* at 338 (describing existing remedies as "illusory and inadequate.")

²⁰⁰ Crowell, 105 *S.E.* at 209.

²⁰¹ See, e.g., *Wife Beater Roasted: Howard Judge Scores Man Who Thrashed His Spouse*, *Aberdeen Daily News*, July 1, 1909, p. 7 ("The woman who had been beaten produced the money with which to pay her husband's fine and secured his release.") The same article was run by the *Aberdeen Daily News* on June

knew. The Court had seen many instances in which deserving wives were unable to get alimony for technical reasons, such as having their suits blocked under the full faith and credit clause. Even if alimony was granted, the death of the former husband would immediately terminate recovery.²⁰² And, as the Yale Law Journal noted, both of these remedies were attached to an “inevitable stigma.”²⁰³ Viewing these shortcomings in conjunction with the Court’s disingenuous reliance on the rhetoric of marital harmony and privacy suggests that something more was at play. The next section offers an explanation.

III. The Justices Were Concerned that Allowing Interspousal Tort Suits for Assault Would Lead to Civil Suits for Marital Rape

One reason why civil suits for domestic violence were not allowed was because the Justices, like other judges at the time, were concerned that if they allowed interspousal personal tort suits, wives would be able sue for damages for what is now called marital rape.²⁰⁴ To reach this conclusion, this section addresses numerous interrelated topics.

The first part introduces the concept of sex as a marital duty. It shows that sex was perceived as central to marriage and uses divorce law and the marital rape exemption to illustrate the law’s protection of husbands who raped their wives. The second part explores the connections people perceived between wives and prostitutes, and explains

25, 1909, p. 2. Women also came to post bond for their abusers. See, Bail: Pastor Whips Jealous Wife: When He Is Arrested She Gives Bond to Keep Him from Jail, *The Washington Post*, April 1, 1907, p. 1.

²⁰² *Boblitz v. Boblitz*, 462 A.2d 506, 509 (Md. 1983) (“The available ‘alternative remedies’ suggested by the [Thompson] Court have a hollow ring.”).

²⁰³ Comment, Action by a Wife Against Her Husband for a Tort to the Person, 23 *Yale L.J.* 613, 617 (1914).

²⁰⁴ As I have argued elsewhere, judges in the 1920s were hesitant to allow interspousal torts because they feared collusion and fraud in automobile negligence actions. See Katz, *supra* note X.

why they found these similarities worrisome. The third part outlines the civil liability men faced for the rape of unrelated women, making two key points. First, civil rape was actually much easier to prove than criminal rape for evidentiary reasons. And, second, in many instances the civil rape suits were actually for *assault*, with the sexual component simply being an aggravating circumstance. This observation is critical because, as the fourth part argues, judges perceived that if they allowed a wife to sue her husband for civil damages for assault in general, it might be difficult to keep her from suing him for an assault that included sex. Although some judges were confident that they could draw meaningful legal distinctions to avoid this result, this section will show that a significant group of others were not so sure. To these judges, tort actions were worrisome because they would threaten married men's only legal source of sexual intercourse and would make wives comparable to prostitutes, essentially paying them for unwanted sexual contact.

A. Sex as a Marital Duty

In the early 1900s, sex was perceived as a crucial component of marriage both in popular culture and the law. In the words of one source from the time, “the impulse of sex is just as fundamental as the impulse of nutrition.”²⁰⁵ The “physical basis of marriage” was unavoidable: “As long as humanity exists on the earth, the fundamental feelings of hunger and love will energize human action.”²⁰⁶ This fundamental impulse was supposed to be satisfied through marriage. Although each woman had “a right to remain unmarried,” once she has “taken upon herself the marriage vow, she has no right

²⁰⁵ Ellis, *supra* note X, at 255-56.

²⁰⁶ Dealey, *supra* note X, at 35.

to violate her contract to reverence and obey.”²⁰⁷ In a book of “Sex Talks” written for teenage girls, the male author advised his readers that “[w]ives and husbands both have certain sexual rights which should be perfectly understood.” Although he advised “care and diplomacy” when the partners had “[d]ifferences in sexual appetite,” other authors focused far less on mutual agreement.²⁰⁸ Consummation was an “essential element of a marriage.”²⁰⁹ A husband and wife must “assume the marriage rights and obligations.”²¹⁰ Similarly, another wrote, “Marriage always implies the right of sexual intercourse: society . . . even regards it as [each spouse’s] duty to gratify in some measure the other partner’s desire.”²¹¹ Wives had a “supposed duty to produce as many children as Fate may decide.”²¹²

Marital sex was not considered a private matter: the falling birthrate of “native born” Americans, especially in combination with the rising rate of divorce, left many people doubting “the survival of the family and the ‘American race.’”²¹³ Many of the same books that analyzed the effect of divorce on the American family also devoted attention to the troubling birthrate.²¹⁴ As one book explained, “‘Race suicide’ and an alarming increase in the divorce rate seem to be closely allied factors in weakening the sanctity of home ties.”²¹⁵ Another observed that “[v]oluntary childless marriage,” or limiting the number of children to one or two, “is no doubt a very serious condition, and

²⁰⁷ Hamner, *supra* note X, at 24.

²⁰⁸ Irving David Steinhardt, *Ten Sex Talks to Girls (14 Years and Older)* 137 (1914).

²⁰⁹ Bayles, *supra* note X, at 42.

²¹⁰ *Id.*

²¹¹ Edward Westermarck, *The History of Human Marriage* 26 (1922, 5th ed.).

²¹² Mona Caird, *The Morality of Marriage: And Other Essays on the Status and Destiny of Women* 138 (1897).

²¹³ Lovett, *supra* note X, at 7.

²¹⁴ See, e.g., Ellis, *supra* note X, *The Task of Social Hygiene*, Ch. 5: “The Significance of a Falling Birth Rate,” 134-92. See also, *Western Civilization and Birth-Rate—Discussion*, 8 *American Econ. Ass’n*, 90 (1907).

²¹⁵ Dealey, *supra* note X, at 3.

one, too, that seems to be on the increase.” That trend was particularly disconcerting because “it seems to affect the classes who, for the sake of the cultural progress of the race, would do well to have more numerous offspring.”²¹⁶ In response, public policy at this time used “nostalgic idealizations of motherhood, the family, and home” to push reproduction agendas.²¹⁷ Perhaps one of the clearest signs of this policy was Congress’s creation of Mother’s Day in 1914.²¹⁸

Public concern in the area of sex and reproduction grew as women’s changing role in society threatened to alter wives’ marital duties. It seemed that “the much-envied ‘bachelor girl’ ha[d] replaced the formerly despised ‘old maid.’”²¹⁹ Observers noted that by earning wages, women increased their importance in the household. Economically independent women “become less eager for marriage,” and perhaps more problematically, “the married, conscious of their capacity for self-support, become less willing to be subordinated to the male in the family or to become mothers to many children.”²²⁰ If a man allowed his wife to become the breadwinner, “she naturally becomes the head of the home and the whole family government is perverted.”²²¹ This trend was explicitly linked to “the modern problem of divorce,”²²² prostitution, and adultery.²²³

²¹⁶ Elsie Clews Parson, *The Family: An Ethnographical and Historical Outline with Descriptive Notes*, Planned as a Text-book for the Use of College Lecturers and of Directors of Home-reading Clubs 351-52 (1906). An article published in the *New York Times* observed, “The unanimous opinion of all foreign and most native observers is that the American race is degenerating, becoming lank, nervous, dyspeptic, hysterical, frivolous, and immoral, the only disagreement being the degree of said degeneracy and the causes which have produced it.” *Are Americans Degenerating?* Dr. Hutchison, *Taking Up Criticisms of Foreigners*, *Elaborates a New Race Problem*, *The New York Times*, April 18, 1909, p. SM6.

²¹⁷ Lovett, *supra* note X, at 3.

²¹⁸ *Id.* at 98.

²¹⁹ Theodore Schroeder, *The Evolution of Marriage Ideals*, 34 *The Arena* 578, 588 (1905).

²²⁰ Dealey, *supra* note X, at 90.

²²¹ Hamner, *supra* note X, at 43.

²²² Dealey, *supra* note X, at 96.

²²³ Parson, *supra* note X, at 350.

Judges' views paralleled those of the general public in regards to the crucial nature of sex in marriage. From a legal perspective, consummation by sexual intercourse has been seen as "virtually synonymous with the marital relationship."²²⁴ A woman's inability to "properly assume the duties of wifhood" was a "deception . . . in regard to facts essential to the very existence of the marriage relation." As such, it justified an annulment.²²⁵ A man's inability to consummate was similarly fatal to the marriage.²²⁶ For example, a New Jersey court granted an annulment to a wife who remained a virgin after three years of cohabitation with her husband on the grounds of presumed impotence, even though the husband "vigorously protested his virility" and claimed the non-consummation was because "his efforts at sexual intercourse were painful and distressing" to the wife.²²⁷ The court had serious "misgivings" about the husband's alleged reason for refraining from sexual intercourse:

Such solicitude of a groom is noble, of a husband, heroic. Few have the fortitude to resist the temptations of the honeymoon. But human endurance has its limitations. When nature demands its due, youth is prodigal in the payment. Men are still cave men in the pleasures of the bed.²²⁸

In the judge's opinion, "[c]ommon experience discredits" the husband's story. Furthermore, if he refrained from sexual intercourse "purely out of sympathy for her feelings, he deserves to be doubted for not having asserted his rights, even though she balked."²²⁹

²²⁴ Laurence Drew Borten, Note, Sex, Procreation, and the State Interest in Marriage, 102 Colum. L. Rev. 1089, 1112 (2002); see also Sally F. Goldfarb, Family Law, Marriage, and Heterosexuality: Questioning the Assumptions, 7 Temp. Pol. & Civ. Rts. L. Rev. 285, 288-92 (1998).

²²⁵ Smith v. Smith, 50 N.E. 933, 934-35 (1898).

²²⁶ See Borten, *supra* note X, at 1098-1104.

²²⁷ Tompkins v. Tompkins, 111 A. 599, 600 (Court of Chancery of N.J. 1920).

²²⁸ *Id.* at 601.

²²⁹ *Id.*

Marriage without sex was simply unthinkable. In the words of an Alaskan judge, “Animal desire between the sexes is one of the incitements to matrimony, the lawful gratification of which is encouraged and protected alike by moral sentiment and municipal regulation.”²³⁰ Another judge explained, “A promise by either spouse to pay the other for continuing the cohabitation or submitting to sexual intercourse would be void, for there would be no consideration therefor [sic] save the plainly insufficient one of doing what the promisor was already legally bound to do.”²³¹ A wife could not contract with her husband for her services because “[i]t would operate disastrously upon domestic life and breed discord and mischief.” Instead, she “should discharge marital duties in loving and devoted ministrations.”²³²

For the purposes of this paper, one of the most helpful types of cases to explore judges’ attitude toward conjugal “duties” is those in which women sought a divorce because of the allegedly excessive sexual demands of their husbands.²³³ According to one scholar’s research, “[a]bhorrence of male lust was one of the most common feelings expressed in sexual conflicts by divorcing wives.”²³⁴ These divorce-for-cruelty suits were so common that by 1921 the Supreme Court of Iowa, hearing one such case, wrote that, “The merits of this controversy present nothing new in judicial annals relative to divorce.” A wife alleging that “compulsory sexual intercourse” injured her health was a “usual story.”²³⁵

²³⁰ Anonymous, 7 So. 100, 100 (Ala. 1890).

²³¹ Spencer, *supra* note X, at 104.

²³² Coleman v. Burr, 93 N.Y. 17, 25 (Court of Appeals of NY 1883).

²³³ For discussion of this topic in the 1800s, see Jill Elaine Hasday, Contest and Consent: A Legal History of Marital Rape, 88 Cal. L. Rev. 1373, 1465-1474 (2000).

²³⁴ Elaine Tyler May, Great Expectations: Marriage and Divorce in Post-Victorian America 105 (1981).

²³⁵ Hines v. Hines, 185 N.W. 91, 91 (Iowa 1921). See also R.P. Davis, Insistence on Sex Relations as Cruelty or Indignity Constituting Grounds for Divorce, 88 A.L.R. 553 (originally published in 1963).

These divorces were not always granted, however. Divorce for cruelty was justified only when there had been “such a course of conduct or continued treatment as renders the wife’s condition intolerable and life burdensome.”²³⁶ Because sexual rights and duties were implied by marriage, mere unwanted sex was not a sufficient ground for divorce. So, for example, when “[t]he only instance of cruelty adduced is roughness or violence in sexual intercourse the night of the marriage, and a repetition of the intercourse, on two other occasions, when, possibly, the [wife] was not in condition for the function,” no divorce was granted. The court explained, “The copulation itself was in the exercise of [the husband’s] marital right, and it is not shown either that its ill consequences were due to any wanton brutality on his part, or of serious detriment to the [wife].”²³⁷ In contrast, a wife who “willingly allowed the husband all reasonable indulgence of his marital rights except when she was not well,” was granted a divorce because her husband’s “unusual and inordinately lustful exactions,” which occurred “in season and out of season, without regard to her physical condition” made her ill.²³⁸

When a wife’s refusal to perform her sexual duties was not rooted in illness, courts were rarely sympathetic. For example, the Supreme Court of Kentucky struck down a wife’s alimony award because she “uncompromisingly refused to perform the marital obligations and stubbornly refused her husband.” The wife’s refusal was based in

²³⁶ *Krug v. Krug*, 22 Pa. Super. 572, *1 (Sup. Ct. Pa. 1903). See also *Maget v. Maget*, 85 Mo. App. 6, *4 (Kansas City Ct. of App., Mo 1900) (“To authorize a divorce on the ground of cruelty the evidence should show that the acts complained of are such as to endanger life, limb or health that will naturally arise from the continued commission of such acts, but it is not necessary that the evidence should show that actual physical violence has been used.”); *Gardner v. Gardner*, 58 S.W. 342, 343 (Tenn. 1900) (“It is now well settled by this court that cruel and inhuman treatment, within the meaning of the statute is not confined to acts of personal violence, but includes such treatment as endangers the wife’s health and renders cohabitation intolerable.”). See also James Schouler, *Law of the Domestic Relations* 48 (1905).

²³⁷ *Dignan v. Dignan*, 40 N.Y.S. 320, 320 (Supreme Court, New York County, 1896). See also, *Ridley v. Ridley*, 100 N.W. 1122, 1122 (Iowa 1904); *Maget v. Maget*, 85 Mo. App. 6, *1, *4 (Kansas City Ct. of App., Mo 1900).

²³⁸ *Krug v. Krug*, 22 Pa. Super. 572, *1 (Sup. Ct. Pa. 1903). See also *McAllister v. McAllister*, 69 P. 119, 120 (Wash. 1902); *Levin v. Levin*, 46 S.E. 945, 947 (S.C. 1904).

not feeling “as a wife should to fulfill such duties.”²³⁹ The dispute resulted in 2,000 pages of typewritten record, including testimony of physicians and surgeons who “made examination of the person of the wife for the purpose of ascertaining if her genital organs had been penetrated by the male organ.”²⁴⁰ Although the doctors’ testimony conflicted, the court did not hesitate to side with the husband. The judges explained, “Each [spouse] owed to the other respect, confidence, affection, love, and all these sacred connubial tendernesses which bless and enrich the married state; and the law both of God and man has ever recognized and protected these relations.” It was unacceptable for the wife to refuse all sexual relations with her husband simply because she did not want to have sex with him.²⁴¹ And, significantly, it was appropriate for courts to delve into intimate sexual details because “[t]he importance of the marriage relation not only to the parties, but also to the public, demands that actions of divorce be supported by clear and strict evidence.”²⁴²

The criminal law also offered little recourse to married women whose husbands committed or instigated sexual assaults. A brief summary of Jill Hasday’s extensive legal history of marital rape will set the necessary framework for incorporating the history of marital rape into this narrative.²⁴³ As Hasday explains, the common law granted husbands substantial control over their wives’ bodies, including sexually. Courts cited to Sir Matthew Hale, an influential Eighteenth Century English judge, for the proposition

²³⁹ Axton v. Axton, 206 S.W. 480, 481 (Ky. 1918).

²⁴⁰ Axton v. Axton, 206 S.W. 480, 482 (Ky. 1918).

²⁴¹ *Id.* at 481-82.

²⁴² Gold v. Gold, 74 Pa. Super. 70 (Pa. Super. 1920).

²⁴³ Hasday, *supra* note X. See also, Michelle J. Anderson, Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates, 54 Hastings L.J. 1465, 1477-1485 (2003); Lisa R. Eskow, Note, The Ultimate Weapon?: Demythologizing Spousal Rape and Reconceptualizing Its Prosecution, 48 Stan. L. Rev. 677, 679-81 (1996); Note, To Have and to Hold: The Marital Rape Exemption and the Fourteenth Amendment, 99 Harv. L. Rev. 1255, 1255-1258 (1986).

that a husband could not be held criminally liable for raping his own wife because once marital consent had been given, it could not be retracted.²⁴⁴

Just as in divorce suits with extreme circumstances, however, unusually unacceptable rape cases pushed judges to define the exact parameters of the conduct they were willing to accept. The scope of the marital rape exemption was sometimes tested in the context of third-party rapes, in which a husband instructed another man to rape his wife, generally to obtain proof of adultery or to humiliate her.²⁴⁵ This situation led to what Hasday calls a “third party caveat,” which limited the marital rape exemption to a personal privilege.²⁴⁶ Significantly, judges drew the line based upon the partner, rather than upon the existence or absence of consent. This approach reinforced the distinction between legal and illegal sex in a world where all sex outside of marriage was criminalized by fornication and adultery statutes. As Hasday explains, “Structuring the legality of sex so that it turned exclusively on whether a woman was married to her sexual partner was crucially important because it *obscured how the marital rape exemption made a wife’s position resemble that of a prostitute.*”²⁴⁷

B. Marriage as Legalized Prostitution

Prostitution and marriage were intertwined in multiple ways, both as a practical matter and legally.²⁴⁸ From a practical perspective, some observers identified a

²⁴⁴ Hasday, *supra* note X, at 1388-99.

²⁴⁵ See Spencer, *supra* note X, at 103-04 (“The right to sexual intercourse between husband and wife is well recognized. Thus, the husband cannot be guilty of rape upon his wife, though he may be guilty as an accessory or even as principal in the second degree, as where he aids another in the commission of the offense.”).

²⁴⁶ Hasday, *supra* note X, at 1403-06. Hasday focuses on the two examples that reached state supreme courts: *People v. Chapman*, 28 N.W. 896 (Mich. 1886) and *State v. Dowell*, 11 S.E. 525 (N.C. 1890).

²⁴⁷ Hasday, *supra* note X, at 1400-02 (emphasis added).

²⁴⁸ For a discussion of the links between marriage and prostitution as demonstrated in the 1910 Mann Act, see generally Anne M. Coughlin, *Of White Slaves and Domestic Hostages*, 1 *Buff. Crim. L. Rev.* 109 (1997).

worrisome cycle in which the lack of sex within marriage led men to prostitutes, acquiring venereal disease, thus justifying their wives' continued abstinence. One book claimed there was "[a] consensus of opinion . . . slowly arising that a real cause underlying the excessive demand for divorce is the existence of sexual diseases transferred from husband to wife."²⁴⁹ Another author wrote, "Gynecologists know only too well the awful price paid by thousands of wives for the sins of the husband."²⁵⁰ The solution was for wives to have more sex with their husbands. The author of a college textbook on the family explained, "It is not rash to say that in this country, at any rate, married women must . . . become more sensible of their so-called conjugal duty in marriage. Their disregard of this duty is one of the factors of increasing prostitution and practical bigamy."²⁵¹

While a wife who refused sexual intercourse drove her husband to prostitutes, a wife who engaged in marital sex simply because it was her marital duty came perilously close to becoming a prostitute herself. Women's rights advocates began pressing for a wife's right to refuse sexual intercourse with her husband as early as the mid-1800s, and the phrase "legalized prostitution" was a commonly used way to express their concerns.²⁵² An article published in *The Arena* in 1895 made the point strongly, blaming the church and society for "tacitly sanction[ing] prostitution when veiled by the respectability accorded by the marriage ceremony." In addition to harming women, this was inexcusable for eugenics-based reasons because it was thought that children of these

²⁴⁹ Dealey, *supra* note X, at 106.

²⁵⁰ Goodsell, *supra* note X, at 475.

²⁵¹ *Id.* Prostitution and marriage were so closely intertwined in this way that some believed "any reforms in prostitution . . . can only follow a reform in our marriage system." Ellis, *supra* note X, at 302-03.

²⁵² Hasday, *supra* note X, at 1428. See also Elizabeth Pleck, *supra* note X, at 91-92.

marriages would be “cursed with that which is worse than leprosy or cancer.”²⁵³ “When a woman is forced to bear children to a man she hates or no longer loves, she is by law obliged to prostitute her body, and the child is cursed before it is born.”²⁵⁴ The author described women’s historical roles in marriage harshly:

For ages men regarded women as slaves, whose duty it was to perform menial tasks, wait upon them, and be the instruments of their sensual gratification. Later, among the wealthier classes, woman became more or less a doll or petted child, who for sweetmeats, flattery, and fine presents was expected to give her body to her master. Still later, she was supposed to come into much higher and truer relations to man; but, unfortunately, this was more largely theoretical than actual. And at the present time, in order to consider one of the chief factors in the immorality of to-day, we must frankly face the problem of *prostitution within the marriage bond*.²⁵⁵

Because women had no practical legal remedies against sexual excess, they were forced into what was “virtually compulsory prostitution.”²⁵⁶ He concluded, “The time has come when society must recognize the fact that prostitution, even though sanctioned by the church and state in the marriage ceremony, *is none the less prostitution*, and that its fruits are altogether debasing.”²⁵⁷ The article attracted dozens of commentary letters, which “serve[d] to show how very general is the interest of thoughtful people in this great problem.”²⁵⁸ *The Arena* published almost twenty of them, strongly praising the author’s theory, and claimed to have only received one negative letter.²⁵⁹

Similar observations continued throughout the early 1900s.²⁶⁰ Stated simply by one author, “The dominant type of marriage is, like prostitution, founded on economic

²⁵³ B.O. Flower, Prostitution within the Marriage Bond, 13 *The Arena* 59, 59 (1895).

²⁵⁴ *Id.* at 71.

²⁵⁵ Flower, *supra* note X, at 59.

²⁵⁶ *Id.* at 67 (italics in original).

²⁵⁷ *Id.* at 71.

²⁵⁸ The Voice of the People on the Subject of Prostitution within the Marriage Bond, 15 *Arena* 2 (1895).

²⁵⁹ Conclusion, 15 *Arena* 2 (1895).

²⁶⁰ For discussion of the recognized links between prostitution and marriage in the previous several decades, see Amy Dru Stanley, *From Bondage to Contract* (1998), especially at 258-263.

considerations; the woman often marries chiefly to earn her living.”²⁶¹ The analogy between wifedom and prostitution was particularly strong in unhappy marriages because, “In marriage without love, the sexual relations are little more than immoral, because the marriage contract simply legalizes the animal desires aroused by sexual passion.”²⁶² Young women were advised: “Do not be the sort of wife who differs only from the mistress because of a few insincere marriage vows.”²⁶³

Prostitution language was also used by people who criticized existing laws. It was unjustifiable, one man wrote, that a husband could rape his wife “with practical impunity,” but if he raped a woman without “priestly ceremony, even though she is his paid mistress, the criminal law against rape will send him to prison.”²⁶⁴ Another author, in criticizing people who advocated for more restrictive divorce laws, suggested “they are determined that the unhappy wife shall be raped at will be her husband to the day of her death or accept the alternative of isolation and heart-hunger.”²⁶⁵ Both spouses suffered under this regime. Wives were told: “Submit to rape, accept perpetual celibacy, or become an outcast,” while husbands were advised: “Associate with your wife, whether she is willing or not, whether you love her or not; or suppress your manhood to the end of life, or buy transient pleasure and deadly disease of the woman of the street.”²⁶⁶ The subject of marital rape was so contentious that openly challenging the marital rape exemption could be risky. For example, one man was federally convicted under the Comstock Law for “giving a realistic account of the treatment of a young wife by her

²⁶¹ Ellis, *supra* note X, at 60-61.

²⁶² *Id.*

²⁶³ Steinhardt, *supra* note X, at 132.

²⁶⁴ Theodore Schroeder, The Evolution of Marriage Ideals, 34 *The Arena* 578, 584 (1905).

²⁶⁵ E.C. Walker, The Effect of Uniform Divorce Laws, “Bra[?]ns’s Iconoclast,” published in *Lucifer the Light Bearer*, Jan. 4, 1901, p. 403.

²⁶⁶ *Id.*

worse than brutal husband, illustrating the legal maxim that the crime of rape is unknown in wedlock, that ‘once consent means always consent.’”²⁶⁷ Critiques that likened wifery to prostitution and cast wives as worse off than mistresses undoubtedly worried those who wished to see legal protections of marital rape continue.

C. Rape Liability in the Civil Law for Unrelated Persons

In the years surrounding *Thompson*, women were often successful in bringing civil rape cases, sometimes receiving thousands of dollars in damages.²⁶⁸ Recovery in tort for rape was actually easier as a legal matter than obtaining criminal conviction. On a basic level, the evidentiary hurdles were easier to overcome. Most essentially, as explained by the Supreme Court of Oklahoma, in a criminal case the prosecution is “bound to prove the charge beyond a reasonable doubt,” but in a civil rape case, the

²⁶⁷ M. Harman, *Heart to Heart Talks: Ignoring and Defying the Comstock Law, Lucifer the Light Bearer*, Oct. 16, 1902, p. 315. His initial sentence can be found at *U.S. v. Harman*, 38 F. 827 (D.C. Kan. 1889). Because of a minor sentencing error, his sentence was reversed at *U.S. v. Harman*, 50 F. 921 (C.C. Kan. 1892) and he was resentenced at *U.S. v. Harman*, 68 F. 472 (D.C. Kan. 1895).

²⁶⁸ See, e.g., *Ryan v. Sayen*, 5 Ohio Dec. 165 (Ohio Court of Common Pleas 1899) (holding man civilly liable for assault with intent to commit rape); *Kinneberg v. Kinneberg*, 79 N.W. 337 (N.D. 1899) (affirming judgment against plaintiff’s father-in-law for assault with attempt to commit rape); *Starnes v. Stevenson*, 98 N.W. 312, 312 (Iowa 1904) (affirming \$2,500 judgment against defendant who “assaulted [plaintiff] . . . and compelled her to submit to sexual intercourse); *Linville v. Green*, 102 S.W. 67, 67 (Mo. App. 1907) (affirming judgment for \$1300 actual and \$1700 exemplary damages for “assault and battery” that was “wanton and malicious”); *Harris v. Neal*, 116 N.W. 535 (Mich. 1908) (affirming judgment for assault and rape); *Smith v. Hendrix*, 128 N.W. 360 (Iowa 1910) (affirming award of damages for rape); *Altman v. Eckermann*, 132 S.W. 523, 523 (Court of Civil Appeals of Tex. 1910) (reversing judgment for defendant in suit for “assaulting, raping, seducing, and debauching appellant”); *Kramer v. Weigand*, 135 N.W. 230, 230 (Neb. 1912) (affirming \$5,000 award for “forcible debauchment”); *Watson v. Taylor*, 131 P. 922 (Okla. 1913) (affirming judgment for plaintiff rape); *Booher v. Trainer*, 157 S.W. 848, 848-49 (Mo. App. 1913) (affirming \$2,000 judgment for plaintiff for assault with intent to rape); *Marts v. Powell*, 161 S.W. 871 (Mo. App. 1913) (affirming \$750 judgment for plaintiff for assault with intent to rape); *McGlone v. Hauger*, 104 N.E. 116 (Ind. App. 1914) (affirming \$1500 award); *Hough v. Iderhoff*, 139 P. 931 (Or. 1914) (granting plaintiff a new trial); *Williams v. Collins*, 167 S.W. 1189 (Mo. App. 1914) (affirming judgment for rape in the amount of \$3,000 actual and \$2,000 punitive); *Wessel v. Lavender*, 171 S.W. 331 (Mo. 1914) (granting plaintiff’s request for new trial for her ravishment). But see *Champagne v. Hamey*, 88 S.W. 92 (Mo. 1905) (overturning damage award of \$10,000 for insufficient evidence); *Rittfeldt v. Young*, 170 Ill. App. 288 (1912) (judgment for defendant affirmed due to insufficiency of the evidence); *Totten v. Totten*, 138 N.W. 257 (Mich. 1912) (reversing judgment for plaintiff because of damages issue); *Borchert v. Bash*, 150 N.W. 830 (Neb. 1915) (affirming judgment for defendant on statute of limitations grounds).

standard is “a preponderance of the evidence.”²⁶⁹ Furthermore, as the Supreme Court of Iowa explained, the corroboration required in criminal law “is not necessary in a civil action.”²⁷⁰ It was “in the very nature of things” that almost every case of this kind “must depend solely on the testimony of the outraged woman,” so requiring corroboration would allow guilty men to go unpunished. Therefore, the victim’s testimony alone was sufficient when it is “not inconsistent with the physical facts and with the well-recognized rules of human conduct.”²⁷¹

The woman’s character and past actions were less critical in civil cases, too. The Supreme Court of Michigan held that evidence regarding a plaintiff’s reputation for chastity was only admissible in the criminal context.²⁷² Thus, even when a plaintiff spoke “too knowingly and freely of obscene matters in obscene terms for a modest maiden,” a court nevertheless affirmed judgment in her favor over the defendant’s evidentiary challenges.²⁷³ The Court of Civil Appeals of Texas held that in the civil context a woman could maintain a charge of assault even if she then consented to subsequent sexual intercourse. It explained, “That a woman yielded, after having been assaulted for the purpose of carnally knowing her, would defeat a charge of rape, but would not defeat a civil action for assault and battery.”²⁷⁴ At the same time, protections developed in the criminal context, such as age-of-consent laws, were used to women’s

²⁶⁹ *Watson v. Taylor*, 131 P. 922, 924 (Okla. 1913)

²⁷⁰ *Starnes v. Stevenson*, 98 N.W. 312, 312 (Iowa 1904).

²⁷¹ *Linville v. Green*, 102 S.W. 67, 67-70 (Mo. App. 1907).

²⁷² *Harris v. Neal*, 116 N.W. 535, 536 (Mich. 1908).

²⁷³ *Booher*, 157 S.W. at 849; see also *Marts v. Powell*, 161 S.W. 871, 873 (Mo. App. 1913) (“The plaintiff’s narrative of the alleged occurrence does not impress us favorably.”); *Starnes v. Stevenson*, 98 N.W. 312, 312 (Iowa 1904) (“While we are frank to say that the record does not present a strong case upon which to support the judgment, still, as the court below had the parties and other witnesses before it, and, in view thereof, gave sanction to the verdict, we do not feel called upon to disturb the judgment as entered, on the ground of the insufficiency of the evidence.”).

²⁷⁴ *Altman v. Eckermann*, 132 S.W. 523, 523-24 (Court of Civil Appeals of Tex. 1910)

benefit in civil trials. Thus, the Supreme Court of Oklahoma determined that a statute barring the defense of consent in criminal trials for raping underage women should also be applied in a civil suit for assault committed by force and violence. It reasoned, “The criminal liability in such a case has never been questioned, and there is good reason for construing the statute strictly against the defendant in such cases.”²⁷⁵

It is important to note that many of these actions were technically for assault and battery, just like the *Thompson* tort suit.²⁷⁶ For example, the Supreme Court of Michigan described a plaintiff’s claim as “assault and battery . . . including a ravishment.”²⁷⁷ It explained, “In a civil action for assault and battery, a charge of ravishment does not change the nature of the action, but is only a matter of aggravation, bearing on the measure of damages.”²⁷⁸ Similarly, the Supreme Court of Nebraska held that an allegation that a defendant attempted to rape his victim when he assaulted her did not change the nature of the action charged. The Court wrote, “It is the same action, but the damages may be enhanced by the nature of the assault.”²⁷⁹ While disagreeing with the result of the case, a dissenting judge nevertheless agreed, “There can be no rape without an assault and violence against the person.”²⁸⁰ A Kansas appellate court found that where “assault with intent to commit rape” was alleged, “the intent of defendant to have sexual intercourse with plaintiff was not an essential element of the assault and battery. If

²⁷⁵ Hough, 139 P. at 932.

²⁷⁶ See, e.g., *Ryan v. Sayen*, 1899 WL 1471 at *1 (Ohio. Com. Pl 1899) (“assault with intent to commit rape”); *Kinneberg v. Kinneberg*, 79 NW 337, 337 (N.D. 1899) (“assault with intent to commit rape”); *Linville v. Green*, 102 SW 67, 67 (Kansas City Ct. of Appeals, 1907) (“assault and battery”); *Smith v. Hendriz*, 128 S.W. 360, 361 (Iowa 1910) (“assault culminating in a rape”).

²⁷⁷ *Totten v. Totten*, 138 N.W. 257, 258 (Mich. 1912) (emphasis added).

²⁷⁸ *Id.* at 260.

²⁷⁹ *Borchert*, 150 N.W. at 831. But see *Kramer*, 135 N.W. at 231 (finding that rape was distinct from assault and battery for purposes of applying a statute of limitations).

²⁸⁰ *Id.* at 832 (Sedgwick, dissenting).

against her will and consent he subjected her to violent and lustful physical contact, he was guilty of assault and battery for which she may recover damages.”²⁸¹

Taken together, these cases show that courts were open to providing women with damages for rape. As the Supreme Court of Nebraska noted in 1915, “The books are full of reports of civil actions for indecent assaults of this nature, extending over a period of many years.”²⁸² Many of these actions resulted in large awards. Given the lower evidentiary requirements and the increased reluctance to allow testimony about the woman’s sexual history and character as compared to criminal cases, these suits were likely more plausible than criminal suits in many instances. And because the suits were for assault, they were not easily distinguishable from the suit brought by Mrs. Thompson.

D. Judges’ Fears

Judges perceived that allowing women to sue their husbands in tort for assault and battery and other similar personal harms could potentially open the door to suits for unwanted sex. As described above, civil actions for rape frequently fell under the basic umbrella of assault and battery, the exact type of tort suit brought by Mrs. Thompson. Because the sexual nature of an assault was simply an aggravating factor that did not change the underlying nature of the tort, some judges feared there was no persuasive legal reason to distinguish between assault and sexual assault in the context of interspousal torts.

Subtle recognition of this fact is apparent in the years immediately following *Thompson*, and the debate became far more explicit within a couple of decades. Courts sometimes used language suggesting that they were concerned about marital sex. For

²⁸¹ *Booher v. Trainer*, 157 S.W. 848, 850 (Mo. App. 1913).

²⁸² *Borchert*, 150 N.W. at 831.

example, the Supreme Court of Connecticut, which was the first to allow interspousal torts, cautioned that although the married women’s act allowed some tort suits, “the parties retain their legal identity, and their civil rights are to be determined in accordance with the status thus established.” In other words, “the reciprocal rights and obligations which are inherent in the relation of husband and wife” remained in place and were unaffected by the allowance of interspousal torts.²⁸³ The Supreme Court of Oklahoma, the second court to allow interspousal torts, also subtly carved out a sex exception. It explained, “we do not mean to be understood as holding that a married woman in such cases is entitled to exemplary damages for mental anguish, humiliation, *etc.*” Although perhaps vague at the time it was written, “*etc.*” was later more clearly defined as sex by the same court, as described below. Entertaining this narrow category of torts would not be “sound” because “[t]hese are matters which, in the very nature of things, she takes chances on, assumes the risk of, when she enters in to the marriage contract and upon the marriage relations.”²⁸⁴

Similar language can be found in the cases refusing to allow interspousal torts. For example, a judge concurring in the Supreme Court of Virginia’s decision, after noting that “marriage is something more than a mere civil contract,” explained, “The mere act of marriage gives rise . . . to new rights and obligations between the parties themselves.” The integrity of this “most sacred relation” was crucial for the preservation of “the health, morals, and purity of the state.” Quoting the Bible, the judge continued, “For these causes ‘shall a man leave his father and mother and cleave unto his wife, and they twain shall be one flesh.’” The wife, like the husband, had certain marital duties and could not

²⁸³ Brown, 89 A. at 891.

²⁸⁴ Fiedeer, 140 P. at 1025 (emphasis added).

“present to her husband a bill for presiding over the household.” This was because, “By the act of marriage the parties thereto establish a unit of society, which automatically carries with it primary obligations, which cannot be destroyed without reducing that honorable estate to *mere licensed cohabitation*.”²⁸⁵ Given that the case involved a husband who *killed* his wife and died himself before the tort suit reached the court, this language was clearly not directed toward the facts presented. Instead, the language seems directed at the possibility that certain marital obligations could be reduced to monetary payments. Indeed, the language about “mere licensed cohabitation” echoes the fears expressed by others about marriage looking like prostitution.

The fear that allowing interspousal torts would subject husbands to damages for unwanted sex became more explicit in the following decades. The Supreme Court of Connecticut, reaffirming its decision to allow interspousal torts in 1925, noted that “doubtless there are certain mutual liabilities, and mutual rights as well, which inhere in the marriage contract, so that conduct which might be a tortuous act as to third persons would, under certain circumstances, create no liability upon that ground as between husband and wife.”²⁸⁶ When the highest court of New York reaffirmed its earlier decision not to allow interspousal torts in 1927, two dissenting judges attempted to reassure the majority that allowing the suits would not pave the way for marital rape claims. Even if married women could sue their husbands, the dissenters wrote, “the marital relation would be a defense to some acts which would be not only torts but felonies if committed against an unmarried woman without her consent.” The legislature in granting married women the right to sue did not “change the character of the marriage

²⁸⁵ Keister’s Adm’r, 96 S.E. at 322 (Burks, concurring) (emphasis added).

²⁸⁶ Bushnell v. Bushnell, 131 A. 432, 433 (Conn. 1925).

state in this regard.” A wife’s suit for sexual assault “would then be subject to the defense that the husband was in the exercise of his marital rights and that the wife was in law a consenting party thereto.”²⁸⁷

Most famously, when the Supreme Court of Wisconsin first allowed interspousal torts, Judge Eschweiler wrote a strongly worded dissent joined by two of his colleagues. He began by explaining the underlying civil law: “The uninvited kiss, no matter how cold and chaste, upon the nonconsenting alabaster feme sole brow is an assault and battery, and substantial damages may be awarded for such.” Therefore, he reasoned, under the majority’s approach, “such form of assault and battery by a present day husband must necessarily result in giving a right of action in the present day wife.” Recognizing that husbands would be unlikely to benefit from this development, he continued, “The surrender of his former immunity is hardly compensated by the possibility of recovering, under the new dispensation, monetary damages by an over-kissed husband.”²⁸⁸ Judge Eschweiler’s dissent drew considerable attention. When the Supreme Court of Oklahoma revisited interspousal torts the following decade, it noted that Eschweiler’s opinion was “now famous and often quoted.”²⁸⁹

Despite the fame of the Eschweiler dissent, the Oklahoma court was not persuaded to change its earlier holding allowing the torts. Instead, it directly addressed Eschweiler’s assertions: “We believe that all courts would shrink from opening their doors to the *absurdities* accompanying such a doctrine,” the court wrote, suggesting that

²⁸⁷ Allen v. Allen, 159 N.E. 656, 661 (N.Y. 1927) (Pound, dissenting).

²⁸⁸ Wait v. Pierce, 209 N.W. 475, 481 (Wis. 1926) (Eschweiler, dissenting). See, e.g., A.A. Goldman, Husband and Wife—Action by Wife Against Husband for Personal Tort—Married Woman’s Statutes, 26 Ill. L. Rev. 88, 89 (1931); A. C., Right of Wife, in New York, to Action for Damages Against Husband for Personal Torts, 5 N.Y.U. L. Rev. 55, 59 (1928).

²⁸⁹ Courtney v. Courtney, 87 P. 2d 660, 667 (Okla. 1938). See, e.g., *supra* note X, at 89; A. C., *supra* note X, at 59; Urban R. Wittig, Notes and Comment, Domestic Relations: Right of a Wife to Recover from Her Husband for Personal Injuries, 11 Marq. L. Rev. 55, 57 (1926).

there was “little basis” for construing the statute broadly enough to allow damages for marital rape. There was no need to fear that husbands would be sued by their wives for sex-based torts quite simply because the courts would not allow that to happen.

Reassured on that ground, the court was able to conclude that “it would be equally absurd to refuse a remedy to a wife who has been shot by her husband merely because of the difficulty in drawing the exact line of demarcation between assault with a gun and assault by a kiss.”²⁹⁰ In other words, perhaps, the court would know an abnormal—and thus actionable—marital harm when it sees it. Significantly, the court then quoted its own language from 1914, reproduced above, about married women not being able to recover for “etc.” because of the “very nature of things” in a marriage contract.²⁹¹ On this occasion, it decided to be more explicit: “Undoubtedly there is conduct tortious when engaged in by a third person, which would not be tortious between husband and wife because of the mutual concessions attending their relationship and implied in the marriage contract.” It explained, “Upon marriage it is necessary that both parties forswear certain rights previously theirs.” Thus, even in states where interspousal torts are allowed, “the marriage status should create a presumption of consent to many acts which would be torts if committed against a third party.”²⁹²

The 1920s and 1930s judges’ focus on the possibility of marital rape suits is all the more telling given that the tort actions presented to them had absolutely nothing to do with sex. Of the four cases discussed here, one was a malicious prosecution suit,²⁹³ and

²⁹⁰ Id. at 668-69 (emphasis added).

²⁹¹ Id. at 669.

²⁹² Id.

²⁹³ Allen, 159 N.E. at 656.

the other three were suits for negligent automobile accidents.²⁹⁴ In fact, the suit that prompted Judge Eschweiler’s “uninvited kiss” dissent involved a wife suing her husband’s partnership after an employee’s negligent operation of an automobile caused her serious injury.²⁹⁵ It required a significant and imaginative jump for the judges to reach the issue of forced tort recovery for forced marital sex, which indicates how troubling the possibility really was for them.

Although the Supreme Court did not use language that obviously implied it was thinking about marital sex in *Thompson*, it did express concern that allowing interspousal tort suits would “open the doors of the courts to accusations of all sorts of one spouse against the other.”²⁹⁶ Furthermore, the briefs and lower court documents provided to the Court told the story of a woman whose abuse began during her honeymoon and who allegedly was encouraged to abort a child. Faced with these facts, the Justices may have had abusive marital sex in mind when evaluating Mrs. Thompson’s suit.²⁹⁷

Additionally, the Supreme Court’s consciousness of such issues is apparent in other cases from the same period. For example, in 1904, Justice Peckham and several Justices who were still on the Court by the time of *Thompson* (Harlan, McKenna, and Day) decided that a judgment for criminal conversation with another man’s wife was not dischargeable in bankruptcy because it was “recovered in an action for willful and malicious injuries to the person or property of another.”²⁹⁸ Justice Peckham explained, “We think the authorities show the husband had *certain personal and exclusive rights*

²⁹⁴ Bushnell, 131 A. at 433; Courtney, 87 P.2d at 660.

²⁹⁵ Wait, 209 N.W. at 475.

²⁹⁶ *Thompson*, 218 U.S. at 617.

²⁹⁷ Citations forthcoming.

²⁹⁸ *Tinker v. Colwell*, 193 U.S. 473, 480-81 (1904). Three Justices—including one from the *Thompson* majority (White) and one from the dissent (Holmes)—dissented, although unfortunately they did not write an opinion.

with regard to the person of his wife which are interfered with and invaded by criminal conversation with her.” The wife’s consent was irrelevant “because the wife is in law incapable of giving any consent to affect the husband’s rights as against the wrongdoer.”²⁹⁹ After reviewing several earlier cases, the Court continued provocatively,

Many of the cases hold that the essential injury to the husband consists in the defilement of the marriage bed, in the invasion of *his exclusive right to marital intercourse with his wife* and to beget his own children. This is a right of the highest kind, upon the thorough maintenance of which the whole social order rests, and in order to the maintenance of the action it may properly be described as a property right.³⁰⁰

Criminal conversation with a man’s wife was “a wrong for which no adequate compensation can be made,” the Court concluded, and any damages were not releasable in bankruptcy.³⁰¹

In 1908 the Court had occasion to discuss prostitution. The defendant had been convicted under a federal immigration law that prohibited anyone from importing a woman into the country “for the purpose of prostitution or other immoral purpose.”³⁰² The question before the Court was whether concubinage fit within the terms of the statute. Justice Harlan, writing for a unanimous Court that included four other Thompson Justices, determined that it did. By grouping a monogamous concubine with common prostitutes, the Court impliedly emphasized that the marriage ceremony itself was the dividing line between prostitutes and wives. This fits within the earlier discussion about distinguishing between wives and prostitutes based on *status*, rather than what they are actually consenting to and why.

²⁹⁹ Id. (emphasis added).

³⁰⁰ Id. at 484 (emphasis added).

³⁰¹ Id. at 490.

³⁰² United States v. Bitty, 208 U.S. 393, 397 (1908).

From the Supreme Court's language in these cases, it is clear that they shared the view held by their state court colleagues and mainstream society that marital sex was a husband's right and a wife's duty and that sex outside of marriage was immoral. They also clearly were aware of society's disapproval of prostitution. It is not difficult to conclude, therefore, that the majority Justices wished to maintain a husband's right to marital intercourse, while depriving a raped wife of damages that would liken her to a prostitute. Faced with an interspousal suit for civil assault, which had undercurrents of sexual issues, they achieved their goals by refusing to allow any interspousal tort actions.

Judges, like many people in society, cared about domestic violence victims. They believed, however, that domestic violence was sufficiently addressed by the availability of divorce and the harshness of criminal punishments for wife beating. They declined to allow interspousal tort suits for assault because they worried that permitting such suits would inevitably lead to civil suits for marital rape, not because they wished to deprive battered women of legal remedies. While their decisions can certainly be criticized for failing to provide remedies for domestic assault victims and for shielding marital rape, it is unfair and inaccurate to conclude from their tort cases that they did not see domestic violence as a serious problem worthy of legal remedy.

Conclusion

The conventional narrative that domestic violence victims were ignored by both law and society in the early 1900s is inaccurate. Battered wives had access to divorce with alimony, and many wife beaters were harshly punished by the criminal courts. Scholars' reliance on interspousal tort suits in researching this time period has been misleading because tort suits involved additional concerns. Specifically, some judges

worried that allowing interspousal tort suits generally would lead to civil suits for marital rape. This result was unacceptable because judges wished to maintain husbands' ability to force nonconsensual sex on their wives and further desired not to prostitutionalize the marriage relationship.

This argument is not to suggest that male judges were not patriarchal or otherwise affected by their perceptions of gender norms. Indeed, their disgust with wife beating largely seems rooted in the idea that husbands should be their wives' protectors. A man beating the woman he had sworn to love and protect was utterly despicable and violated society's expectations for male behavior. Forced marital sex was not met with the same revulsion; although sometimes condemned, marital rape did not clearly violate a husband's duty the way other domestic violence did. The fact that judges used gendered reasoning and sought to protect men's access to sex is distinct, however, from the claim that they did not care about domestic violence.

Appendix

List A: Newspaper Articles Showing a Man Charged or Arrested for Wife-Beating

1900

- Chronic Wife Beater: Pritchett Again Held at City Prison on the Charge, *The Age Herald*, Jan. 14, 1900, p. 5.
Branford Briefly Chronicled, *New Haven Evening Register*, Jan. 30, 1900, p. 8.
Not an Envidable Record, *The Philadelphia Inquirer*, Feb. 10, 1900, p. 3.
Alleged Wife Beater Punished, *The Philadelphia Inquirer*, March 8, 1900, p. 12.
Notes of Maryland News, *The Philadelphia Inquirer*, March 10, 1900, p. 6.
Nubs of News, *Grand Forks Daily Herald*, March 11, 1900, p. 4.
Hamilton in Disgrace: Charged with Wife Beating, *The Minneapolis Journal*, March 15, 1900, p. 6.
Charged with Wife-Beating: Wealthy Farmer of Redwood County on Trial, *The Minneapolis Journal*, April 10, 1900, p. 3.
Dan Baldwin Plays Even: Big Policeman Arrests the Wife Beater Who Nearly Killed Him Three Years Ago, *Omaha World Herald*, published as *Morning World-Herald*, April 16, 1900, p. 2.
From the Police Blotter, *The Philadelphia Inquirer*, May 3, 1900, p. 3.
Sections of the Old Keystone State: Towanda, *The Philadelphia Inquirer*, May 6, 1900, p. 5.
Justice Alsted's Busy Day, *Omaha World Herald*, published as *Morning World-Herald*, May 24, 1900, p. 7.
Council Bluff Notes, *Omaha World Herald*, published as *Morning World-Herald*, June 20, 1900, p. 3.
Brutal to His Wife: Prominent Beatrice Churchman Is Charged With Wife Beating, *Omaha World Herald*, published as *Morning World-Herald*, June 22, 1900, p. 5.
For Wife Beating, *New Haven Evening Register*, July 7, 1900, p. 8.
Jersey in Short Metre, *The Philadelphia Inquirer*, July 26, 1900, p. 5.
Alleged Wife Beater Held, *The Philadelphia Inquirer*, Aug. 8, 1900, p. 11.
Suburbs and County, *The Sun*, Aug. 11, 1900, p. 7.
Had a Year of Marital Discord, *The Philadelphia Inquirer*, Aug. 12, 1900, p. 3.
Two Charged with Wife Beating, *The Philadelphia Inquirer*, Aug. 24, 1900, p. 8.
In the City Court, *New Haven Evening Register*, Aug. 27, 1900, p. 2.
Another Case of Wife-Beating, *Charlotte Daily Observer*, Sept. 8, 1900, p. 5.
An "Uneven Home," *The Morning World-Herald*, Sept. 23, 1900, p. 8.
Wife Beater in Court, *Morning World-Herald*, Oct. 2, 1900, p. 3.
Wife Beating Charged, *The Morning Herald*, Oct. 11, 1900, p. 8.
Wife Beater Not a Christian, *Charlotte Daily Observer*, Oct. 12, 1900, p. 3.
Charged with Wife Beating, *The Philadelphia Inquirer*, Oct. 21, 1900, p. 12.
Wife Beating Charged, *The Morning Herald*, Nov. 8, 1900, p. 3.
Ugly Husband: Tried to Carve Arresting Officer with Razor, *The Evening News*, Nov. 30, 1900, p. 4.
Charge of Wife-Beating: Mrs. Thompson Has Her Husband Arrested—Negroes in a Fight, *The Sun*, Dec. 27, 1900, p. 8.

1901

- Was Captured at Revolver's Point, *The Philadelphia Inquirer*, Feb. 14, 1901, p. 1.
Wife Beater Jailed, *Omaha World Herald*, published as *Morning World-Herald*, March 7, 1901, p. 3.
A Bowery Wife Beater, *The Duluth News Tribune*, April 4, 1901, p. 5.
Barret's Case a Serious One, *Omaha World Herald*, published as *Morning World-Herald*, April 18, 1901, p. 3.
Tragic Scene at the Jail, *San Jose Mercury News*, May 19, 1901, p. 5.
A Wife Beater Fights Arrest, *The Kansas City Star*, May 20, 1901, p. 2.
Nose Broken in a Fight, *Omaha World Herald*, published as *Morning World-Herald*, July 22, 1901, p. 5.
Wife Beating Charged, *Duluth News-Tribune*, published as *The Sunday News Tribune*, Sept. 8, 1901, p. 5.
For Wife Beating, *The State*, Oct. 15, 1901, p. 3.
Wife Beater Shot, *The Columbus Enquirer-Sun*, Nov. 21, 1901, p. 2.
Caught While Beating Wife, *The Duluth News Tribune*, Dec. 2, 1901, p. 5.
Beast's Head Shown, *Idaho Daily Statesman*, Dec. 28, 1901, p. 2.
Wilmington News Notes, *The Philadelphia Inquirer*, Dec. 28, 1901, p. 2.

1902

- Two Recreant Husbands, *Omaha World Herald*, published as *Morning World-Herald*, Jan. 21, 1902, p. 3.
Charged with Wife Beating, *The Duluth News Tribune*, Jan. 28, 1902, p. 4.
Accused of Wife Beating, *The Morning Herald*, Feb. 23, 1902, p. 5.
Wife Beater in the Toils, *The Duluth News Tribune*, March 3, 1902, p. 3.
Andrew Is A Scrapper, *The Macon Telegraph*, March 16, 1902, p. 16.
Bob Phillips Under Arrest, *Columbus Daily Enquirer*, published as *The Columbus Enquirer-Sun*, August 1, 1902, p. 3.
Wife Beating Charged, *The Morning Herald*, Aug. 11, 1902, p. 5.
Wife-beater Arrested, *The City in Brief*, *Los Angeles Times*, Sept. 2, 1902, p. 12.
Wife Beater Goes to Jail, *The Duluth News Tribune*, Aug. 28, 1902, p. 3.
Bound Over to Grand Jury, *The Duluth News Tribune*, Aug. 30, 1902, p. 12.
Pardoned Wife Beater in Again, *Omaha World Herald*, published as *Morning World-Herald*, Sept. 9, 1902, p. 3.
Arrested for Wife Beating, *Belleville News Democrat*, published as *The Daily News-Democrat*, Oct. 6, 1902, p. 3.
He Stopped the Wife Beater, *The Kansas City Star*, Oct. 8, 1902, p. 5.
Fierce Battle Fought by Detective with a Wife Beater, *Grand Forks Daily Herald*, Oct. 9, 1902, p. 1.
Preacher Charged with Wife-Beating, *Charlotte Daily Observer*, Nov. 26, 1902, p. 5.
Shocking Story of an Alleged Wife Beater, *The Duluth News Tribune*, Dec. 13, 1902, p. 6.

Champion Wife Beater, Omaha World Herald, published as Morning World-Herald, Dec. 29, 1902, p. 3.

1903

His Supper Was Late: Cause for Alleged Wife Beating by Manayunk Shoemaker, The Philadelphia Inquirer, Feb. 9, 1903, p. 2.
Will Be Prosecuted, Grand Forks Daily Herald, Feb. 24, 1903, p. 4.
Alleged Wife-Beater Held for Court, The Philadelphia Inquirer, April, 7, 1903, p. 2.
Local Laconics, The Columbus Enquirer-Sun, May 26, 1903, p. 3.
Wife-Beating Mania, The Philadelphia Inquirer, May 31, 1903, p. 12.
Record in Wife Beating Offered by South Chicago, Chicago Tribune, June 20, 1903, p. 4.
A Conductor Under Arrest, Charlotte Daily Observer, July 1, 1903, p. 1.
Arrested for Wife Beating, Omaha World-Herald, published as Morning World-Herald, July 22, 1903, p. 3.
Wife Beater Under Arrest, The Duluth News Tribune, July 29, 1903, p. 6.
Wife Beater Arrested, Grand Forks Daily Herald, Aug. 4, 1903, p. 1.
Wife Beater Arrested, Omaha World Herald, published as Morning World-Herald, Aug. 8, 1903, p. 2.
Wife Beater in Jail, Omaha World Herald, published as Morning World-Herald, Sept. 19, 1903, p. 3.
Case of Alleged Wife Beating, The Duluth News Tribune, Sept. 29, 1903, p. 6.
Reverend Wife-Beater, Los Angeles Times, Nov. 27, 1903, p. 4.
Covina: Arrested for Wife Beating, Los Angeles Times, Dec. 14, 1903, p. 15.
Wife Says Husband Was a Rough Mate, The Philadelphia Inquirer, Dec. 23, 1903, p. 2.

1904

Wife Beater In Jail, The Columbus Ledger, Jan. 25, 1904, p. 1 (also published as Wife Beater In Jail, The Macon Telegraph, Jan. 24, 1904, p. 1)
[No Title], The Morning Herald, March 11, 1904, p. 3.
Alleged Wife Beater Now Occupies Cell, The Grand Forks Daily Herald, April 10, 1904, p. 3.
Charged with Wife Beating, The Columbus Enquirer-Sun, April 22, 1904, p. 8.
Charged with Wife Beating, The Lexington Herald, May 6, 1904, p. 8.
Cripple Breaks the Furniture, Fort Worth Telegram, June 8, 1904, p. 3.
Camden: Wife Beater Went Up Road in a Hurry, The Philadelphia Inquirer, June 18, 1904, p. 3.
An Alleged Wife Beater, The Lexington Herald, July 1, 1904, p. 3.
Alleged Wife Beater Jailed, The Philadelphia Inquirer, July 24, 1904, p. 4.
Seattle Detectives Given Good Advice, The Idaho Daily Statesman, Aug. 12, 1904, p. 1.
O'Day Beat Wife Again, The Lexington Herald, Sept. 1, 1904, p. 8.
Alleged Wife Beater Jailed, The Philadelphia Inquirer, Sept. 5, 1904, p. 3.
Alleged Wife Beater Arrested, The Lexington Herald, Oct. 2, 1904, p. 6.
Alleged Wife Beaters, The Lexington Herald, Oct. 15, 1904, p. 5 (two wife beaters arrested)
For Wife Beating, The Grand Forks Daily Herald, Oct. 16, 1904, p. 1.
Alleged Wife Beater Was Arrested, The Lexington Herald, Oct. 16, 1904, p. 3.
Arrest, The Lexington Herald, Nov. 4, 1904, p. 5.

1905

Hibbing [No title], Duluth News Tribune, Jan. 12, 1905, p. 3.
Held on Charge of Wife-Beating, Belleville News-Democrat, Jan. 13, 1905, p. 5.
Nubs of News, The Grand Forks Daily Herald, Feb. 12, 1905, p. 4.
Accused of Wife Beating, The Bellingham Herald, Feb. 27, 1905, p. 2.
Judge Cosgrove's Plan, Omaha World-Herald, published as Morning World-Herald, April 27, 1905, p. 2.
Alleged Wife Beater, Morning Herald, published as The Lexington Herald, May 9, 1905, p. 9.
Wanted by Police for Wife Beating, The Columbus Ledger, June 26, 1905, p. 3.
Mayor Punished a Wife Beater, Wilkes-Barre Times, July 1, 1905, p. 12.
Charged with Wife Beating: Clark Lee's Case Postponed Pending Developments in Woman's Condition, The Washington Post, July 27, 1905, p. 12.
Alleged Wife Beater, Morning Herald, published as The Lexington Herald, Aug. 8, 1905, p. 2.
Los Angeles County—Its Cities, Towns, Villages and Hamlets: For Wife Beating, Los Angeles Times, Aug. 22, 1905, p. II7.
Charged with Wife Beating: J.W. Lynch, a Traveling Optician, Arraigned in Police Court, The Kansas City Star, Sept. 6, 1905, p. 5.
Judge Cutting Will Try Joseph Sobzyk, The Duluth News Tribune, Sept. 27, 1905, p. 6.
Arrests a Wife Beater, Omaha World Herald, published as Morning World-Herald, Sept. 29, 1905, p. 3.
Nabs Wife Beater and Makes Arrest, The Duluth News Tribune, Oct. 2, 1905, p. 4.
Charged with Wife Beating: M.D. Scarborough, 63 Years Old, a Gardener, Arrested This Morning, The Kansas City Star, Nov. 10, 1905, p. 10.
Wife Beater Under Arrest: E.F. Boren, While Drunk, Assaults His Helpmeet and Lands in Jail, The Idaho Daily Statesman, Dec. 11, 1905, p. 2.

1906

A Son of "Bloody Bridles" Waite, Morning Olympian, Feb. 13, 1906, p. 2.
Wife Beating Charged: Louis Rusk Is Jailed For Abusing His Wife and Children—Claimed to Have Driven Is Accused of Beating His Wife, The Duluth News Tribune, March 2, 1906, p. 6.
Is Accused of Beating His Wife, The Duluth News Tribune, March 2, 1906, p. 6.
Wife Beating Charged, The Grand Forks Daily Herald, March 3, 1906, p. 3.
Policeman and Wife Beater, Omaha World Herald, published as Morning World-Herald, March 12, 1906, p. 2.
Charges Her Husband with Wife Beating: C.W. Bentley, A Mill Operative Before Justice Hargett this Morning, The Columbus Ledger, April 19, 1906, p. 1.

Henrico County Man Used Horse-whip on Woman in Road: Mr. and Mrs. Walter E. Brauer Had Been Separated and She Returned to Get Some of Her Possessions, *The Washington Post*, May 6, 1906, p. 13.

Wife Beater May Have to Face a Serious Charge, *Omaha World Herald*, published as *Morning World-Herald*, May 11, 1906, p. 1.

Charged with Wife Beating, *Omaha World Herald*, published as *Sunday World-Herald*, June 3, 1906, p. 4.

Alleged Wife Beater Jailed, *The Philadelphia Inquirer*, June 15, 1906, p. 3.

Cannot Get His Children Back, *Duluth News Tribune*, June 17, 1906, p. 10.

Union Picket Beats Wife, *Chicago Daily Tribune*, June 24, 1906, p. 2.

Kansas Notes, *The Kansas City Star*, July 11, 1906, p. 6.

Judge Will Not Dismiss Paryzick, *The Duluth News Tribune*, July 21, 1906, p. 8.

Wife Beater Is Jailed, *Omaha World Herald*, published as *Morning World-Herald*, Aug. 1, 1906, p. 3.

Held for Wife Beating, *The Washington Post*, Aug. 2, 1906, p. 5.

Wife Beating Charged: Druggist Was Released in Similar Case on Wife's Denial of Assault, *The Washington Post*, Aug. 15, 1906, p. 4.

Wilmington News Notes, *The Philadelphia Inquirer*, Aug. 18, 1906, p. 5.

Son-in-Law Defended by Mother-In Law, *The Macon Daily Telegraph*, Aug. 21, 1906, p. 2.

Postoffice Clerk Arrested, *Charlotte Daily Observer*, Aug. 24, 1906, p. 4.

Resisted Officers, *Charlotte Daily Observer*, Aug. 25, 1906, p. 12.

"Not Guilty," Says Schmidt, to Charge of Wife Beating: But He Is Being Held in Custody of the Sheriff for He Is Accused of Beating His Spouse, *The Duluth News Tribune*, Aug. 31, 1906, p. 16. (Also published in *The Idaho Daily Statesman*, Oct. 21, 1906, p. 4).

He is Accused of Beating His Spouse, *The Duluth News Tribune*, Aug. 31, 1906, p. 16.

Wife Beater Held, *The Fort Worth Telegram*, Aug. 31, 1906, p. 1.

Arrested as Wife Beater, *Los Angeles Times*, Sept. 7, 1906, p. II3.

Wife-Beater Pleads Guilty, *Los Angeles Times*, Sept. 27, 1906, p. II2.

Girl Bride Accuses Spouse, *Los Angeles Times*, Sept. 28, 1906, p. II2.

Would Thrash Wife-Beater, *The Philadelphia Inquirer*, Oct. 13, 1906, p. 6.

Trial Tomorrow Morning, *The Idaho Daily Statesman*, Oct. 21, 1906, p. 4.

Three Cases in Justice Court, *The Idaho Daily Statesman*, Oct. 23, 1906, p. 5.

Bigamist in Society: A.W. Lawrence Posed as Wall Street Millionaire, *The Washington Post*, Nov. 11, 1906, p. 13.

Plunger Accused of Wife Beating and of Bigamy, *The Philadelphia Inquirer*, Nov. 11, 1906, p. 1.

Policeman Held for Wife Beating, *The Philadelphia Inquirer*, Nov. 21, 1906, p. 1.

Wife Says He Beats Her, *Los Angeles Times*, Nov. 28, 1906, p. II12.

Wife Beater Arrested, *Los Angeles Times*, Dec. 14, 1906, p. II9.

First Wife Beating Case: Talbot County to Have an Unusual Trial, *The Philadelphia Inquirer*, Dec. 16, 1906, p. 7.

Alleged Wife Beater, *Omaha World Herald*, published as *Morning World-Herald*, Dec. 27, 1906, p. 2.

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Feet and Arms Frozen: Man Charged with Wife Beating Is Overcome While Drunk, *The Duluth News Tribune*, Jan. 17, 1907, p. 4.

Unionite Must Face Court, *Los Angeles Times*, Jan. 27, 1907, p. II6.

Paroled Wife Beater No. 2 Again Behind Prison Bars, *Chicago Daily Tribune*, Feb. 5, 1907, p. 1.

Charged with Wife Beating, *The Bellingham Herald*, Feb. 9, 1907, p. 5.

Preston Man Beats His Wife and Skips, *The Duluth News Tribune*, Feb. 11, 1907, p. 2.

Alleged Wife Beater Held, *The Philadelphia Inquirer*, Feb. 13, 1907, p. 4.

Alleged Wife Beater Jailed, *The Philadelphia Inquirer*, Feb. 24, 1907, p. 8.

Pittson: Arrest a Wife Beater, *Wilkes-Barre Times*, Feb. 26, 1907, p. 6.

News from All Over the State: Wife Beating, *San Jose Mercury News*, Feb. 28, 1907, p. 3.

Wife Beater Captured, *Omaha World Herald*, published as *Morning World-Herald*, March 1, 1907, p. 7.

Pastor Whips Jealous Wife: When He Is Arrested She Gives Bond to Keep Him from Jail, *The Washington Post*, April 1, 1907, p. 1.

Pastor Whips Jealous Wife, *The Washington Post*, April 1, 1907, p. 1.

"One of the Worst Scoundrels," *The Philadelphia Inquirer*, April 6, 1907, p. 6.

South hOmaha Brevities, *Omaha World Herald*, published as *Morning World-Herald*, April 8, 1907, p. 2 (four men arrested)

Called Wife-Beater, *Los Angeles Times*, April 27, 1907, p. II2.

Accused of Wife Beating, *Los Angeles Times*, May 3, 1907, p. II3.

Wife Beater Pleads: Admits at Whittier That He Applied Cruel Treatment to His Girl Spouse, *Los Angeles Times*, June 1, 1907, p. II8.

112 Cases on Docket: Heavy Criminal Business for June Term City Court Which Convenes Tomorrow, *The Macon Daily Telegraph*, June 2, 1907, p. 2 (two wife beating cases on docket).

Licked Him Just 3 Times a Month, *The Duluth News Tribune*, June 18, 1907, p. 14.

An Attempted Suicide and Wife Beating In Same House, *The Macon Daily Telegraph*, July 17, 1907, p. 3.

Wife Beater Wanted, *Los Angeles Times*, July 27, 1907, p. II3.

[No Title], *Charlotte Daily Observer*, July 30, 1907, p. 3.

Wife Beater Arrested, *San Jose Mercury News*, published as *Sunday Mercury and Herald*, Aug. 4, 1906, p. 9.

May Be Whipped Himself, *The Philadelphia Inquirer*, Sept. 1, 1907, p. 4.

Floods the House: Woman, Whose Husband Is Arrested for Wife Beating, Turns on the Faucet, *Morning Olympian*, Sept. 4, 1907, p. 1.

Spoilt His Coast Trip: Red Lake Falls Man Arrested on Charge of Wife Beating—Says He Is Willing to Settle in Court, *The Grand Forks Daily Herald*, Sept. 8, 1907, p. 31.

Cowers at Feet of Abused Wife, *The Duluth News Tribune*, Sept. 10, 1907, p. 5.

Collins in a New Role: Glen Echo Marshal May Have Chance to Whip Wife-beater, *The Washington Post*, Sept. 14, 1907, p. 1.

Alleged Wife Beater Is Now Under Two Bonds, *The Columbus Enquirer-Sun*, Sept. 18, 1907, p. 3.

Knocked Wife-Beater Down and Threw Him Out of the Window, *The Macon Daily Telegraph*, Sept. 26, 1907, p. 1 (also published as *Wife-Beater Thrown Out of a Window*, *The Columbus Enquirer-Sun*, Sept. 27, 1907, p. 1)

Marshal Werner of Shiloh, Illinois, Has More Trouble, *Belleville News Democrat*, Oct. 2, 1907, p. 1.

Abused His Wife for No Reason, Wilkes-Barre Times, Oct. 10, 1907, p. 6.
 John Whittaker Arrested on Wife Beating Charge, The Lexington Herald, Oct. 31, 1907, p. 10.
 Will Be Tried on Wife Beating Charge, The Lexington Herald, Nov. 9, 1907, p. 10 (two men charged).
 Made Wife-Beater Crawl, The Macon Daily Telegraph, Nov. 11, 1907, p. 1.
 Wife Rushed the Can; Spouse Hit Her Jaw; The Duluth News Tribune, Nov. 25, 1907, p. 3.
 Arrested for Beating Wife; She Pays Fine, The Duluth News Tribune, Dec. 11, 1907, p. 2.
 Wanted for Wife Beating, Wilkes-Barre Times Leader, Dec. 19, 1907, p. 6.
 Wife Beater Said by Wife to Have Killed a Negro, The Macon Daily Telegraph, Dec. 21, 1907, p. 1.

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First Day of Prohibition Very Quiet, The Columbus Enquirer-Sun, Jan. 2, 1908, p. 5.
 Emerson Brothers Both in Jail, The Idaho Daily Statesman, Jan. 4, 1908, p. 5.
 Wife Beater Believed to Be Insane Is Now in Jail, Wilkes-Barre Times Leader, Jan. 4, 1908, p. 2.
 Cut by Desperate Negro, Charlotte Daily Observer, Jan. 24, 1908, p. 10.
 Accused of Wife-Beating: Mrs. Zeman of Brooklyn Says Husband Hit Her with a Tea Crane, New York Times, Jan. 22, 1908, p. 2.
 Two Arrested on Charges of Wife-Beating, Belleville News-Democrat, Jan. 27, 1908, p. 2.
 Wife Beater Punished, Wilkes-Barre Times Leader, Feb. 3, 1908, p. 3.
 Wife Beater Now Under Arrest, The Idaho Daily Statesman, Feb. 14, 1908, p. 5.
 Alleged Wife Beater Given a Continuance, The Duluth News Tribune, Feb. 16, 1908, p. 12.
 Charged with Wife Beating, The Columbus Enquirer-Sun, Feb. 18, 1908, p. 6.
 Charged with Wife Beating, The Philadelphia Inquirer, Feb. 19, 1908, p. 14.
 Old Soldier Charged with Wife Beating, The Philadelphia Inquirer, March 23, 1908, p. 3.
 Assault and Battery Is Charge Against Moran, Duluth News Tribune, April 5, 1908, p. 13.
 Seeking an Alleged Domestic Oppressor, Duluth News Tribune, April 25, 1908, p. 1.
 Breaks Jaw of Wife; Found Playing Jacks: Warrant for Husband Who Beat Girl of 16, with Whom He Had Eloped, The Fort Worth Telegram, June 28, 1908, p. 27.
 Arrested a Wife Beater, Kansas City Star, July 25, 1908, p. 2.
 Arrest of 2 Men Who May Be Murderers, The Evening News, July 29, 1908, p. 1.
 Wife-Beater Lands in Jail, Morning Oregonian, Aug. 14, 1908, p. 4.
 In Police Court, San Jose Mercury News published as The Evening News, Aug. 15, 1908, p. 1.
 Crowd Maddened by Wife Beater, The Duluth News Tribune, Aug. 23, 1908, p. 9.
 First Soulmate Beats New Wife, Chicago Daily Tribune, Aug. 26, 1908, p. 1.
 Artist Earle Beats Soul Mate, The Bellingham Herald, Aug. 26, 1908, p. 1.
 Earle Beats Affinity and Lands in Jail, Los Angeles Times, Aug. 26, 1908, p. 11.
 Earles Kiss and Make Up? Chicago Daily Tribune, Aug. 28, 1908, p. 5.
 Alleged Wife Beater Held, The Philadelphia Inquirer, Sept. 2, 1908, p. 3.
 Charged with Wife-Beating, The Washington Post, Sept. 8, 1908, p. 5.
 A Kansan Arrested for Wife Beating, The Kansas City Star, Sept. 9, 1908, p. 4.
 Police Court, The Lexington Herald, Sept. 17, 1908, p. 7.
 Accused of Beating Wife, Morning Oregonian, Sept. 29, 1908, p. 9.
 Wife Beater Ran Away, The Evening News, Oct. 1, 1908, p. 1.
 Wife Beater Is Given Ten Days-- Another Man Accused of Beating, Grand Forks Daily Herald, Oct. 16, 1908, p. 7.
 Alleged Wife Beater Held, The Philadelphia Inquirer, Dec. 6, 1908, p. 1.
 Alleged Wife Beater Jailed, The Philadelphia Inquirer, Dec. 6, 1908, p. 12.
 Lake Breezes: Placed Under Bonds, The Duluth News Tribune, Dec. 12, 1908, p. 14.
 Opens Fusillade on Wife in Rector's House, The Duluth News Tribune, Dec. 18, 1908, p. 4.

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Lexington Detectives Make Great Showing: Various Causes of Arrest, The Lexington Herald, Jan. 5, 1909, p. 10 (11 arrest for wife beating)
 Farmer in Jail for Wife Beating, New York Times, Jan. 7, 1909, p. 18.
 Wife Beater Arrested, The Columbus Enquirer-Sun, Jan. 9, 1909, p. 5.
 Magistrates' Court, The Lexington Herald, Jan. 24, 1909, p. 2.
 Barber Barricades Shop, The Philadelphia Inquirer, March 7, 1909, p. 5.
 East Grand Forks: Charged with Wife Beating, Grand Forks Daily Herald, March 12, 1909, p. 3.
 Brief State News: North Yakima, Olympia Daily Recorder, March 19, 1909, p. 5 (also published as Brief State News: North Yakima, Morning Olympian, March 19, 1909, p. 4.)
 Beating for Wife-Beater, Los Angeles Times, March 20, 1909, p. 15.
 Tailor Barber Wife-Beater? Los Angeles Times, April 20, 1909, p. 14.
 Wife-Beater Thrashed by 82-Year-Old Man: Father-in-Law Sends Brutal Husband to Hospital and Appears Against Him in Court, The Philadelphia Inquirer, April 24, 1909, p. 3.
 His Father-In-Law Was by Far Better Man, The Columbus Enquirer-Sun, April 25, 1909, p. 1.
 Circuit Court Notes, Morning Oregonian, April 27, 1909, p. 11.
 For Wife Beating, Grand Forks Daily Herald, May 9, 1909, p. 2.
 Wife Will Now Complain, Los Angeles Times, May 26, 1909, p. 17.
 Pedagogue in Toils, Morning Oregonian, May 28, 1909, p. 15.
 Wife Beating Charged Against Wilmore Man: He Says He Was Whipped By Tree Unknown Visitors for His Action, The Lexington Herald, June 13, 1909, p. 3.
 Wife-Beater is Beaten, The Sunday Oregonian, June 20, 1909, p. 12.
 G.J. Brooks Charged with Wife-Beating: Bailiff Willis Arrested Him Twice During the Afternoon, The Columbus Enquirer-Sun, June 30, 1909, p. 8.
 Accused of Wife Beating, The Duluth News Tribune, July 6, 1909, p. 7.

Wife Beating Case Reported by Police: Two White Men Are Locked Up Pending a Hearing This Morning, *The Columbus Enquirer-Sun*, July 20, 1909, p. 8.

Negro Runs Amuck: Crazy by Mean Liquor, Bob Wright, of High Point, Pounces Upon His Wife, Beating Her Unmercifully, *Charlotte Daily Observer*, July 27, 1909, p. 1.

Down Dover Way, *The Philadelphia Inquirer*, August 8, 1906 p. 5.

Wife-Beating Is Charge: Teamster Accused of Striking Woman and Child, Is Arrested, *Morning Oregonian*, Aug. 9, 1909, p. 4.

Brief News of the City: Charge Wife Beating, *The Lexington Herald*, Sept. 9, 1909, p. 10.

Alleged Wife Beater in Jail, *Morning Olympian*, Sept. 17, 1909, p. 3.

Charged with Wife Beating, *The State*, Sept. 20, 1909, p. 9.

Charged with Wife Beating, Charles Owens Confined in County Jail Without Privilege of Making Bond, *The Columbus Enquirer-Sun*, Sept. 24, 1909, p. 1.

In South Dakota: Wife Beater Arrested, *Aberdeen Daily News*, Sept. 28, 1909, p. 6.

Wife Beater Arrested, *Aberdeen Weekly News*, Sept. 30, 1909, p. 8.

Sussex County Snapshots, *The Philadelphia Inquirer*, Oct. 5, 1909, p. 6.

Alleged Wife Beater Held, *The Washington Post*, Oct. 16, 1909, p. 3.

Charged with Wife Beating, *The Duluth News Tribune*, Oct. 27, 1909, p. 3.

Wife Turned When He Hit Her with a Lemon, *San Jose Mercury News*, published as *The Evening News*, Oct. 28, 1909, p. 1.

Charged with Wife Beating, *The Lexington Herald*, Oct. 30, 1909, p. 7.

"Used Singletree" Is Wife's Charge, *The Lexington Herald*, Nov. 2, 1909, p. 8.

Model Man When Sober May Go to Penitentiary, *The State*, Nov. 5, 1909, p. 4.

"Used Singletree" Is Wife's Charge: Owen White Gives Bond to Answer Wife Beating Complaint, Nov. 11, 1909, p. 8.

Preacher a Wife Beater, *The Grand Forks Daily Herald*, Nov. 18, 1909, p. 5.

In Police Court, *The Lexington Herald*, Dec. 15, 1909, p. 8.

Wife-Beater on Probation, *Los Angeles Times*, Dec. 31, 1909, p. II2.

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Wife-Beating Charge Faced, *Morning Oregonian*, Feb. 6, 1910.

I.W.W. Talker in Law's Grip: Part of "Ceremony," *Los Angeles Times*, Feb. 17, 1910, p. III1.

Alleged Wife Beater Jailed, *The Philadelphia Inquirer*, Feb. 22, 1910, p. 6.

Grand Jury Begins Work: Long List of Cases To Be Investigated in Clatsop County, *Morning Oregonian*, Feb. 24, 1910, p. 5.

Wife Beating Is Basis of Arrest: Eveleth Man Forgets Promises to Court and Is Said to Have Started "Rough House," *The Duluth News Tribune*, March 17, 1910, p. 3.

Wife Beater Held for Lack of Bonds, *Olympia Daily Recorder*, March 22, 1910, p. 1.

Negro Is Arrested on an Old Charge, *The Lexington Herald*, March 23, 1910, p. 3.

Alleged Wife Beater to Be Tried in Justice Court, *Morning Olympian*, March 23, 1910, p. 4.

Judge Southgate Has Busy Day and Asses A Number of Fines, *The Lexington Herald*, March 24, 1910, p. 7.

Wife Shows Hair Pulled from Head, *Morning Olympian*, March 25, 1910, p. 1.

Wife Beater Held under \$1,500 Bonds, *Olympia Daily Recorder*, March 25, 1910, p. 2.

Cowardly. Women Beaten by Brutal Men: One Victim is Severely Hurt by Husband, *Los Angeles Times*, April 18, 1910, p. III.

Northwest Briefs, *The Duluth News Tribune*, May 10, 1910, p. 2.

Accused Wife Beater Egged, *Aberdeen Daily News*, May 11, 1910, p. 4.

Wife Beater Held at Little Rock, *Morning Olympian*, May 18, 1910, p. 1.

Negro Arrested on the Charge of Wife-Beating, *The Lexington Herald*, May 20, 1910, p. 7.

Wife-Beater Is Thumped, *Morning Oregonian*, May 24, 1910, p. 6.

Alleged Wife-Beater, *Los Angeles Times*, June 10, 1910, p. II5.

Alleged Wife Beater Held, *The Philadelphia Inquirer*, July 3, 1910, p. 2.

Wife-Beating is the Charge, *The Grand Forks Daily Herald*, Aug. 12, 1910, p. 8.

Charges Wife-Beating, *San Jose Mercury News*, published as *The Evening News*, Sept. 7, 1910, p. 8.

Golf Marriage Fails: Yale Professor's Temper Not Improved by Exercise, *Morning Oregonian*, Sept. 18, 1910, p. 12.

Green Weeps at Capture: Sheriff Helps Marshal Put Alleged Wifebeater Under Arrest, *Morning Oregonian*, July 14, 1910, p. 6.

Wife Beater Is Arraigned in Garman's Court, *The Wilkes Barre Times-Leader*, July 18, 1910, p. 17.

Wife-Beating Is the Charge, *The Grand Forks Daily Herald*, Aug. 12, 1910, p. 8.

Wife Beater Held on Serious Charge, *Morning Olympian*, Aug. 17, 1910, p. 1.

County Jail Now Has 5 Star Boarders, *Morning Olympian*, Aug. 18, 1910, p. 1.

Alleged Wife-Beater to Be Given Hearing, *Morning Olympian*, Aug. 18, 1910, p. 4.

Wife Beater Arrested, *Morning Oregonian*, Sept. 5, 1910, p. 7.

Policeman Thrashes Foreign Wife Beater, *The Philadelphia Inquirer*, Sept. 6, 1910, p. 1.

Charges Wife-Beating, *The Evening News*, Sept. 7, 1910, p. 8.

Wife Beater Takes Poison Before Arrest, *Olympia Daily Recorder*, Oct. 18, 1910, p. 6.

Wife-Beater Caught, *Los Angeles Times*, Oct. 23, 1910, p. II2.

Numerous Offenders Before the Recorder, *The Macon Daily Telegraph*, Oct. 25, 1910, p. 12.

Charge Little Rock Man with Wife Beating, *Olympia Daily Recorder*, Oct. 27, 1910, p. 4.

Bostwick in Police Court, *The Idaho Daily Statesman*, Oct. 28, 1910, p. 10.

Alleged Wife Beater Released on Bail, *Olympia Daily Recorder*, Oct. 28, 1910, p. 1.

8 Criminals Will Be Tried in Monroe County, *The Macon Daily Telegraph*, Oct. 30, 1910, p. 3.

Camden News Notes, *The Philadelphia Inquirer*, Nov. 10, 1910, p. 3.

Finally the Worm Turns: Wife-Beater Again Jailed, *Los Angeles Times*, Nov. 12, 1910, p. II2.

Wife-Beater Arrested by Police Last Night, *The State*, Nov. 27, 1910, p. 16.

Man Under Arrest Makes Escape, *The Idaho Daily Statesman*, Dec. 5, 1910, p. 8.

Captor Loses Captive, *Morning Oregonian*, Dec. 8, 1910, p. 7.

Arrested as a Wife Beater, *Chicago Daily Tribune*, Dec. 11, 1910, p. 3.

Policeman Defends Self, The Washington Post, Dec. 14, 1910, p. 4.
Late Local News, The Bellingham Herald, Dec. 22, 1910, p. 3.
Accused of Wife Beating: Thomas Godin Was Arrested Yesterday Afternoon for Beating His Wife, The Grand Forks Daily Herald, Dec. 24, 1910, p. 3.
Charges Husband with Cruelty: Andriago Arrested in a Hurry when Wife Tells Her Story to Judge Prince, The Duluth News Tribune, Dec. 29, 1910.

List B: Newspaper Articles Showing a Man Jailed for Wife-Beating

1900

Long Beach: Wife-Beater Sentenced, Los Angeles Times, April 19, 1900, p. I15 (“County Jail for fifty days”)
Doses of Jersey Justice: Girl’s Assailant and a Wife Beater Sent to State Prison, The Philadelphia Inquirer, May 1, 1900, p. 3 (“one year at hard labor”)
A Wife Beater’s Punishment: Joseph McKenna Committed to State Prison for Three Years, New York Times, May 12, 1900, p. 7 (“three years’ imprisonment”)
Long Beach: Wife-Beater Sentenced, Los Angeles Times, May 18, 1900, p. I15 (“County Jail for ninety days”)
Over in Camden, The Philadelphia Inquirer, May 20, 1900, p. 4 (“one year”)
Five Months for a Wife Beater, The Philadelphia Inquirer, July 7, 1900, p. 7 (“five months”)
Catawba Court, Charlotte Daily Observer, Aug. 10, 1900, p. 2 (“twelve months on the ... chain gang”)
Old Wife Beater: Next Offense Will Mean Life Term, The Evening News, Oct. 22, 1900, p. 5 (“sentenced to the workhouse here for ten days”)
Wife Beater Goes to Jail, The Philadelphia Inquirer, Dec. 12, 1900, p. 14, p. 14 (“seven months”)

1901

Two Year Sentence for Wife Beater Burns, The Philadelphia Inquirer, Jan. 29, 1901, p. 9 (“two years imprisonment”)
Sad Case of Wife-Beating, Omaha World Herald, published as Morning World-Herald, Feb. 12, 1901, p. 3 (one month)
Wife Beater Arrested, The Duluth News Tribune, March 16, 1901, p. 3 (“forty days in the county workhouse”)
[No Title], The Biloxi Daily Herald, June, 30, 1901, p. 2 (“three months’ sentence”)
San Bernardino: Wife-Beater Sent Up, Los Angeles Times, June 30, 1901, p. 10 (“six months in the County Jail”)
San Bernardino and Riverside Counties—Redlands and Ontario, Los Angeles Times, Aug. 23, 1901, p. 14 (“thirty days in jail”)
Ninety Days for Wife Beater, The Duluth News Tribune, Nov. 9, 1901, p. 3 (“ninety days”)

1902

Wife-Beater Punished: John Phillips, Colored, Sentenced to Four Months in Jail, The Washington Post, March 25, 1902, p. 8 (“[f]our months in jail”)
Bruton for Brutality Gets Limit of the Law, Omaha World Herald, published as Morning World-Herald, March 26, 1902, p. 5 (“three months in the county jail”)
Condensed Dispatches, The Evening News, April 8, 1902, p. 2 (“two years”)
Charged with Wife-beating, The Washington Post, May 15, 1902, p. 12 (“three months in the District jail”)
Pomona: Wife-Beater Sentenced, Los Angeles Times, May 29, 1902, p. A7 (“ninety days in the County Jail”)
One Year for a Wife Beater, The Philadelphia Inquirer, June 14, 1902, p. 8 (“one year”)
Husband Was Hard to Please, The Philadelphia Inquirer, Aug. 6, 1902, p. 9 (“the House of Corrections for two years”)
Six Months in Jail for Beating Wife, Wilkes-Barre Times, Sept. 9, 1902, p. 7 (“six months”)
Wife Beater Got the Limit, The Columbus Enquirer-Sun, Nov. 19, 1902, p. 3 (“twelve months on the chaingang, at the expiration of which he will spend six months in jail”)
Old Wife Beater Must Do Penance, The Philadelphia Inquirer, Nov. 21, 1902, p. 15 (“ten months in the workhouse”)
Wife-Beater’s Sentence: Jersey Judge Sends One to State’s Prison for Three Years, New York Times, Dec. 19, 1902, p. 16 (“three years in State Prison”) (also published as Three Years for Wife Beating, The Kansas City Star, Dec. 19, 1902, p. 1)

1903

Wife-Beater Sent to the Roads, Charlotte Daily Observer, Jan. 13, 1903, p. 1 (“the county chain gang for 30 days”)
East Grand Forks Wife Beater, Grand Forks Daily Herald, Jan. 25, 1903, p. 3 (“sentenced to 30 days’ time”)
Wife-Beater Is Scored in Court, The Duluth News Tribune, Feb. 15, 1903, p. 5 (“ninety days”)
Rock Pile for Wife Beater, The Duluth News Tribune, Feb. 24, 1903, p. 10 (“forty days”)
Prisoners Sentenced, Grand Forks Daily Herald, Feb. 25, 1903, p. 4 (one defendant “given 20 days”; one “given 30 days”)
Thirty Days for Wife Beater, The Kansas City Star, March 23, 1903, p. 2 (“thirty days”)
South Omaha Brevities, Omaha World-Herald, published as Sunday World-Herald, Aug. 9, 1903, p. 7 (“ten-days’ sentence in the county jail”)
One More Wife Beater in Jail, The Duluth News Tribune, Sept. 24, 1903, p. 8 (“90 days at hard labor”)
Salem Evildoers Receive Sentences, The Philadelphia Inquirer, Oct. 31, 1903, p. 3 (“seven months in State prison”)
Wife Beater Again Accused, New York Times, Dec. 4, 1903, p. 5 (“two years and four months”)

1904

Sing Sing for Wife Beater: Judge in Denouncing Prisoner Told Him He Would Get the Limit, New York Times, Jan. 15, 1904, p. 14 (“will be sent to Sing Sing, probably for five years”)
Beatrice Wife Beater Sentenced, Omaha World Herald, published as Morning World-Herald, Feb. 22, 1904, p. 2 (“thirty days in the county jail”)
Wife-Beater’s Three Months, Omaha World Herald, published as Morning World-Herald, March 29, 1904, p. 8 (“three months at hard labor”)
Wife Beater Must Serve a Sentence, The Grand Forks Daily Herald, April 12, 1904, p. 3 (“60 days in the county jail”)
Sixty Days for Wife Beating, Duluth News-Tribune, published as The Sunday News Tribune, May 22, 1904, p. 12 (“sixty days in the county jail”)
Thirty Days for Wife Beating, The Duluth News Tribune, June 16, 1904, p. 10 (“thirty days”)
Tried and Sentenced to a Year’s Term in Six Minutes, Wilkes-Barre Times, June 20, 1904, p. 7 (“jail for a term of one year’s imprisonment”)

Would Forgive Wife Beater, The Philadelphia Inquirer, Oct. 23, 1904, p. 1 (“one year in State Prison”)
Gets 90 Days for Wife Beating, The Duluth News Tribune, Dec. 16, 1904, p. 8 (“90 days in the work house”)
Two Years for Camden Wife Beater, The Philadelphia Inquirer, Dec. 23, 1904, p. 3 (“two years in state’s prison”)

1905

A Bad Wife Beater, The State, January 1, 1905, p. 2 (“30 days” on the chain gang”)
[No Title], The Duluth News Tribune, Jan. 12, 1905, p. 3 (“ninety-day sentence in the county jail”)
Ten Years for Wife Beating: In Passing Sentence Upon Joe Wade Judge Gage Said Wife Beaters Should Be Hanged, The State, Jan. 28, 1905, p. 1 (“[t]en years at hard labor in the penitentiary”)
[No Title], The Biloxi Daily Herald, Jan. 30, 1905, p. 2 (“two years in state’s prison”)
Negro Sentenced for Wife-beating, The Washington Post, March 11, 1905, p. 5 (“sixty days in the workhouse”)
Two Years for a Wife-Beater, The Philadelphia Inquirer, May 16, 1905, p. 3 (“two years”)
Blows Up Home with Dynamite: New York Wife Beater Tries to Destroy Family when Freed from Jail, Chicago Tribune, June 5, 1905, p. 4 (term not specified)
Convicted of Wife-Beating: “You Will Miss Me, Bertha,” Said John Wran, as He Was Led to Workhouse, The Washington Post, June 8, 1905, p. 5 (“thirty days in the workhouse”)
Wife Beater Goes to Jail, The Duluth News Tribune, June 8, 1905, p. 7 (“75 days in the county jail at hard labor”)
Severe on Wife-Beaters: Judge Scott Gives Two Six Months Each in Jail, The Washington Post, July 6, 1905, p. 12 (“given the full penalty of the law, six months in the District Jail”)
Wife Beater Is Given 206 Days, Morning Herald, published as The Lexington Herald, Aug. 15, 1905, p. 2 (“206 days in the work house”)
Wayne County Court, Charlotte Daily Observer, Aug. 31, 1905, p. 3 (“twelve months on the roads”)

1906

Wife Beater Punished, The Idaho Daily Statesman, Feb. 17, 1906, p. 1 (“prison for four years”)
Eight Months for Wife Beating, The Philadelphia Inquirer, Feb. 24, 1906, p. 3 (“eight months in State Prison”)
Wife Beater Gets 20 Days, The Biloxi Daily Herald, Feb. 26, 1906, p. 1 (“[t]wenty days in jail”)
Glad to Go to “The Island”: White was “Delighted” with Two Months’ Sentence for Wife Beating, New York Times, April 3, 1906, p. 18 (“two months”)
Wife Beater Is Indicted: Frank Dement, Serving Two Years, Must Face More Charges, The Washington Post, May 22, 1906, p. 16 (two years)
Wife Beater Is Jailed, Omaha World Herald, published as Morning World-Herald, May 29, 1906, p. 1 (“placed in the county jail, where he will serve his term”)
Six Months for Wife Beater, The Philadelphia Inquirer, June 30, 1906, p. 2 (“six months in the county jail”)
Wife Beater Is Given Fifteen Days, The Duluth News Tribune, Sept. 11, 1906, p. 12 (“15 days in jail”)
Wife-Beater Goes to Jail: Farley to Serve Thirty Days on Chain Gang, Los Angeles Times, Oct. 18, 1906, p. II2 (“sent to jail for thirty days”)
Wife Beater Goes to Jail, The Duluth News Tribune, Oct. 31, 1906, p. 7 (“30 days’ sentence in jail”)
A Wife Beater Is in Jail, The Grand Forks Daily Herald, Dec. 2, 1906, p. 3 (“15 days in the county jail”)

1907

Charged with Wife Beating, The Lexington Herald, Feb. 21, 1907, p. 2 (“100 days on the rock pile”)
Husband Spanked for Wife Beating: “I’ll Never Do It Again,” He Wails Under the Stalwart Policemen’s Arm, The New York Times, Sept. 28, 1907, p. 9 (sentence not specified)
Wife Beater Jailed, San Jose Mercury, March 2, 1907, p. 5 (“[n]inety days in the County Jail”)
Wife Beater Is Given 30 Days, The Duluth News Tribune, April 13, 1907, p. 10 (“[t]hirty days at the rock pile”)
Wife Beater Got Eighteen Months, The Philadelphia Inquirer, May 25, 1907, p. 3 (“State prison for eighteen months”)
Fifty Days in Jail on Wife Beating Charge, The Lexington Herald, July 19, 1907, p. 6 (“fifty days in jail”)
Persistent Wife Beater Gets Sixty Days in Jail, The Duluth News Tribune, Sept. 21, 1907, p. 4 (“sixty days”)
More Wife-Beaters, Los Angeles Times, Oct. 2, 1907, p. II2 (“100 days on the chain gang”)
Wife Beater Has A Happy Prospect, The Duluth News Tribune, Nov. 26, 1907, p. 10 (“30-days sentence”)

1908

For Wife Beating, The Columbus Enquirer-Sun, Feb. 26, 1908, p. 4 (“two years imprisonment”)
Wife Beater Jailed, The Duluth News Tribune, Feb. 27, 1908, p. 4 (“30 days straight . . . at hard labor”)
Prison Board Passes on Applications, The Macon Daily Telegraph, April 12, 1908, p. 1 (“ten months”)
Wife-Beater Sentenced: Monrovia Justice Gives Him Thirty Days for Violence to His Better Half, Los Angeles Times, May 16, 1908, p. II8 (“thirty days in jail”)
Wife Beater Is Given Sixty Days in Jail, The Duluth News Tribune, June 7, 1908, p. 1 (“60 days at hard labor”)
Tried and Convicted in a Moving Building, The Philadelphia Inquirer, June 14, 1908, p. 1 (“found guilty and sent to jail”)
Wife Beater Gets Long Sentence, Chicago Daily Tribune, July 4, 1908, p. 9 (“one year in the house of correction”)
Wife Beater Jailed, The Duluth News Tribune, Aug. 18, 1908, p. 10 (“20 days”)
Beats Wife Once Too Often: John Trilling, After Escaping Twice, Receives a Nine Months’ Sentence, The Washington Post, Aug. 21, 1908, p. 12 (“jail for nine months”)
Gets the Limit: Greek with Wife-beating Habit Is Given Ninety Days by Redondo Recorder, Los Angeles Times, Sept. 11, 1908, p. IIB (“ninety days”)
Wife He Pounded Secures Release: Mrs. Peter Hanson Gets Husband Out of Jail Where He Had Part of Sentence of 30 Days Served, Grand Forks Daily Herald, Sept. 12, 1908, p. 10 (30 days)
Wife-Beater Sentenced, The Bellingham Herald, Sept. 23, 1908, p. 3 (“eighteen-day sentence”)
Eveleth Wife Beater Given 60-Day Sentence, The Duluth News Tribune, Sept. 24, 1908, p. 3 (“60 days in jail”)
M’Kinley Wife Beater Escapes from Guard, The Duluth News Tribune, Sept. 26, 1908, p. 3 (“60 days in the county jail”)
Back to Jail for Beating Wife, The Philadelphia Inquirer, Oct. 15, 1908, p. 3 (“eighteen months’ term”)

Fatal Stab for Peacemaker: He Intercedes When He Finds Father Pursuing Girl with Knife, *New York Times*, Oct. 25, 1908, p. 11 (“six months’ sentence”)

Finds Diet in Jail Tiresome: Wife-Beater “Sick” of Beans, Mush and Molasses, *Los Angeles Times*, Oct. 28, 1908, p. II2 (“six months”)

Eighteen Months for Wife-Beater, *Charlotte Daily Observer*, Nov. 29, 1908, p. 13 (“sent to the roads for eighteen months”)

Hibbing Wife Beater Given 90 Days in Jail, *The Duluth News Tribune*, Dec. 1, 1908, p. 3 (“90 days in the county jail”)

1909

Twelve Months for Wife Beating: Was Sentence in City Court Yesterday Against White Man, *The Columbus Enquirer-Sun*, Jan. 12, 1909, p. 8 (“twelve months on the chain gang, without the privilege of paying a fine”)

Judge Lynch Out-Donahues Donahue, *Wilkes-Barre Times-Leader*, Jan. 18, 1909, p. 11 (“one year in the county jail”)

“Man-Afraid-of-is-Wife,” *Kansas City Star*, Jan. 19, 1909, p. 7 (“130 days”)

Heavy Sentence for Wife Beater, *The Philadelphia Inquirer*, Jan. 23, 1909, p. 8 (“[s]ix years in the Eastern Penitentiary”)

Goes to Prison on Wife Beating Charge, *The Duluth News Tribune*, Feb. 11, 1909, p. 8 (“60-day sentence in the county jail”)

Tries to Escape But Cop Grabs Him: James Reed is Unsuccessful in His Efforts to Evade Punishment—Gets Jail for Wife Beating, *Grand Forks Daily Herald*, April 13, 1909, p. 12 (“10 days in jail”)

Jailed at 105 Years, *Grand Forks Daily Herald*, June 13, 1909, p. 1 (“locked up in the county jail yesterday to serve a sentence of 30 days”) (also published as *Centenarian a Wife Beater*, *Aberdeen Daily News*, June 14, 1909, p. 7)

News and Comment, *The Duluth News Tribune*, July 3, 1909, p. 8 (“a year and a half in the penitentiary”)

Heavy Sentence for Colored Wife Beater, *The Evening News*, July 6, 1909, p. 4 (“150 days”)

Northwest Briefs: Madison, Wis., *The Duluth News Tribune*, July 9, 1909, p. 2 (“Six months in jail at hard labor”)

Wife Beater Sentenced to Two Years on Roads, *Charlotte Daily Observer*, July 27, 1909, p. 7 (“two years on the roads”) (also published as “A Well-Deserved Sentence, *Charlotte Daily Observer*, Aug. 2, 1909, p. 7)

Wife Beater Sentenced, *The Idaho Daily Statesman*, Aug. 8, 1909, p. 2 (“three months in the county jail”)

Lake Breezes: Guilty of Wife Beating, *The Duluth News Tribune*, Aug. 28, 1909, p. 3 (“30 days at hard labor in the county jail”)

Wifebeater Gets Jail, *Morning Oregonian*, Sept. 4, 1909, p. 16 (“90 days on the rockpile”)

Thief and Wife-Beater Before the City Court, *The Macon Daily Telegraph*, Sept. 19, 1909, p. 16 (“six months on the public roads”)

Wife Beater Sentenced, *The Evening News*, Sept. 25, 1909, p. 3 (“150 days in the county jail”)

Escapes in Sight of Jail, *The Philadelphia Inquirer*, Oct. 9, 1909, p. 3 (“sixty-day sentence”)

Wife-Beater is Put Away, *Los Angeles Times*, Oct. 10, 1909, p. II6 (“the workhouse for three months”)

A Wife Beater Fined \$500, *The Kansas City Times*, Oct. 20, 1909, p. 4 (“one year in the workhouse”)

[No Title], *The Washington Post*, Oct. 21, 1909, p. 5 (“workhouse for six months”)

Jail Sentence for Wife-Beater, *The Washington Post*, Nov. 5, 1909, p. 16 (“[f]our months in jail”)

Court Accuses Wife-Beater: Charges He Drove Woman to Suicide Through Abuse, *The Washington Post*, Dec. 14, 1909, p. 1 (“three years in State’s prison”) (also published as *Wife Beater Scored; Is Given Three Years*, *The Philadelphia Inquirer*, Dec. 14, 1909, p. 1)

1910

Drunkard Beats Family, *Aberdeen Daily News*, Feb. 2, 1910, p. 7 (“fifteen days’ imprisonment”)

Wife Beater in Jail, *The Duluth News Tribune*, March 9, 1910, p. 10 (“six-months’ sentence”)

Wife-Beater Gets Long Sentence, *Los Angeles Times*, April 7, 1910, p. II2 (“100 days at hard labor on the chain gang”)

Wife-Beater on Chain Gang, *Los Angeles Times*, April 27, 1910, p. II3 (“thirty days on the chain gang”)

Wife Beater Is Sent to Prison, *The Duluth News Tribune*, May 1, 1910, p. 6 (“75 days in county jail”)

Northwest Briefs, *The Duluth News Tribune*, July 9, 1910, p. 2 (“Six months in jail at hard labor”)

90 Days for Wife Beater, *The Duluth News Tribune*, Oct. 7, 1910, p. 5 (“90 days in the workhouse”)

Negro Leader Jailed for Wife Beating, *New York Times*, Nov. 3, 1910, p. 3 (“sent to the Workhouse for thirty days”)

Wife-Beater Gets Six Months at County Farm, *The Bellingham Herald*, Nov. 26, 1910, p. 4 (“six months at the county farm”)

List C: Newspaper Articles Showing a Man Fined for Wife-Beating

1900

Council Bluff Notes, *Omaha World Herald*, published as *Morning World-Herald*, May 26, 1900, p. 3 (“\$25 and costs”)

Wife Beater Fined, *The Grand Rapids Herald*, June 16, 1900, p. 2 (“fined \$20”)

His Ginger Ale Cost Him \$25, *The Philadelphia Inquirer*, June 20, 1900, p. 2 (“\$25 and costs”)

Council Bluff Notes, *Omaha World Herald*, published as *Morning World-Herald*, June 21, 1900, p. 3 (“\$50 and costs”)

Many Assault Cases: Sentenced Imposed on Wife-beaters, Stone-throwers, and Other Offenders, *The Washington Post*, July 19, 1900, p. 10 (“\$20 for kicking his wife in the eye”)

Council Bluffs Notes, *Omaha World Herald*, published as *Sunday World-Herald*, June 24, 1900, p. 6 (“\$50 and costs”)

Reasons Why, *New Haven Evening Register*, July 10, 1900, p. 8 (“\$1 and costs”)

Wife Beaters Are Punished, *Omaha World-Herald*, published as *Morning World-Herald*, Aug. 3, 1900, p. 3 (one sentenced to \$10 and costs, the other \$5 and costs)

Police Court Storyettes, *The Morning Herald*, Sept. 25, 1900, p. 2 (“\$50 and costs”)

1901

She Paid His Fine, *The Columbus Enquirer-Sun*, Jan. 6, 1901, p. 8 (\$5)

A Wife Beater Fined \$40, *The Kansas City Star*, Jan. 30, 1901, p. 10 (“fined him \$50”)

The M’Auley Cure, *The Kansas City Star*, April 20, 1901, p. 1 (“\$25”)

Would Silence the Press, *Omaha World Herald*, published as *Morning World-Herald*, Aug. 14, 1901, p. 3 (“\$15 and trimmings”)

1902

Lesson to Wife Beater, *Omaha World Herald*, published as *Sunday World-Herald*, Feb. 16, 1902, p. 5 (“fined \$35 and costs”)

Severely Punished, Was William Meyer, Who Beat His Wife, *Belleville News Democrat*, published as *The Daily News-Democrat*, April 29, 1902, p. 1 (“\$50 and costs”)

Wife Beater Fined: Horsemwhipped a Woman, *Los Angeles Times*, May 16, 1902, p. A2 (“fined him \$40)

\$200 and Costs, *Belleville News Democrat*, published as *The Daily News-Democrat*, June 13, 1902, p. 3 (“\$200 and costs”)

Police Court, The Morning Herald, June 28, 1902, p. 3 (“\$25 and costs”)
Police Court, The Morning Herald, July 8, 1902, p. 2 (“\$100 and costs”)
Wife Beater Is Discharged, The Duluth News Tribune, August 1, 1902, p. 10 (“\$100 and costs”)
Cow Innocent Cause of Divorce Proceedings, The Duluth News Tribune, Aug. 19, 1902, p. 3 (“fine \$10”)
Before the Recorder, The State, Aug. 19, 1902, p. 6 (one man fined \$20; one fined \$50)
Fined for Wife Beating, The Morning Herald, Aug. 23, 1902, p. 7 (\$50 and costs”)
Wife Beater Gets the Limit, The Duluth News Tribune, Aug. 30, 1902, p. 12 (\$50 and costs”)
Wife Beater Fined, Omaha World Herald, published as Morning World-Herald, Sept. 26, 1902, p. 1 (“\$60 and costs”)
Before the Mayor, Wilkes-Barre Times, Sept. 26, 1902, p. 6 (“\$5 and costs”)
Fined \$100 and Costs, Belleville News Democrat, published as The Daily News-Democrat, Nov. 28, 1902, p. 1 (“\$100 and costs”)
Shows No Mercy to Wife Beater, Duluth News-Tribune, published as The Sunday News Tribune, Dec. 14, 1902, p. 14 (“\$25”)

1903

A Wife Beater Fined \$25, The Kansas City Star, Jan. 13, 1903, p. 8 (“\$25”)
Wife-Beater Fined, Belleville News Democrat, published as The Daily News Democrat, Jan. 23, 1903, p. 1. (“\$100 and costs”)
Wife Beater Fined, Wilkes-Barre Times, March 3, 1903, p. 2 (“fined \$10”)
A Wife Beater Fined \$100, The Kansas City Star, April 13, 1903, p. 1 (“fined \$100”)
South Omaha Brevities, Omaha World Herald, published as Morning World-Herald, May 26, 1903, p. 5 (“fine of \$5 and costs”)
Recorder Freeman and Law Breakers, The Macon Telegraph, July 9, 1903, p. 8 (“fine of \$25”)
Fined \$25 for Wife Beating, Omaha World Herald, published as Morning World-Herald, July 29, 1903, p. 6 (“\$25 and costs”)
Wife-Beater Fined, Belleville News Democrat, published as The Daily News Democrat, Sept. 16, 1903, p. 1 (“\$200”)
A Fine for a Wife Beater, The Kansas City Star, Sept. 23, 1903, p. 1 (“\$10”)
One-Armed Wife-Beater, The Macon Telegraph, Dec. 6, 1903, p. 6 (“fined \$20”)

1904

News of City in Brief, The Morning Olympian, Jan. 6, 1904, p. 3 (“fined \$25 and costs”)
Loiterers Get Heavy Sentences, The Macon Daily Telegraph, Jan. 28, 1904, p. 8 (two defendants, each fined \$10)
Wife Beater Fined in Kansas City, The Kansas City Star, March 29, 1904, p. 3 (“fined \$50”)
Alleged Wife Beaters Fined, The Washington Post, Aug. 9, 1904, p. 5 (two wife beaters “heavily fined”)
An Armourdale Wife Beater Fine \$100, The Kansas City Star, Aug. 22, 1904, p. 7 (“\$100”)
Samuels Is Twice Punished: Omaha World Herald, published as Morning World-Herald, Sept. 9, 1904, p. 5 (“\$50 and costs”)

1905

Gets a Wife Beater, Omaha World Herald, published as Morning World-Herald, Jan. 31, 1905, p. 2 (\$30 and costs”)
Kansas Notes, The Kansas City Star, Feb. 10, 1905, p. 8 (“fined \$10”)
Is Fined \$500, The Bellingham Herald, April 1, 1905, p. 12 (“\$500 and costs”)
Wife Beater Fined, Morning Herald, published as The Lexington Herald, April 15, 1905, p. 6 (“\$50 fine”)
A Wife Beater Fined \$500, The Kansas City Star, June 28, 1905, p. 1 (“fined \$500”)
\$10 Fine for Wife Beater, Morning Herald, published as The Lexington Herald, July 8, 1905, p. 5 (“\$10 and costs”)
A Wife Beater Fined \$200, The Kansas City Star, July 18, 1905, p. 1 (“fined \$200”)
Wife Beating Expensive, Morning Herald, The Lexington Herald, Aug. 10, 1905, p. 3 (“fined \$50”)
“Fixed the Wife Beater”: A Macon, Mo., Judge’s Remarks to a Culprit, The Kansas City Star, Nov. 22, 1905, p. 2 (\$150 and costs)

1906

New Constable, Morning Herald, Published as The Lexington Herald, Jan. 7, 1906, p. 7 (“\$5 and costs”)
Man Fined \$100 for Wife Beating: T.H. King Arraigned in Dallas City Court, The Forth Worth Telegram, Jan. 13, 1906, p. 8 (\$100 fine)
Three Wife Beaters Fined: Penalty of \$25 and Costs Imposed on Each by Justice Foster of South Chicago, Chicago Daily Tribune, Jan. 30, 1906, p. 1 (“fines of \$25 each”)
A Wife Beater is Fined \$500, The Kansas City Star, Feb. 14, 1906, p. 4 (“\$500”)
Wife Beater Fined: Judge Riley Punishes Negro Who Bruised His Wife’s Face, The Lexington Herald, Feb. 21, 1906 (\$5 and costs)
Wife Beater is Given a Heavy Fine, The Bellingham Herald, May 4, 1906, p. 1 (“fined a total of \$126.50”)
Wife Beater Must Pay \$50 and Costs, The Bellingham Herald, May 8, 1906, p. 5 (“a fine of \$50, and costs in the sum of \$21.65”)
News in Brief, Wilkes-Barre Times, June 15, 1906, p. 9 (“fined \$7.50 and costs”)
Police Court, Lexington Herald-Leader, published as The Lexington Herald, June 29, 1906, p. 2 (“\$50 and costs”)
Fined for Wife Beating, The Lexington Herald, Sept. 20, 1906, p. 9 (\$20)
City Bulletin: Wife-beater is Fined \$100, The Washington Post, Aug. 7, 1906, p. 12 (“fined \$100 and costs”)
Fined for Wife Beating, Lexington Herald-Leader, published as The Lexington Herald, Sept. 20, 1906, p. 9 (“fined \$20”)
Sentence Suspended by Consent of Wife: Charles Smith Convicted of Wife Beating and Comes Near Serving Long Term in Jail, The Idaho Daily Statesman, Oct. 24, 1906, p. 5 (\$150 fine)

1907

Wife-beater Fined, Los Angeles Times, May 17, 1907, p. II2 (\$40)
For Beating His Wife--\$200: Claude Brestman Asked Judge Sims to Be Merciful, The Kansas City Star, May 20, 1907, p. 1 (\$200: “It’s \$100 for each beating.”)
Negro Fined at Georgetown Charged with Wife Beating, The Lexington Herald, June 19, 1907, p. 2 (\$20 and costs)
Regret Lash Is Obsolete; Rawhide for Wife Beaters, Chicago Daily Tribune, Aug. 31, 1907, p. 7 (\$150)
Were Three Cases of Wife-Beating, The Macon Daily Telegraph, Sept. 4, 1907, p. 8 (three wife beaters each fined \$10)
Wife Beaters Fined \$50 by Two Municipal Judges, Chicago Daily Tribune, Sept. 17, 1907, p. 3 (“\$50 fine” for each of two defendants)

1908

Family is Reunited, The Duluth News Tribune, March 15, 1908, p. 10 (\$13)
Heavy Sentence for Wife Beater Ralph, Olympia Daily Recorder, April 3, 1908, p. 6 (“\$100 and costs”)
Three Offenders before Mayor, Wilkes-Barre Times Leader, Sept. 8, 1908, p. 1 (“\$2.50 and costs”)
Man Fined for Wife Beating, Dallas Morning News, Sept. 12, 1908, p. 1 (\$10)

Can't Drink Whisky in Hubby's Absence, The Macon Daily Telegraph, Sept. 30, 1908, p. 4 (\$25).
Sentence Was Not to Speak to Wife, The Philadelphia Inquirer, Nov. 1, 1908, p. 11 ("fine of \$100 and costs")

1909

M'Vitte Pleads Guilty to Wife Beating, Olympia Daily Recorder, Feb. 2, 1909, p. 4 (fined \$50)
Police Court, The Lexington Herald, Feb. 16, 1909 ("\$50 and costs")
Assessed Ten Dollars, Grand Forks Daily Herald, March 13, 1909, p. 3 (\$10)
Shot at the Peacemaker: Chester Toombs Tries to Kill Policeman Who Stopped Wife-Beating, The Washington Post, March 13, 1909, p. 3 (\$10)
Negro Wife Beater Fined, The Lexington Herald, March 19, 1909, p. 2 ("fined \$5 and costs")
Police Court, The Lexington Herald, May 18, 1909, p. 10 (\$50 and costs)
Wife Beater Roasted: Howard Judge Scores Man Who Thrashed His Spouse, Aberdeen Daily News, July 1, 1909, p. 7 (fined \$31.60); (the same article was run by the Aberdeen Daily News on June 25, 1909, p. 2)
A Wife Beater Fined \$500, The Kansas City Star, Aug. 17, 1909, p. 1 (\$500 fine)
Wife Beater Is Fined, Morning Oregonian, Sept. 14, 1909, p. 6 ("fined \$100 and costs")
Would Use the Whip, Morning Olympian, Sept. 18, 1909, p. 1 ("\$100 and costs")
Fined a Wife Beater, The Grand Forks Daily Herald, Sept. 24, 1909, p. 2 (fined \$10)
Wife Beater Fined, Los Angeles Times, Sept. 30, 1909, p. II6 ("fined \$50")
Alleged Wife Beater Is Given \$100 Fine, The Duluth News Tribune, Nov. 13, 1909, p. 2 ("fined \$100")

1910

Wife Beater Gets Light Fine, The Gulfport Daily Herald, Jan. 25, 1910, p. 8 ("\$2.50 and costs")
Victim of Wife Beater Attempts to Help Husband, Wilkes Barre Times Leader, Jan. 25, 1910, p. 18 ("fined \$15")
Fined for Beating His Wife, Chicago Daily Tribune, Jan. 12, 1910, p. 7 ("\$25 and costs")
Arrested Twice for Beating His Wife, Aberdeen Daily American, May 21, 1910, p. 4 (\$10 and costs)
Negro Wife-Beater Fined, The Lexington Herald, June 3, 1910, p. 12 ("\$25")
Wife Beater Is Saved by the Plea of his Victim, The Lexington Herald, June 16, 1910, p. 7 ("a fine of \$1 the lowest he could assess")
Wife-Beater Is Fined \$25, Morning Oregonian, July 10, 1910, p. 6 ("fined \$25 and costs")
Wife Beater Is Fined \$25, The Lexington Herald, Aug. 19, 1910, p. 5 ("fined \$25 and costs")
Suspended Sentence is Given Kuhm, Morning Olympian, Aug. 19, 1910, p. 4 (\$50 and costs, plus suspended jail sentence "on condition that he would abstain from drinking in the future")
All Over Texas: Fined Wife Beater, Fort Worth Star-Telegram, Oct. 21, 1910, p. 6 (\$15)

List D: Newspapers Articles Showing a Man Given a Fine with Jail as an Alternative

1900

A Wife Beater: Gets His Deserts in Recorder Aucoin's Court, Times Picayune, published as The Daily Picayune, Feb. 10, 1900, p. 9 ("\$25 or 30 days on each [of three] charge[s]")
Wife Beater Jailed: Sixty Days for Brutal Husband—Two Held for Alleged Larceny, The Washington Post, July 4, 1900, p. 10 ("jail for sixty days in default of a fine of \$20")
Brute Escapes the Lash: Wife-Beater Sentenced to Whipping or Prison, Los Angeles Times, July 27, 1900, p. 12 ("sent to the workhouse in a special conveyance to serve his fine of \$25 and costs")
Wife-Beater Sentenced: Injured Woman Fainted in Court After the Trial Was Finished, The Washington Post, Oct. 13, 1900, p. 4 ("150 days in jail or pay a fine of \$50")

1901

Wife Beater Punished, The Duluth News Tribune, Jan. 22, 1901, p. 3 ("35 days in the workhouse, or \$33 fine")
Penalty for Wife Beaters, The Washington Post, Oct. 3, 1901, p. 10 ("fined \$30 with the alternative of ninety days in jail")
Wife-beater Punished, Los Angeles Times, July 23, 1901, p. 14 ("\$30 . . . with the alternative of working for fifteen days on the chain gang")

1902

Brief Local News: Went to Jail, Idaho Daily Statesman, March 16, 1902, p. 6 ("\$37 and costs . . . and not being able to pay the fine was sent to jail")
Wife Beater Sent to Jail, Wilkes-Barre Times, March 20, 1902, p. 6 ("fined \$5 and costs in default, of which he was sent to jail")
For Wife Beating: Negro Fined by the Recorder, Other Cases, The State, May 22, 1902, p. 8 ("\$20 or 60 days on the chaingang")
For Wife Beating, The Macon Telegraph, June 26, 1902, p. 6 ("\$40 or four months on the chain gang")
Two Months for Wife-Beating; Judge Would Have Preferred Lashes on the Prisoner's Bare Back, The Washington Post, Nov. 15, 1902, p. 5 ("two months in jail was given as an equivalent to the fine [of \$20]")
A Wife Beater Fined \$500, The Kansas City Star, Nov. 17, 1902, p. 1 ("fined \$500 . . . in the workhouse one year unless he pays")
A Wife Beater Fined \$500, The Kansas City Star, Dec. 8, 1902, p. 2 ("fined \$500 . . . [n]ot being able to pay his fine . . . will serve one year in the workhouse")

1903

Wife-Beater Fined, Belleville News Democrat, published as The Daily News Democrat, Feb. 5, 1903, p. 1 ("\$100 and costs in default of payment he was sent to jail . . . for about three weeks")
Three Wife Beaters Sentenced, The Washington Post, Feb. 6, 1903, p. 2 ("\$100 or a year in jail"; "six months"; "six months")
Wife Beater Goes to Jail, The Duluth News Tribune, May 16, 1903, p. 5 ("sixty days in the county jail, in default of a fine of \$50")
Wife Beater Gets Thirty Days, Omaha World Herald, published as Morning World-Herald, Aug. 5, 1903, p. 2 ("fine of \$100 or thirty days in the county jail")
Wife Beater Sent to Jail, Aberdeen Daily News, Oct. 1, 1903, p. 5 ("jail for twenty-five days in lieu of the payment of a fine of \$50")
A Few Breezy Moments with the Police Jude, State, published as The Sunday State, Nov. 22, 1903, p. 16 ("\$20 or 30 days")
Wife-Beater Got It, Belleville News Democrat, published as The Daily News Democrat, Dec. 8, 1903, p. 1 ("\$100 and costs" but unable to pay so sent to jail")
Punishment for Wife Beater, The Washington Post, Dec. 22, 1903, p. 10 ("fine of \$50 or else spend the ensuing six months in jail")

1904

Charge With Wife-Beating, Olympia Daily Recorder, Jan. 5, 1904, p. 4 (“fined him \$25 or a sentence of 25 days in jail”)
Is Fined for Wife Beating, Duluth News-Tribune, published as The Sunday News Tribune, Jan. 17, 1904, p. 10 (“fined \$50 or given the alternative of sixty days in jail”)
Wife Beater Gets Ninety Days in Jail, The Duluth news Tribune, July 27, 1904, p. 4 (“fine of \$100 and costs, with the alternative of 90 days in the county jail”)

1905

Wife Beater Goes to Jail, The Duluth News Tribune, Jan. 5, 1905, p. 9 (“\$50 or sixty days”)
Neighbors Care for Family: Chicago Daily Tribune, Feb. 17, 1905, p. 14 (“He will work out a \$100 fine in the bridewell.”)
Wife Beater Is Called a Cur, The Duluth News Tribune, March 4, 1905, p. 4 (“\$102.50 or ninety days in the county jail”)
A Whipping Post, The Grand Forks Daily Herald, May 4, 1906, p. 6 (“option of a \$60 fine or 30 days in the county jail”)
Wife Beater Gets Very Severe Penalty, The Macon Telegraph, May 13, 1905, p. 5 (“three months on the county chaingang with the alternative of paying a fine of \$25”)
Wife Beater Is Sentenced to Jail, The Duluth News Tribune, July 4, 1905, p. 5 (“60 days in jail . . . alternative of a fine of \$56.12”)
Wife Beater Fined \$100, Belleville News-Democrat, Aug. 8, 1905, p. 1 (“in jail, serving out a fine of \$100 and costs”)
Fined for Blackening Wife’s Eyes, The Washington Post, Dec. 22, 1905, p. 9 (“a fine of \$50 with the alternative of six months in jail”)

1906

A Whipping Post: John Lavander Told That It Was Just What Was Needed in His Case, The Grand Forks Daily Herald, May, 4, 1906, p. 6 (“option of a \$60 fine or 30 days in the county jail, and her was forced to take the latter being without funds.”)
Recorder Fined This Wife Beater, The Macon Daily Telegraph, June 6, 1906, p. 8 (“a fine of \$20 or thirty days in the stockade”)
Wife Beater Given Sixty Days in Jail, Daily Nevada State Journal, Sept. 1, 1906, p. 3 (“He was sentenced to serve sixty days in the county jail or pay a fine of \$120. He was unable to pay the fine and is now in the county jail.”)
Wife Beater Fined \$10, The Washington Post, Oct. 9, 1906, p. 12 (10 dollars but “went to jail in default of the money”)

1907

A Wife Beater Wept in Court, The Kansas City Star, March 26, 1907, p. 1 (“\$250. That means a year in the workhouse if you cannot pay or appeal.”)
Brain Storm is Negro’s Excuse, The Duluth News Tribune, April 6, 1907, p. 8 (“will work for the city for three months, not being able to raise a \$75 fine”)
Rock Pile for A Wife Beater, Te Duluth News Tribune, July 26, 1907, p. 12 (“the rock pile for 10 days” because he was unable to pay \$10 fine)
Wife Beater Is Given 60 Days, The Duluth News Tribune, Sept. 12, 1907, p. 6 (“60 days’ sentence with the alternative of a fine of \$70 and costs”)
Wife-Beater Got 9 Months, The Macon Daily Telegraph, Oct. 6, 1907, p. 4 (“nine months sentence with the alternative of paying \$75”)
Wife-Beater Is Jailed: Woman’s Story of Cruelty Prompts Judge to Sentence Husband, Oct. 13, 1907, p. 10 (“[i]n default of payment of the fine... jail for thirty days”)
Wife Beater Gets His Sentence, The Idaho Daily Statesman, Dec. 13, 1907, p. 3 (could not pay \$300 fine, so must serve 150 days)

1908

What the Sinners Pay: A Monday Morning Docket in the Recorder’s Court, The State, April 28, 1908, p. 3 (\$30 or 30 days)
Wife Beater on the Rocks, Belleville News-Democrat, July 31, 1908, p. 1 (“fined \$100 and costs . . . in lieu of the same was sent to the St. Clair County workhouse, where he will do a turn of 20 days, pounding rocks”)
Wife Beater Goes to Jail, Wilkes-Barre Times Leader, Sept. 14, 1908 (“\$5 and costs. In default . . . he was committed to the county jail.”)
Negro Fined \$25 for Wife-Beating: Police Docket Not Heavy for the Monday after Christmas, The Columbus Enquirer-Sun, Dec. 29, 1908, p. 2 (“\$25 or forty days on the gang”)
Now in Session: Cases Disposed of During the First Day of the October Term, The Columbus Enquirer-Sun, Oct. 6, 1908, p. 8 (“six months on the chain gang or pay a fine of \$25”)
Wife Beater Is Given Ten Days, Grand Forks Daily Herald, Oct. 16, 1908, p. 7 (“\$15 or spend ten days in the county jail”)

1909

Alleged Burglar, Accused Handbook Man, and Wife-Beater Arraigned in Police Court, The Washington Post, April 21, 1909, p. 9 (“fined \$10, in default of which he will go to jail”)
Negro Wife Beater Put Under Arrest, The Columbus Enquirer-Sun, May 19, 1909, p. 2 (“a fine of \$75.00 or twelve months in the gang”)
His Honor’s Busy Day, The Washington Post, July 18, 1909, p. 8 (“\$50, with the alternative of spending six months in jail”)
Dick Russell Was Sentenced: Much Interest in Case of Wife Beating in City Court, The Columbus Enquirer-Sun, Oct. 12, 1909, p. 8 (\$75 fine or six months on the chaingang”)
Wife Beater Severely Ill in County Jail, Olympia Daily Recorder, Oct. 12, 1909, p. 1 (“fine of \$100 . . . which amounts to 43 days”)

1910

Wife Beater Was Given Jail Term, The Wilkes-Barre Times-Leader, Feb. 15, 1910, p. 17 (“fine of ten dollars and costs or ten days in jail”)
Wife Beater Is Sent to County Jail for 90 Days, The Duluth News Tribune, March 8, 1910, p. 3 (“fined \$90 and costs, with the alternative of spending 90 days in the county jail”)
Several Were Given Fines: Judge Tigner Passed on Several Criminal Cases in City Court, The Columbus Daily Enquirer, March 13, 1910, p. 2 (“\$25 or three months”)
Negro-Wife Beater Jailed, The Lexington Herald, March 22, 1910, p. 12 (“was sent to jail yesterday in default of a fine of \$1 and costs”)
Wife Beater Is Sent to Prison for Sixty Days, Wilkes-Barre Times Leader, June 1, 1910, p. 6 (“fined the prisoner \$25 and costs and in default committed him to jail for sixty days”)
Waddell Signs Pledge: Promises Judge Pollard to Abstain from Use of Liquor, The Philadelphia Inquirer, June 28, 1910, p. 10 (“\$130 or 300 days in the workhouse”)

Burnett's Court, The Wilkes Barre Times-Leader, July 26, 1910, p. 13 (punishment not stated; "He refused to pay his fine and was committed to jail.")
Colored Wife Beater Gets \$50 or Ninety Days, The Duluth News Tribune, Oct. 4, 1910, p. 5 ("\$50 and costs [or] . . . 90 days in the Douglas county workhouse at hard labor")
City Court Takes Recess, The Columbus Ledger, Oct. 16, 1910, p. 10 ("three months on the chaingang, or a fine of \$25")
Wife Beater Draws 60 Days, The Duluth News Tribune, Oct. 28, 1910, p. 5 ("60 days . . . when he was unable to produce the \$50 assessed against him")
For Striking His Wife Halford Fined \$300, The Macon Daily Telegraph, Nov. 13, 1910, p. 6 ("12 months on the county chain gang or to pay a fine of \$300 the latter which was paid immediately and he was released") (also published by the same newspaper Nov. 14, 1910, p. 8)

List E: Newspaper Articles Showing a Man Given a Combination of Punishments

1900

Known as a Wife Beater, Wilkes-Barre Times, June 19, 1900, p. 6 ("fine of \$5 costs and be imprisoned one month in the county jail at hard labor")
Jailed for Wife Beating: A Dark Page of Charles Ball's Domestic History, New Haven Evening Register, Aug. 1, 1900, p. 2 ("\$20 and . . . a jail sentence of 20 days")
Wife Beater Punished, New Haven Evening Register, Sept. 1, 1900, p. 2. ("fined \$200 and costs and sent to jail for six months")
Woman's Love Was Ever Strange, The Philadelphia Inquirer, Sept. 2, 1900, p. 1 ("fined \$200 and sentenced to seven months in jail")
Severe Sentence for Wife Beater, The Washington Post, Sept. 2, 1900, p. 1 ("fined \$200 and sentenced to seven months in jail") (also published in the New York Times, Sept. 2, 1900, p. 12)
Wife-Beater Swinson Sent to the Eastern Penitentiary, The Philadelphia Inquirer, Sept. 21, 1900, p. 9 ("fined \$100 and sentenced to three years in the Eastern Penitentiary")
Six Months and \$100 for Wife Beating, The Kansas City Star, Oct. 10, 1900, p. 1 ("six months in the county jail and \$100 fine")
Six Months for Wife Beating, New Haven Evening Register, Oct. 24, 1900, p. 1 (\$100 with costs and sentenced him to jail for six months")
Pratt City, The Age Herald, Nov. 6, 1900, p. 3 ("\$3 and work sixty days on the streets")

1901

The Lash for a Wife Beater, The Washington Post, March 29, 1901, p. 9 ("thirty lashes on the bare back . . . [and] six months in the house of correction")
Deals with a Wife Beater, Omaha World Herald, published as Morning World-Herald, April 12, 1901, p. 8 ("fined \$50 and costs and sentenced to thirty days in jail")
Wife Beater Punished, The Morning Herald, July 7, 1901, p. 3 ("\$50 and costs and sentenced to 50 days in jail")
Limit for Wife Beater, The Daily Express, Dec. 5, 1901, p. 1 ("two years in jail and fined \$1000") (also published as Penalty for a Wife-Beater, Dallas Morning News, Dec. 5, 1901, p. 7; Gave Cowardly Brute Full Legal Limit, The Fort Worth Register, Dec. 5, 1901, p. 2)

1903

Wife Beater Is Punished, Fort Worth Telegram, Jan. 8, 1903, p. 8 ("fined \$250 and given a term of a year in the county jail") (also published as Severe Penalty for Wife Beater, San Antonio Express, published as The Daily Express, Jan. 9, 1903, p. 9)
Wife Beater Heavily Fined, Fort Worth Telegram, March 8, 1903, p. 10 ("\$100 fine and ninety days in jail")

1904

In the Courts, Dallas Morning News, Jan. 9, 1904, p. 7 ("fined \$500 and sentenced to one year in jail")
The Champion Wifebeater, Fort Worth Telegram, Feb. 21, 1904, p. 14 (five year sentence with \$1000 fine")
Wife Beater's Special Whip: Used It to Flog Her With When She Let Flies in House, New York Times, July 21, 1904, p. 8 ("six months in jail and a fine of \$100") (also published as Wife Beater Goes to Jail, Grand Forks Daily Herald, July 21, 1904; Didn't Like Flies, Whipped His Wife, The Philadelphia Inquirer, July 21, 1904, p. 5)
Court Calls Husband a Cur, The Bellingham Herald, Oct. 20, 1904, p. 3 ("six months' imprisonment in jail and \$250 fine")

1905

1906

Rich Wife Beater Put in Chain Gang, The Duluth News Tribune, Feb. 1, 1906, p. 7 ("fined \$50 and costs and sentenced to thirty days on the streets") (also published as Rich Wife Beater in Chain Gang, The Evening News, Feb. 1, 1906, p. 5)
A Year in Jail for Beating Wife, Wilkes-Barre Times, Nov. 13, 1906, p. 1. (\$50 plus costs and one year in county jail).

1907

Wife-Beater Sent to Jail, The Washington Post, Feb. 6, 1907, p. 11 ("one year in the city jail and fined \$500")
Lash for Wife Beater: Sentence Passed in Baltimore for First Time in Twenty Years, The Washington Post, March 2, 1907, p. 12 ("two months in jail in addition to receiving nine lashes at the post") (also published as Whipping Post Revived for Wife Beater in Maryland, Omaha World Herald, published as Morning World-Herald, March 2, 1907, p. 3)
Heavy Sentence Is Given Wife Beater, Olympia Daily Recorder, May 25, 1907, p. 9 ("two years in the penitentiary and . . . fine of \$5,000")
Wife-Beater Heavily Fined, Dallas Morning News, July 11, 1907, p. 3 ("\$106.50 fine and a year to serve on the farm")
Wife Beater Is Heavily Fined, The Lexington Herald, July 23, 1907, p. 2 ("fine of \$100 [and] a jail sentence of twenty days")
Wife Beater Gets Five Years, Aberdeen Daily American, Dec. 6, 1907, p. 1 (five years in prison and fine of \$1,000; "The sentence is the maximum provided by law.") (Also published as Wife Beater Is Given Five Years in Prison and a Fine of \$1,000, The Duluth News Tribune, Dec. 6, 1907, p. 1; Maximum Penalty for Wife Beater, The Lexington Herald, Dec. 6, 1907, p. 3; Wife Beater Punished, The Philadelphia Inquirer, Dec. 6, 1907, p. 1)

1908

Magistrates' Court, The Lexington Herald, Feb. 16, 1908, p. 9 ("\$25 and twenty-five days")
Eight Months for Wife Beater, Wilkes-Barre Times-Leader, Aug. 1, 1908, p. 1 ("eight months" and "\$100 fine")

1909

Judge Regrets No Whipping Post, Olympia Daily Recorder, Feb. 3, 1909, p. 1 (\$50 and suspended sentence of thirty days)

Wife-Beater Now Goes to Prison, *The Philadelphia Inquirer*, March 19, 1909, p. 3 (“six months in State Prison and \$200 fine”) \$1,000 Fine for a Wife Beater, *The Kansas City Star*, Sept. 4, 1909, p. 1 (“fined \$1,000 and was sent to jail for one year”) San Joaquin Valley: Flogged with Chain, *Los Angeles Times*, Dec. 18, 1909, p. II6 (“six months in jail . . . and a fine of \$50). Flogged With Chain, *Los Angeles Times*, Dec. 18, 1909, p. II6 (“six months in jail and pay a fine of \$50”) Given Fine and Jail Sentence: H.G. Bostwick Ordered to Pay \$200 and Serve 60 Days for Wife Beating, *The Idaho Daily Statesman*, Nov. 1, 1910, p. 6 (\$200 and 60 days) Thief and Wife Beater Sentenced, *The Philadelphia Inquirer*, Nov. 10, 1909, p. 2 (“sentenced to one year and fined \$1,000”)

1910

Wife Beater Given Six Months in Jail, *Wilkes Barre Times Leader*, Oct. 1, 1910, p. 13 (“sentenced to jail for six months . . . also ordered to pay a fine of \$10 and the costs of prosecution”) Wife-Beater Gets Severe Sentence, *The Daily Herald*, Oct. 28, 1910, p. 1 (“\$100 and . . . thirty days in the city jail”) Given Fine and Jail Sentence, *The Idaho Daily Statesman*, Nov. 1, 1910, p. 6 (“a \$200 fine and a 60-day jail sentence”)

List F: Newspaper Articles Showing a Man Sentenced to Flogging or Whipping

1900

Whipping Post: Thirty Lashes Well Laid on for Wife Beating, *The Sun*, July 26, 1900, p. 8. Maryland News Notes, *The Philadelphia Inquirer*, July 27, 1900, p. 6.

1901

Maryland News Notes, *The Philadelphia Inquirer*, Aug. 30, 1901, p. 14. Lashed by a Court’s Order, *The Kansas City Star*, Sept. 1, 1901, p. 1. Negro Wife Beater Given Taste of the Lash, *The Philadelphia Inquirer*, Sept. 1, 1901, p. 10. Negro Whipped in Maryland, *New York Times*, Sept. 1, 1901, p. 1.

1905

First Wife Beater Whipped in Oregon, *The Bellingham Herald*, June 7, 1905, p. 5 (also published as Wife Beater Lashed, *The Columbus Enquirer-Sun*, June 8, 1905, p. 6) Portland Wife Beater Lashed, *The Idaho Daily Statesman*, June 8, 1905, p. 1 (also published as Portland Wife Beater Gets a Whipping, *Olympia Daily Recorder*, June 8, 1905, p. 1; Twenty Lashes Applied to Back of Wife Beater, *Omaha World Herald*, published as *Morning World-Herald*, June 8, 1905, p. 1; A Wife Beater’s Reward, *The State*, June 8, 1905, p. 5; Wife Beater Beaten, *The Lexington Herald*, June 9, 1905, p. 3) Alleged Wife Beater Gets Fifty-Two Lashes, *Omaha World Herald*, published as *Morning World-Herald*, June 30, 1905, p. 3. Postmaster to Be Lashed: Oregon Official Beats Wife, *Los Angeles Times*, Sept. 16, 1905, p. 13. Ten Lashes for Wife Beater, *The Idaho Daily Statesman*, July 20, 1905, p. 3 (also covered in *Portland Wife Beater Cries in Agony under the Lash*, *Olympia Daily Recorder*, July 20, 1905, p. 3) Wife Beater Cries When Whipped in Jail, *The Idaho Daily Statesman*, Sept. 17, 1905, p. 1.

1907

Whipping Post Used to Punish Negro Wife Beater, *Macon Daily Telegraph*, April 6, 1907, p. 1. Colored Wife Beater Flogged, *The Duluth news Tribune*, April 6, 1907, p. 1. Whipping Post used in Baltimore, *Aberdeen Daily American*, April 6, 1907, p. 5. Publicly Flogged, *San Jose Mercury News*, published as *Sunday Mercury and Herald*, Aug. 4, 1907, p. 3. Wife Beater Whipped at Post in Portland, Ore., *The Evening News*, Oct. 25, 1907, p. 7.

1908

Must Support Wife or Be Whipped, *Morning Oregonian*, May 12, 1908, p. 6. Wife-Beater Whipped: First Corporal Punishment at Frederick in Fifteen Years, *The Washington Post*, July 28, 1908, p. 5. Lash for Wife-Beater: Husband to Be Whipped for Assaulting His Delicate Wife, *The Washington Post*, Nov. 4, 1908, p. 9. Lash for Wife-Beater, *The Washington Post*, Nov. 28, 1908, p. 3.

1910

Wife-Beater to Be Whipped: Resident of Hagerstown’s West End Sentenced to Ten Lashes, *The Washington Post*, March 29, 1910, p. 3. 20 Lashes for Wife Beater: Also Sent to Hagerstown Jail for Brutality to Bride of Two Weeks, *The Washington Post*, April 6, 1910, p. 15. Wife-Beater Is Whipped: C.S. Dove First White Man to Be Sent to Post at Rockville, *The Washington Post*, June 9, 1915, p. 4.