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Battered Justice for Battered Women

By Joan Meier

It is common for the public and the courts to criticize women who are victims of domestic abuse for staying in an abusive relationship and tolerating it. But what happens when women do try to end the abuse? Jessica Gonzales's story provides one horrifying answer.

In May 1999 Gonzales received a protection order from her suicidal and frightening husband, Simon Gonzales, whom she was divorcing. The order limited his access to the home and the children. On June 22 the three girls disappeared near their house. But when Jessica Gonzales called the Castle Rock, Colo., police department, she received no assistance. Over a period of eight hours, the police refused to take action, repeatedly telling her that there was nothing they could do and that she should call back later – even after she had located her husband and daughters by cell phone. The three young girls, ages 7, 9 and 10, were not to survive the night. At 3 a.m. on June 23, Simon Gonzales arrived at the police station in his truck, opened fire and was killed by return fire. The bodies of Leslie, Katheryn and Rebecca were found in the back of his truck.

Next week the U.S. Supreme Court will hear the case of *Town of Castle Rock, Colorado v. Jessica Gonzales*, which stems from Gonzales's lawsuit against the police. The question before the court is whether the constitutional guarantee of procedural due process was violated by the police department's dismissal of the protection order, in clear violation of the state statute, which required them to use "every reasonable means" to enforce it. If procedural due process – required by the 14th Amendment – means anything, then it must be found that it was violated here, and the U.S. Court of Appeals for the 10th Circuit has so ruled.

The doctrine of procedural due process derives from the principle that when a state chooses to establish a benefit or right for citizens, it may not deny such benefits in an arbitrary or unfair way. In this case, the state established a benefit of mandated police enforcement of protection orders. Aware that police discretion too often fails, the Colorado legislation required the police to make arrests or otherwise to enforce domestic violence restraining orders of the sort issued to Jessica Gonzales. Police discretion was limited to determining whether a violation of an order had occurred. Yet in this case the police did nothing; they simply ignored the complaint, a clear example of "arbitrary" conduct.

This type of police behavior has to be understood in its historical and legal context. Early English common law and some U.S. courts once endorsed the right of men to beat their wives and children, on the grounds that the man was head of the household. By the mid-19th century,

most states had abandoned such legal doctrines, but the courts and police continued to refuse to protect victims of violence in the family in the name of so-called family privacy. In the past few decades, while many police departments have implemented better procedures, too many have continued to be indifferent and sometimes even hostile to women's calls for help. Thus many states such as Colorado have tried to force change by requiring police responses to victims of abuse, particularly where a protection order has been violated.

The Castle Rock police department and its defenders, such as the National League of Cities, the National Sheriffs' Association and others, are arguing that the police could not have predicted the terrible outcome of what appeared at the time to be a mere "domestic dispute." But it was not the police department's job to make predictions. As in 19 other states and the District of Columbia, Colorado's mandatory-arrest statute was adopted to end precisely this type of speculative decision making by police. Indeed, the Castle Rock police department's dismissive attitude not only defied the law, it flouted standard practices for domestic violence cases. Four police associations and the police-led Americans for Effective Law Enforcement have signed on to a brief opposing the Castle Rock police department, and the International Association of Chiefs of Police has refused to support the town's position.

Castle Rock and, shamefully, the Bush administration argue that to uphold the 10th Circuit's finding of a constitutional violation would be to inappropriately insert the federal courts into state matters. But here the state has done everything it could to ensure police action: Both the legislature and courts have spoken emphatically to require police protection in domestic violence cases. A negative decision from the high court, far from respecting the state's policy, would undercut it and would give police everywhere a green light to ignore state mandates requiring enforcement. Such a decision would encourage police to do less than they do now, drastically weakening the effectiveness of protection orders, which are a crucial legal means of protecting battered women and children.

In fact, the history of profound gender inequality in the government's treatment of wife-beating makes the problem one of core constitutional concern. No less than police brutality, this kind of passive misconduct implicates fundamental civil rights.

The writer is a professor of clinical law at George Washington University and director of the Domestic Violence Legal Empowerment and Appeals Project. She is co-author of a friend-of-the-court brief submitted to the Supreme Court in the case of Castle Rock v. Gonzales.

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