



BOB LARSON / FOR THE RECORDER

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**ELIHU HARRIS:**  
Pro-feminist groups assail the Assembly Judiciary chairman as rude and un-receptive to their agenda; his proponents say he's just abrupt.

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# Beating Up on Judiciary

## Assembly Committee Criticized for Stands on Family Law Issues

**BY SIGRID BATHEN**  
RECORDER CAPITAL CORRESPONDENT

SACRAMENTO — Accusations of misogyny are flying amid angry clashes over the handling of family law legislation by the Assembly Judiciary Committee, which pro-feminist groups call a graveyard for their concerns.

Some legislators, legislative consultants and family law specialists say the com-

mittee; its staff expert on family law, Deborah DeBow; and its chairman, Assemblyman Elihu Harris, D-Oakland, are biased — often to the point of rudeness — against bills involving spousal abuse, child support or custody issues.

But all sides agree on one thing: Family law bills, especially those dealing with domestic violence and spousal abuse, generate enormous emotion and controversy, with personal biases sometimes

dominating reason.

Dozens of interviews with legislative consultants, legislators, family law and domestic violence experts around the state offer widely divergent views of the committee's role in defeating or heavily amending proposed legislation supported in recent years by numerous feminist and women lawyers' organizations and groups working to toughen laws against domestic

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# Committee Criticized for Family Law Stands

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violence and spousal abuse.

Committee staffers contend that most family law legislation that reaches the committee is passed — including a recent measure to make judges available on weekends and evenings to sign temporary restraining orders — and that Harris' record on the issue is distinctly favorable to women's rights.

Harris did not respond to numerous, specific inquiries from The Recorder. DeBow denied any bias.

"It strikes me that there is some bias," said Sen. Dan McCorquodale, D-San Jose, sponsor of a measure, SB 377, rejected last year by the committee, which would have required that judges take notice of spousal abuse or domestic violence in awarding child custody. The committee's analysis and processing of that bill, in particular, prompted a torrent of criticism from pro-feminists.

"I see a lot of committee analyses, and it seems to me that [Judiciary Committee] analyses are much more fair on bills that do not deal with domestic violence," McCorquodale said.

McCorquodale, who several years ago also sponsored a bill to raise the statute of limitations for prosecution of spousal rape to three years [the same as rape by a non-spouse], said he is so annoyed by the handling of such measures by the committee that he is loathe to introduce similar bills in the future. The spousal rape bill was passed by the committee, McCorquodale aide Peggy Collins said, but only after the three-year statute of limitations was reduced to 90 days.

"I'm sort of reluctant to carry more bills that go to [Assembly] Judiciary," McCorquodale said. "I think I'll let someone else do that."

McCorquodale and others are particularly irked by what they perceive as rude behavior by Harris, who is known in legislative circles as a volatile and outspoken legislator.

"I never object to a person voting against my bills," said McCorquodale. "We all go there with our own constituencies and our own biases. . . . But it's not necessary to be so discourteous on the part of the chair. Mr. Harris questions our motivations, our integrity. There really is no reason for that."

Other committee members defend the chairman.

"We all get abrupt," said Assemblyman Philip Iseberg, D-Sacramento, a former private practice family law specialist in Sacramento. "I get abrupt, but I don't think it's fair to say we don't spend time on family law [issues]. I'd venture a guess that 80 percent of the family law bills that come to a vote pass."

"I've never heard Harris or his staff to be anything but objective and professional," said Assemblyman Larry Stirling, R-San Diego, who is a member of the Assembly Judiciary Committee and chairs the Assembly Committee on Public Safety.

DeBow's staff analysis of McCorquodale's child custody bill prompted an especially angry reaction among the bill's many supporters, ranging from the California Alliance Against Domestic Violence and California National Organization for Women to the California State Parent-Teacher Association, Catholic Charities and the Central Labor Council of Santa Clara County.

In a lengthy recitation of criticism generated by the bill, which was passed unanimously by the Senate, the analysis said the measure "provides a motive to consciously or unconsciously provoke the violence in order to improve one's chances to get custody."

"I thought it was the most irresponsible, inaccurate, unprofessional, totally misleading and slanted analysis I've ever seen in my life," said Sheila Kuehl, a professor at Loyola University Law School, who specializes in family and sex discrimination law. "She actually had the temerity to say that it is possible that battered women cause their own battering."

DeBow, who practiced family law for eight years in Sacramento and the Bay Area and represented many victims of domestic violence, said she routinely summarizes criticism of measures — as well as support — so that committee



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members will have a thorough understanding of all sides of a given issue.

DeBow is a past president of Sacramento Women Lawyers, has been active in California Women Lawyers and insisted neither she nor Harris are biased against family law affecting women's rights.

"I've represented a lot of domestic violence victims," DeBow said. "I've stood on street corners waiting for cops to show up. I've provided free legal counsel. I've gotten medical care for women missing teeth, with broken bones. . . ."

Santa Rosa solo practitioner Margaret Anderson, who chairs the family law section of the State Bar of California, said she was very pleased with DeBow's work with the committee because of her experience in family law.

"We don't have to educate her about the day-to-day realities," Anderson said. "She is extremely competent and under a great deal of pressure with the quantity of legislation she is asked to analyze."

Justice Donald King of the First District Court of Appeal in San Francisco, a nationally recognized family law expert, praises DeBow and the "excellent staff" of the Assembly Judiciary Committee.

"She is very competent, extremely knowledgeable, extremely conscientious and very interested in hearing different points of view," King said of DeBow. "She doesn't always agree with everything I say, but I don't know anybody else who does besides me."

Noting that versions of the same child custody bill have been defeated in the Legislature for several years, DeBow said the measure raises "controversial issues" of concern to family law experts.

"I made a number of calls to people throughout California who raised concerns [about the bill]," she said. "The fact that critics raise these concerns doesn't mean I made them, and I'm not saying I agree."

She said she could not recall who raised the provocation criticism, but that it was raised by several authorities in family law and domestic violence. She

can, but are not required to, take such notice.

"It's unfathomable that it wouldn't be in the code in California," Kuehl said. "And it would be if it weren't for the misogyny of the chairman and the consultant."

Kuehl added that Harris "has been fair on other women's issues, and he isn't quite the misogynist he used to be four years ago. But he has a blind spot on the issue of battered women."

Support for Kuehl's view is voiced in varying degrees by activists in several major women's groups and by some key legislative staff members who regularly work on family law and domestic violence issues.

Mildred Daley Pagelow, an Orange County sociologist and private family law mediator who is vice chairwoman of the Orange County Coalition Against Domestic Violence, wrote Harris in November and January, expressing her serious misgivings about the committee's analysis of SB 377, and offering to provide an alternative view based on her extensive professional experience.

In the letter, Pagelow questioned DeBow's qualifications and took strong issue with the notion that victims of domestic violence may "provoke" that violence.

"A wealth of research shows that spouses of violent persons go to extreme lengths to prevent violence and their own victimization," she wrote, "because they are unsure whether or not the next outburst will result in their own deaths."

Pagelow said Harris angrily phoned her after he received the second letter.

"I was shocked — definitely shocked — at the tone of his voice, at the way he dominated the conversation, did not pause, did not allow any response," she recalled. "Rather, it was a one-way frontal attack on me; on the qualifications that I had cited, and anger."

"He was angry at me for daring — he used the term, 'How dare you question the ability of my staff, my consultant!' He said it was the first time anyone had dared to question her abilities. He also made very derogatory remarks about the Senate [where SB 377 originated]."

Harris also wrote a Feb. 2 letter in response to Pagelow's Jan. 24 letter, in which he said he is "opposed to domestic violence, and my legislative record on this issue is consistent." He said he found SB 377 to be "inconsistent with the public policy which has been adopted relative to 'no-fault' divorce and the award of child custody on the basis of the best interests of the child. . . . If spousal abuse has a direct or indirect physical or emotional impact on the child, an exception already exists for the consideration of allegations of child abuse."

Joanne Schulman, an Oakland family law attorney who was the staff attorney for the Senate Task Force on Family Equity, which proposed 23 family law bills in 1987 and 1988, called the committee analysis of SB 377 "legally unsound and inflammatory," and said Harris is "basically hostile to family law legislation."

Nancy Lemon, a Berkeley family law attorney, who is a consultant for the Judicial Council and an adjunct faculty member at Boalt Hall School of Law at the University of California, Berkeley, described as "extremely bizarre" the circumstances surrounding the defeat of SB 377.

Active in supporting the bill as co-chair of the Family Law Committee of the California Alliance Against Domestic Violence, Lemon said DeBow "seems quite biased, as does her boss, against any issue that has to do with domestic violence, which is really surprising to me because Assemblyman Harris is known as being liberal in his home district."

"But," Lemon said, "he's not on this issue."

Deanna Jang, an Oakland family law attorney who testified on behalf of the bill for the Asian Law Alliance and the Domestic Violence Alliance, said she was treated rudely and her legal credentials questioned by Harris.

"He didn't see the connection between domestic violence and the best interests of the children," she said. "He saw no cor-

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relation. He said the couple is separated and the violence is over. We came forth with statistics that two-thirds of domestic violence occurs after divorce. We were prepared to refute the analysis, but he didn't give us the chance."

Mimi Modisette, consultant to Sen. Gary Hart, D-Santa Barbara, who sponsored three of the family law bills coming out of the family equity task force, said such bills "generally do have a difficult time in that committee, and it is largely a result of very complex analysis by the staff, and the fact that we don't get [criticism] in time to respond even to technical objections before a hearing. That makes things very difficult for us."

She said none of the equity bills involved "revolutionary" changes in the law, but mainly attempted "to address the fact that the law leaves many women with lesser earning capacity and greater demands [on their resources]."

She said many of the bills passed the committee only after intense lobbying by Hart, support groups, other legislators and legislative staff.

Eleven legislative proposals — incorporating 13 recommendations of the Senate Task Force on Family Equity — were actually introduced in 1987 or 1988, that staff lawyer said, and nine were approved as a result of intense lobbying by legislators and support groups.

Several legislative staff lawyers complained that DeBow engages in psychological — rather than legal or factual — analysis when reviewing some family law bills for the committee. Privately, they believe DeBow's analyses may be influenced by her husband, Herbert N. Weissman, a noted Sacramento clinical psychologist with a long list of prestigious professional accomplishments to his credit.

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**DEBORAH DEBOW, Senate Judiciary Committee consultant**

"Obviously, we do have discussions and if it's a particular area where he knows someone, to that extent he has given me an entree into top-notch research," DeBow said, insisting her husband's profession plays no direct role in her work for the Legislature.

"I think it is a real cheap shot to say her work is influenced by her husband," said family law specialist Anderson.

Critics point to DeBow's analysis of SB 1306, sponsored by Sen. Rebecca Morgan, R-Los Altos Hills, which would clarify certain custody and visitation statutes of the California Family Law Act by confirming equal consideration for sole as well as joint custody based on specific factors, including domestic violence. The bill passed the Senate, but stalled in Assembly Judiciary last year. It passed earlier this year only after months of heavy task force lobbying, and after specific factors to be considered in awarding custody, including domestic violence, were removed from the bill.

In one portion of the analysis, DeBow wrote that critics of the bill — whom she named only as "a number of mental health professionals and attorneys" — argue that:

"Enforced separation of child and parent is always and inevitably traumatic for the child and likely to lead to pathological consequences. Both parent-child bonds are equally powerful bonds and are essential to normal and healthy development of children."

Several legislative staff consultants objected to the absolute language — words such as "always," "inevitably" and "essential" — in that portion of the analysis.

"There were many attitudinal statements in the analysis that bothered me," said one consultant. "Taking for granted, for example, that joint custody is the best thing for all children — things that haven't been proven."

"Bills should get a very thorough going over, but in most committees you have an opportunity to talk with a consultant before an analysis is written, and they point out to you what are valid problems so you can be prepared with amendments," said one longtime legislative consultant who worked for months on the task force bills.

"That is not an opportunity we get in that [Senate Judiciary] committee. We are called several days in advance of a hearing, and she [DeBow] will never offer

constructive criticism. She doesn't change her analysis. You walk into a jammed committee hearing with many other bills to be heard, and it's difficult to get a fair hearing.

"On all of our [task force] bills, the analysis was extremely slanted, and not in the least bit constructive. We got the bills through because we went to the grass roots."

Other consultants and family law experts — and DeBow — disagree.

"I find her to be extremely bright, extremely astute," said Susan Goodman, a former prosecutor who is consultant/counsel to the Assembly Public Safety Committee, chaired by Stirling.

"Even when I disagree with the outcome, I can't argue with her rationale. She knows her stuff. When she has something to say, she says it, but I don't think that has anything to do with her knowledge of the law or her sense of good policy."

Other consultants say the furor over treatment of family law bills by the judiciary committee and in DeBow's analyses may stem more from the volatility of the issue itself rather than actual bias.

"Domestic violence and rape crisis groups are very single-issue oriented," said one knowledgeable legislative lawyer, who was supportive of DeBow, but asked not to be named. "They're looking at one problem that they genuinely and sincerely want to fix. But our job [as consultants] is to look at all the ramifications and applications, and that may not be compatible with what single-issue groups want."

"If I were an author of a bill, or a sponsor, and I wanted to get all the proper criticism of my bill to make it a better bill, I would want someone like Deborah DeBow to do the analysis."