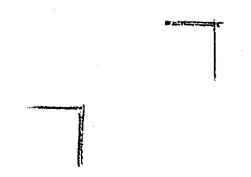
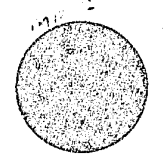
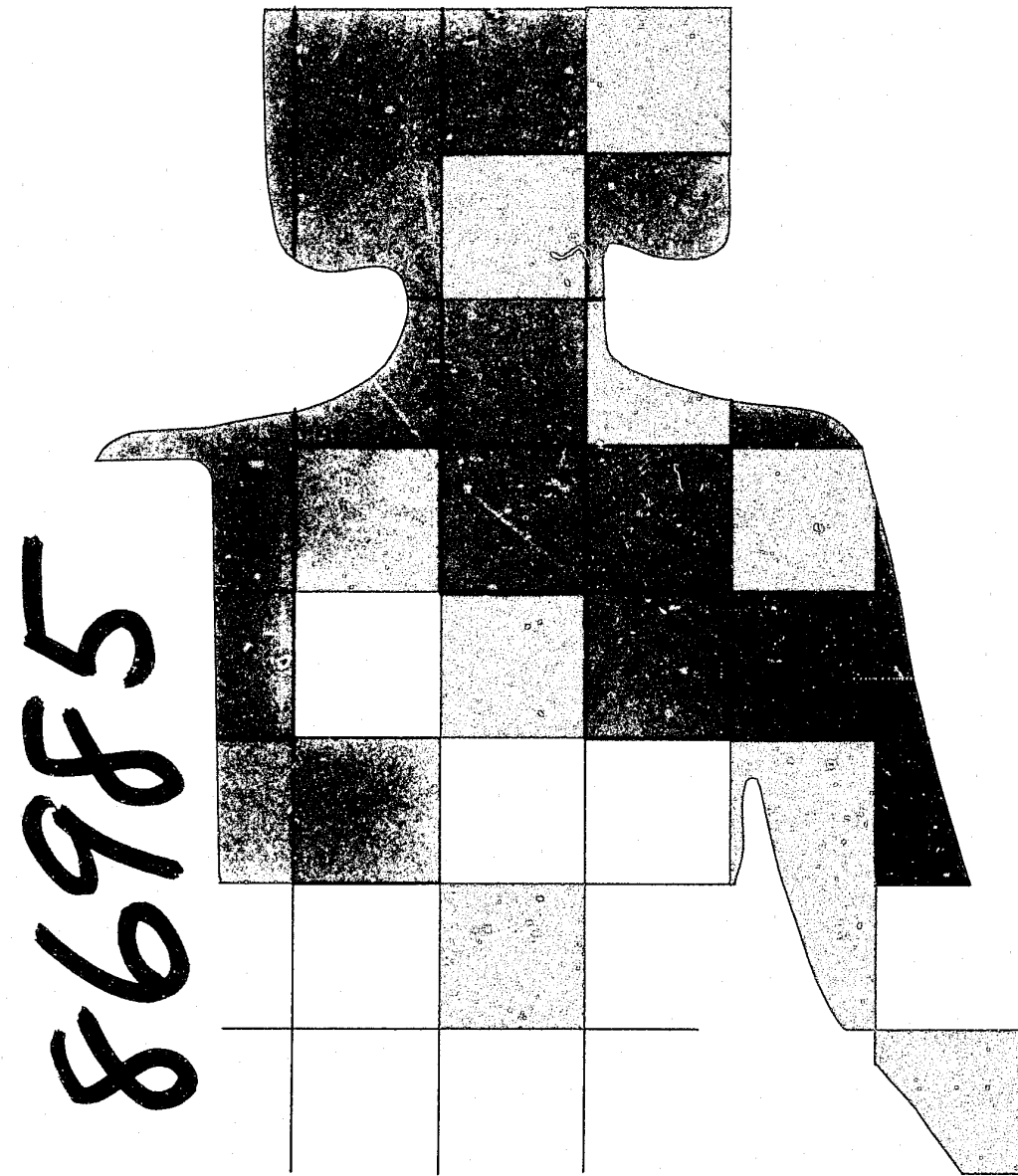


# Battered Women and the New Hampshire Justice System



A Consultation

September 1980



—A report based on a Consultation sponsored by the New Hampshire Advisory Committee to the United States Commission on Civil Rights, June 18, 1979, published for the information of the Commission and the citizens of New Hampshire. This report will be considered by the Commission, which will make public its reaction. In the meantime, the contents of this report should not be attributed to the Commission but only to the New Hampshire Advisory Committee or, where appropriate, individual Consultation panelists.

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# Battered Women and the New Hampshire Justice System

## A Consultation

—A report based on a Consultation sponsored by the New Hampshire Advisory Committee to the U.S. Commission on Civil Rights, June 18, 1979.

U.S. Department of Justice  
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The New Hampshire Advisory Committee  
to the  
U.S. Commission on Civil Rights  
September 1980

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Murray Saltzman

Louis Nuñez, *Staff Director*

The New Hampshire Advisory Committee to the U.S. Commission on Civil Rights, pursuant to its responsibility to advise the Commission on civil rights issues in New Hampshire, submits this record of presentations and discussions at the Advisory Committee's Consultation on the Status of Battered Women in New Hampshire, June 18, 1979.

The Advisory Committee has undertaken this project specifically to assist the Commission in fulfilling its mandate to examine "discrimination or denials of equal protection of the law based on . . . sex."

The New Hampshire Advisory Committee is continuing to monitor the treatment of battered women by New Hampshire's police, courts, and government agencies. The Committee is assessing the implementation of the domestic violence laws passed by the State legislature shortly after the Consultation, and is prepared to offer recommendations should it detect problems or deficiencies.

We urge you to review this report, and hope that it will be useful to the Commission's national project on battered women currently in progress.

Respectfully,

Sylvia Chaplain, *Chairperson*

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\*\*\* Added since the Consultation.

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## PREFACE

While wife-beating<sup>1</sup> is hardly a new phenomenon, it has emerged in recent years as a priority issue for those concerned with equal rights for women.

It is logical that this problem should take a place on what is more-or-less an agenda of political and social reform. For one thing, the sheer number of victims suggests that this is not a rare and personal problem but a grave social one meriting public discussion. It has been estimated that there are as many as 26 to 30 million Americans, the overwhelming majority of them female, assaulted by their spouses in the average year.<sup>2</sup> The traditional public indifference to this problem, some women's rights advocates argue, is consistent with the trivialization of matters of concern to women (their aspirations and accomplishments as well as problems) that is endemic in a male-dominated society.

Another reason spouse abuse belongs on the public agenda is that there are many indications that the vulnerability of women in their homes is linked to their being economically dependent, personally isolated, and denied access to justice, and that this status is enforced by many of our political and social institutions. This is a state of affairs with far different implications than the familiar beliefs that woman-battering stems from psychological aberrations or the values of particular classes and subcultures.

The institutionalized obstacles faced by battered women are nowhere more clear than in an abused woman's efforts to obtain security or redress through the criminal justice and judicial systems. Numerous studies have found that she is likely to encounter "discrimination or denials of equal protection of the laws based on . . . sex," an element of the mandate of the U.S. Commission on Civil Rights. In recent years, the Commission has analyzed this problem in *Battered Women: Issues of Public Policy* (proceedings of a 1978 national consultation); in the Colorado Advisory Committee's *The Silent Victims: Denver's Battered Women* and its companion film, "A Woman, A Spaniel, A Walnut Tree"; and in the Connecticut Advisory Committee's report, *Battered Women in Hartford* and its film "Coming Out of Violence." In 1980, the Commission is undertaking a major project (hearings in Phoenix, Arizona, and Harrisburg, Pennsylvania, followed by the

<sup>1</sup> Unless otherwise specified, the terms "wife-beating," "women-battering," "spousal assault," "domestic violence," and similar terms all are applied in this report to violence between mates both in married and cohabiting households and also in situations in which the victim formerly was married to or cohabited with the assailant. The behaviors included are those types of assaults, threats, and harassment that, if they occurred between strangers, would warrant police and/or court action. (See appendix A for the meanings of "abuse" and "family or household member" as used in New Hampshire's domestic violence statutes.)

<sup>2</sup> R. Langley, *Wife-Beating: The Silent Crisis* (New York: E.P. Dutton, 1977), as abstracted by U.S. Department of Justice, National Criminal Justice Reference Service (NCJRS), "Bibliography on Battered Women," document 33. Men have "almost no risk" of being assaulted by their wives. D.A. Gaquin, "Spouse Abuse: Data from the National Crime Survey," *Victimology*, vol. 2, no. 3 (1977-78), p. 632-43, as abstracted by NCJRS, document 97.

release of a report) to study the response of the legal system to the distinct needs of women who are physically abused by their mates.<sup>3</sup>

In this report, the New Hampshire Advisory Committee wishes not only to describe and assess the status of battered women in New Hampshire, but to add to the national literature a discussion heretofore lacking of the special difficulties of women living in rural areas. Domestic assault is known to be a notoriously under-reported crime, and there are indications that certain features of rural life work to suppress even more strongly reporting and awareness of it.

By mid-1979, New Hampshire had a variety of organizations concerned about domestic violence, and there was enough public interest in the issue that law reforms were being considered by the legislature. To record and organize the information and proposals that had been generated by these developments, the New Hampshire Advisory Committee on June 18 held a day-long Consultation in Laconia. Panelists included State legislators, agency officials, police representatives, prosecutors, and judges, as well as domestic assault victims and those who study them, shelter them, and provide them with psychological and legal services.

The first four chapters of this report treat conditions as they existed in New Hampshire at the time of the Consultation, that is, before the New Hampshire Legislature passed new laws to address domestic violence. While some of the complaints and analyses included therefore may be viewed as outdated, the Advisory Committee hopes that this inventory of the frustrations and problems prior to reform may help those in other parts of the country who are just beginning to address this issue. The fifth chapter of the report presents the changes promised by the new law, as anticipated by many of the same panelists whose frustrations and complaints appear in earlier chapters. The sixth chapter summarizes the themes that emerged in presentations and discussions during the Consultation.

The New Hampshire Advisory Committee hopes that this report will be a valuable extension of the efforts and thoughts of those who contributed to the Consultation and who continue to work to end women-battering in New Hampshire.

<sup>3</sup> The Commission's activities have perhaps contributed to a growing awareness in Washington of the problems of battered women. In April 1979, President Carter announced the creation of an interdepartmental committee, headed by the Secretary of Health, Education, and Welfare, to coordinate Federal programs for battered spouses. Also, the 96th Congress is making progress on the Domestic Violence Prevention and Services Act, which would provide Federal support for State and local activities. (In the 95th Congress, a similar bill had been the major legislative effort of Rep. Newton I. Steers, who now chairs the Maryland Advisory Committee to the U.S. Commission on Civil Rights.)

## ACKNOWLEDGMENTS

The New Hampshire Advisory Committee wishes to thank the staffs of the Commission's Eastern Regional Office in New York and New England Regional Office in Boston for their assistance in this project. The planning and arranging of the Consultation on the Status of Battered Women was carried out by Elpidio Collazo, initially under the direction of Eastern Regional Director Ruth Cubero and later under the direction of New England Regional Director Jacob Schlitt. The report was written by Larry Riedman of the New England Regional Office.

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## Chapter 1

# Overview

New Hampshire Governor Hugh Gallen, in his welcoming remarks at the Consultation on Battered Women, captured both the complexity and the urgency of the problems that the New Hampshire Advisory Committee intended to address:

We are here today to discuss what the FBI calls the most under-reported crime in the country, which is wife-abuse. . . . It is a problem that for too long has not received the attention it demands.

Today you will hear from many people about the many sides of the issue. You will learn that there is no single cause for the problem and that there is no one single cure. That makes the problem doubly hard to solve, but it doesn't mean that we shouldn't make every effort possible to solve it.

I want you to know that I am concerned about this problem, and I intend to see that the State government lives up to its obligations in addressing this problem. I can't tell you how many times, riding the roads around the State of New Hampshire in some of the rural areas, that this thought has gone through my mind: If a person were in trouble in that particular isolated house, where would she go and whom would she call? So, I can truthfully say I'm very pleased to see this problem being recognized. (pp. 10-11)<sup>1</sup>

<sup>1</sup> Numbers in parentheses refer to pages in the transcript of the Consultation on Battered Women in New Hampshire sponsored by the New Hampshire Advisory Committee to the U.S. Commission on Civil Rights in Laconia, New Hampshire, June 18, 1979.

<sup>2</sup> U.S. Department of Commerce, *Statistical Abstract of the United States, 1978*, p. 19.

<sup>3</sup> Two representative studies that found severe underreporting are: C.J. Crowley and L.V. Iperen, "Physically Abused Women and their Families: The Need for Community Services," (Trenton, N.J.: New Jersey Department of Human Services, 1978), and S.K. Steinmetz, "Wifebeating,

In citing the particular problems of rural victims, the Governor struck a theme that would recur many times during the day-long Consultation. Only nine States are less urbanized than New Hampshire; with only 36.3 percent of its population living in Standard Metropolitan Statistical Areas in 1976, New Hampshire's population distribution more closely resembles those of Iowa, West Virginia, and New Mexico rather than the States of the Northeastern Corridor.<sup>2</sup> The rural character of the State is reflected in State and local laws, the organization of the courts, the quality of police services, availability of social services, and social values. All these factors bear on the safety of women in their homes.

## Incidence of Battering

Panelists at the Consultation identified many factors that work against reporting of battering: the victim's confusion, shame, guilt, and fear of retribution from the assailant; absence of supportive friends, relatives, or social services; and lack of confidence in the fairness or effectiveness of the police and courts.<sup>3</sup>

Although the obstacles just described make it difficult to establish precisely the size of the abuse problem, most panelists experienced in providing social and legal services in rural areas judged it to be great. Donna Larson-Denman, a para-legal with New Hampshire Legal Assistance in Berlin (pop.

Husbandbeating: A Comparison of the Use of Physical Violence Between Spouses to Resolve Marital Fights," in Maria Roy, *Battered Women: A Psychosociological Study of Domestic Violence* (New York: Van Nostrand Reinhold, 1977), both abstracted by U.S. Department of Justice, National Criminal Justice Reference Service (NCJRS), "Bibliography on Battered Women," documents 32 and 49. The New Jersey study found that 63.6 percent of abused wives never filed a criminal charge and 57.6 percent never called police. The other study, of New Castle County, Delaware, contrasts a 1975 reported wifebeating rate of 24 (sic) per 100,000 population with an estimated rate of 7,016 (sic) per 100,000 population.



15,000) reported that in the past year she personally had worked on over 30 battering and abuse cases. (pp. 54-55) In her opinion, ". . .there is a large amount of battering going on in the rural area. . ." (p. 104) Lee Haskell, currently coordinator of the Task Force on Battered Women in Manchester (pop. 87,000), reflected on her dozen years of residence in northern New Hampshire (including work for an outreach program) and summarized the situation this way: "I think the reason that we don't know about domestic violence in rural areas is that we simply haven't heard about it yet. The real point to address is how to uncover that situation." (p. 94)

Dr. Sheila Stanley, a psychologist for Central New Hampshire Community Mental Health Services, linked the absence of support services and the absence of data about battering. Dr. Stanley noted that, except for the city of Concord, central New Hampshire has no task force on domestic violence and no telephone hotline for emergency assistance, so that "there is right now very little that a battered woman can do." (p. 93) When victims are forced to remain isolated in their homes, ". . .there's no clear way to record how frequent domestic violence is in rural areas," Stanley summarized.

The effect of accessible support services on uncovering the problem is evident in Lee Haskell's account of the early months of the Manchester Task Force:

When we arrived last May. . .we weren't advertised. No one knew we were there. About three calls a week came from women who one way or another found a way to us. After opening the crisis line on March 1, we went up to 10 calls a week from battered women. In the first three months of operation, 28 women were in such a severe situation they had to have shelter. (p. 73)

The effect of isolation may be reinforced by rural values. Olivia Henry, a psychiatric social worker in the forensic unit of New Hampshire Hospital, said of her patients from rural areas:

There's a great deal of violence and a kind of protectiveness and real pressure not to come forward or go public: "This is a family matter. Incest has gone on in our families for generations. There is nothing wrong with it." There's a kind of pressure on anybody who chooses to

<sup>1</sup> Roger Hall, Director, Statistical Analysis Center, New Hampshire Governor's Commission on Crime and Delinquency, "Information on Battered Wives" (prepared at request of Catherine Menninger, New

speaking out, from the family and the community, and I think from the police. (p. 94)

Not only are victims themselves discouraged from reporting domestic assaults, but the rural residential pattern reduces the likelihood of reporting by neighbors. Sgt. George Miville of the Manchester Police Department contrasted the settings:

We do have apartments and houses being close by, [and] thin walls, [while] in a rural area someone could be raising all kinds of havoc in the farmhouse and the nearest other house could be a half-mile away and it isn't heard. We have a lot of calls from neighbors who hear things; whereas the people involved in that house where it's happening do not call. If there are not neighbors to hear, then the call never comes in. (p. 51)

Another factor serving to obscure the problem of spouse abuse has been how police have classified such crimes. Police Chief David Walchak of Concord (pop. 30,000) said that until 1977 his department had grouped "domestic disturbances" with "disorderly conduct." When the department began to list "domestic disturbances" separately, it recorded 286 such disputes in 1977, 317 in 1978, and 115 in the first five months of 1979. (p. 139)

Several attempts have been made to estimate the total incidence of woman-beating in the State. The Statistical Analysis Center of the Governor's Commission on Crime and Delinquency estimates that there were a maximum of 1,379 battered wives in New Hampshire in 1977.<sup>4</sup> This figure was derived in part by taking the numbers of reported "simple assaults" and "aggravated assaults" in that year involving male assailants related to female victims and multiplying them by the under-reporting rates (established through a victimization study) for those offenses. One defect of this calculation is that it excludes cohabiting households and women who are abused by their former husbands. Another defect is that this method ignores the probability that under-reporting rates for domestic assaults are significantly higher than for "street" assaults, and thus depresses the estimate.

Hampshire Advisory Committee to the U.S. Commission on Civil Rights, Jan. 22, 1979.

A far higher estimate was offered by Dr. Murray Straus<sup>5</sup> of the University of New Hampshire. Dr. Straus heads the University's Family Violence Research Program, which over the course of a decade has emerged as one of the Nation's foremost research centers on domestic violence. Dr. Straus opened his discussion of the incidence of domestic assaults by stating, "My real feeling, though I don't have the statistics to prove this, is that there's been at least one violent incident in the majority of all American marriages." (p. 17) More precisely, he cited results from a house-to-house survey of a representative sample of American families:<sup>6</sup> "We found that each year about 12 out of every 100 American wives are attacked by their husbands." (p. 19) This statistic includes pushing, shoving, slapping, throwing objects, and also more serious attacks. To isolate the more grievous incidents, the researchers developed a "severe beating index, comparable to what legally would be called aggravated assault."<sup>7</sup> These incidents included kicking, punching, biting, and knife and gun attacks. The survey revealed that during the course of a year such an attack on the woman occurred in 3.8 percent of all families. This rate, applied against New Hampshire's 250,000 male-female households, means that each year there are an estimated 9,500 "severe" domestic assaults and 30,000 assaults overall in the State.<sup>8</sup> Dr. Straus, contrasting this figure to the far lower number of assaults (typically stranger-to-stranger "street" incidents) recorded by police, remarked:

. . .you can say that for a typical woman the problem of violence is not the violence in the streets that we hear about all the time, but it's the violence in her own home. That's the place where a typical woman is most likely to be assaulted. . ." (p. 20)<sup>9</sup>

<sup>5</sup> Professor Straus's paper, "Wife Beating: Causes, Treatment, and Research Needs," is included in U.S. Commission on Civil Rights, *Battered Women: Issues of Public Policy* (1978).

<sup>6</sup> For this study, "families" included unmarried couples living together.

<sup>7</sup> Although it is not a specific interest of this report and was not an agenda item at the Consultation, marital rape has struck the headlines as one of the abuses suffered by women. Its technical criminality may be in dispute in some jurisdictions, but its association with wife abuse has been alleged to be strong. For example, Campbell Harvey of New Hampshire Legal Assistance reported that ". . .once I started asking the question, I found every single client had experienced marital rape. That's something that hasn't been talked about and I think needs to be looked into." (p. 119)

<sup>8</sup> Although the incidence of wife abuse in New Hampshire has not been studied directly (estimates are statistical projections), at least one rigorous study of the problem exists, focusing on the behavior of 80 families in two New Hampshire cities: R.J. Gelles, "No Place to Go: The Social Dynamics

## The Violence-Prone Household

In discussing the causes of domestic violence, Dr. Straus listed several features that distinguish family relations from other social relations and that produce high levels of conflict:

- ". . .the family is concerned with all aspects of our life; there is just more to get into a hassle about."
- ". . .intensity of involvement. . .makes for a high level of conflict. Love creates that intensity."
- ". . .the family consists of two generations. . .they are in conflict."
- ". . .the family is the main locus for the battle of the sexes."
- ". . .the presumption that the husband will be the 'head of the household' [is] a potent source of conflict." (pp. 22-23)

The volatility of the family situation calls for good communication skills and for emotional stability if conflicts are to be resolved peacefully. Psychologist Stanley linked the absence of these traits to outbreaks of violence:

. . .my limited contact with batterers suggests that they are unable to deal with frustration, even minor frustrations. As one of my clients said, "If the house wasn't picked up or the baby cried or I said something that he didn't like, then I got beat up." Frustration with the job often leads to scapegoating a wife, and change in and of itself seems to be threatening to many of these battering husbands. (p. 79)

. . .there is poor communication between such couples. Both are often poor listeners, are quick to accuse the other, and do not know how to openly share feelings. Sometimes I found that the wife might be quite verbally aggressive toward her husband. Often, neither one of them knows how to solve conflicts rationally. (p. 80)

of Marital Violence," in Maria Roy, *Battered Women: A Psychosociological Study of Domestic Violence* (New York: Van Nostrand Reinhold, 1977).

<sup>9</sup> One piece of evidence supporting Professor Straus's assertion is a finding in a study of Boston City Hospital that 70 percent of assault victims treated in the emergency room were women attacked in their homes. "Documenting a Problem: Are there Battered Women?" *RESPONSE to Intrafamily Violence and Sexual Assault*, vol. 1, no. 1 (October 1976), p. 2, cited in Diane Hamlin, "The Nature and Extent of Spouse Assault," National District Attorneys Association, *The Victim Advocate* (1978), p. 5. Other research has found that husbands or ex-husbands were the assailants in 25 percent of all assaults on ever-married women, 15.6 percent of assaults on married women, 54.6 percent on separated women, and 27.9 percent on divorced women. D.A. Gaquin, "Spouse Abuse: Data from the National Crime Survey," *Victimology*, vol. 2, no. 3 (1977-78), pp. 632-43, abstracted by NCJRS, document 97.

The poor would presumably be likely to face more of the stresses that trigger violence, while the lower education levels usually associated with poverty would suggest that the articulation and communication skills necessary to deal with frustration and conflict would be reduced. Dr. Straus explained that, with one important qualification, this is in fact the case:

...for the ordinary violence in family life, the pushing, slapping, shoving. . .there's not much difference by socio-economic status or race. But when you come to the more serious kinds of violence, then the lower the socio-economic status, the higher the level of violence, by very large amounts.

Now, that doesn't mean that serious violence is just a poor people's problem. There's plenty of wife-beating in middle class and upper middle class families. It means that there's even more when you get people who are living under poor, stressful conditions. (pp. 33-34)

Although Dr. Straus believes that income factors largely explain certain racial and ethnic differences found in studies of battering, he noted that:

...over and above the poverty of our ethnic minorities, the physical poverty, the stresses of such life, there are certain rules of behavior that have developed as adaptations to a life full of violence, self-protective rules. And though these rules are self-protective for a certain portion, they tend to spill over into family life. (p. 34)

In other words, where a group (perhaps with a history of oppression and struggle) stresses the resolution of many types of conflicts—in the workplace, the political arena, the sidewalk—by physical rather than nonviolent means, family disputes often are resolved in the same way, even when the family is financially insulated from many of the pressures that can lead to frustration and violence.

The aggressiveness of the abuser in many violent households is complemented by his belief that women in our society are obliged to serve as scapegoats for the frustration of men. The victim herself may have come to believe that this is her lot in life, particularly if she has observed such victimization in her parents' home and encountered indifference or hostility to her own efforts to escape abuse. Campbell Harvey, an attorney for New Hampshire Legal Assistance in Berlin, reported that

a client had asked her, "What would he do if I'm not there for him to beat up? Who would he beat up?" (p. 119) Panelists asserted that this manifestation in the violent household of the age-old conception of the woman as passive, long-suffering, and sacrificing is not unusual.

According to Dr. Sheila Stanley, the "most notable trait" of the abused women she counsels is low self-esteem:

Most of the battered women didn't seem to think a lot of themselves before they were married, but whatever self-respect they had was shattered as the marriage went on. After a few years of being told that you're stupid, dumb, or no good, you begin to believe it. And instead of seeing the marriage as a failure, they tend to blame themselves. . . .Consequently, some of the women that we see feel they somehow deserve the abuse. (p. 76)

Dr. Stanley was quick to stress that such behavior should *not* be interpreted as masochism. She said, ". . .I have not met one battered woman who likes to be beaten. Blaming the victim by labeling her as masochistic is a copout for ignoring the problem." (p. 77)

While the passivity that society and tradition demand of women may provide a partial explanation of why they put up with abuse, according to Dr. Stanley any effort to shift from that vulnerable role to a more independent one may trigger abuse. She said that a wife's ". . .getting a job, going back to school, or beginning to develop opinions of her own" may cause the husband to become abusive. (p. 80) Dr. Stanley explained:

Traditional sex role expectations still exist, and I believe they have a major impact on domestic violence. The man in our society is expected to be tough, in control, macho; while the woman has traditionally [been] expected to be submissive, weak and defensive, or dependent. These expectations put an incredible pressure on both husband and wife to be something they can't always be. And when these codes are violated, abuse can erupt. (p. 81)

Dr. Stanley emphasized that such attitudinal and psychological factors provide only a part of the setting for violence in the home. Such a home also typically has identifiable external conditions conducive to victimization of the woman because they

close off her possible routes of escape. Dr. Stanley listed the following.

- "The battered woman we work with usually has no place to go, no job, and no credit of her own. So in many ways she's both psychologically dependent and financially dependent on her husband."
- "Most of them have no close friends or relatives with whom they share their plight. In fact, many have found that relatives become less supportive of their troubles and no longer want to listen."
- "I think it's important to stress that many don't leave because they fear they're going to be followed and beaten."
- ". . .they are presented with many obstacles from the courts and from relatives who hold the belief that, 'You made your bed, now lie in it.'" (pp. 76-78) The problems of fleeing with and caring for small children are also intimidating.

The effect of these circumstances is explicit in the personal histories of battered women who spoke at the Consultation. Ms. "A" recounted:

I didn't know I could get help, because I wasn't allowed no money, no car, nothing. I wasn't even allowed to go get groceries. I was living at home like a prisoner. (p. 39)

Ms. "D" reported:

I wanted to get out of the situation, but I always went back. I had the baby. All my things were there and I had no money and I was scared for my life. . . .you're in fear he's going to kill you. With all the threats and the abuse, it's not that easy. (p. 186)

Ms. "D" added that on several occasions her husband had nailed the door shut to prevent her from leaving.

In summarizing the characteristics of the violent home, it seems to be the case that attitudinal and temperamental factors lead the assailant to choose violence to "solve problems" and that external factors serve to keep the woman in the violent situation.

Certain conditions of rural life are particularly influential in entrapping women in violent homes: lack of access to public transportation; absence of support services or nearby sympathetic friends or relatives; the fact that police and courts are often only in operation part-time; lack of job opportunities

through which to become financially independent; and the possible stigma that "deserting the husband" and ending a marriage may produce in a small town.

Although evidence and arguments such as those described above support the conclusion that rates of abuse are higher in certain types of households, this should not lead to the conclusion that other types of households are exempt. Psychiatric Social Worker Olivia Henry asserted, "One of the things we've been learning is that people of both sexes [and] all ethnic, economic, and social backgrounds are battering victims." (p. 59)

### The Legacy of Abuse

Many participants in the Consultation reported that they had encountered the attitude that domestic violence somehow exists apart from society—that there is no functional relationship between the problems within the family and those of society. Evidence was offered that this attitude is entrenched in law and in the criminal justice system.

Dr. Straus offered two manifestations of this view. First, he cited the concept of family privacy, "Something which most of you value, I do, but it has its negative aspects. Namely, you can get away with a lot in the family that you can't get away with if the rules of privacy don't apply." (p. 23) Second, Dr. Straus asserted that:

The rules everywhere else in society are that you can't hit someone. The rule in the family is exactly the opposite. . . .that if someone does wrong and "won't listen to reason," you can hit him. . . .So, as long as parents are licensed to hit, the marriage license is also a hitting license.

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Just like with a driver's license you can't drive 90 miles an hour down Main Street, with the marriage license you can't exceed the "speed limit," which means, generally speaking, you can't give an injury which causes a person to get medical attention. Short of that, please don't intervene. In fact, in some cities they used to have what's called a "stitch rule," which says they're not going to arrest unless there's a wound that requires a certain amount of stitches to repair. (pp. 24-26)

Dr. Straus summarized that "we have norms. . . .which. . . .permit assaults of husbands on their wives up to a certain point." (p. 26)

Dr. Straus then warned that ". . . the minor violence is the basis for the more severe violence, because things get out of hand." (p. 26) He was referring to escalating violence in the home, but there is also evidence that family violence "gets out of hand" by spilling over into society. Children raised in violent homes come to see the violent approach to dealing with frustration and conflict as the norm.

This first occurs in the children's dealings with their own parents. Felicity Lavelle, director of the Concord Mediation Project, said that in a great many instances where the abusive father has left the family, ". . . when the male child becomes an adolescent, he then assumes the role of the father figure and then he starts beating the mother." (p. 203) Susan Bruce, project coordinator for the New Hampshire Social Welfare Council, said, ". . . it's been established that 80 percent of criminals in prison today grew up in violent environments. So, when [the courts] address cases concerning burglaries or theft of cars or whatever else. . . in effect [they are] dealing with domestic violence." (p. 223)

Psychiatric Social Worker Olivia Henry reported that her State Hospital clients:

. . . come in saying, "The last thing I'd ever want to do is act the way that I was treated by my father or by my aunt." Yet, ironically, they're the most vulnerable to it, because these victims see violence as a normal way of life, as a pattern, and in turn under stress and pressure they become abusive themselves." (p. 60)

Dr. Stanley agreed with that observation: "Research confirms my own experience, that most spouse abusers come from families where violence

was a common occurrence." (p. 79) She added that most battered wives have been raised in similar circumstances. Dr. Stanley concluded that "family violence teaches violence to the next generation." (p. 79)

The products of violent homes are characterized not only by criminal and violent tendencies, but by other types of maladjustment. Dr. Stanley stated that many children she sees in her work with schools "have been damaged in many ways because of the domestic violence going on at home." (p. 106) She also suggested that encounters with domestic violence often leave psychological scars that eventually lead people to seek mental health services:

. . . a majority of the persons who come into our mental health center have been touched one way or another by family violence. That is, many of them do not come in because they are being beaten, but the majority of them—men, women, couples, or children—have somehow been affected by family violence. Either they have been physically abused themselves, as a spouse or as a child, or they have witnessed family violence as children. (p. 74) This pattern in mental health service clients suggests that violence in the home is both a widespread and enduring problem.

In summary, violence in the home, far from being a problem existing in isolation from society, spills over into the community in the form of criminal behavior and enhanced need for mental health services, for education programs for "disturbed" children, and for other social services. Moreover, it is a self-perpetuating problem, passing from one generation to the next.

## Chapter 2

# Police Responsiveness

Despite the fact that many domestic assaults go unreported, battered women or their neighbors often do call the police.<sup>1</sup> Like those who report other crimes, those who call for police aid in domestic assaults expect prompt, fair, and competent assistance. Too often, assistance of this calibre is not forthcoming, according to those who have studied the responses of the Nation's police departments to domestic assaults. For example, Dr. Murray Straus reported that in New York City battered wives sued the police department and the family court to get the protection those agencies were obligated to provide, and obtained an out-of-court settlement. (p. 27)

Across the State of New Hampshire there seem to be wide variances in police capacity to respond to domestic assaults, police *perception* of their capacity to respond, and police performance in response to these types of complaints. Some measure of inconsistency is probably inherent in the handling of matters as complicated and dangerous as many domestic assaults. Of such calls, Police Chief Brian Burke of Lee (pop. 1,500) said, ". . . we, as administrators, have drummed into the patrolman's head that it is

the most dangerous situation." (p. 208) Chief David Walchak of the Concord Police Department agreed that ". . . the officer is aware that a high percentage of police officer injuries result from responding to disturbance calls." (p. 137)<sup>2</sup> Chief Walchak called such calls ". . . one of the most distasteful assignments the officer can be given." (p. 137) Despite the inherent difficulty of such assignments, information presented at the Consultation suggests that a number of causes of police inconsistency and ineffectiveness can be identified and remedied.

## Police Capability: Training

Psychiatric Social Worker Olivia Henry acknowledged that police are "in a very dangerous predicament" and said that ". . . it's unreasonable if we're not offering them careful training over long periods of time to expect them to do the kind of job they'd like to do." (p. 65-66) Chief Burke connected this problem with the rural nature of the State:

. . . one of the largest problems we have had for years in this State has been the fact that the State of New Hampshire at any given time is

<sup>1</sup> New York City Police Academy instructors estimate that husband-wife disputes account for 40 percent of all calls for police assistance. A 1967 study in Chicago estimated that family conflict accounted for more police calls than did criminal incidents. M.D. Fields, *Wife Beating: The Hidden Offense* (1976), abstracted by U.S. Department of Justice, National Criminal Justice Reference Service (NCJRS), "Bibliography on Battered Women," document 115.

<sup>2</sup> The FBI reports that in 1975 "domestic disturbance" calls were responsible for 28 percent of assaults on police officers and more than 21 percent of police officer deaths. U.S. Department of Justice, Federal Bureau of Investigation, "Crime in the United States—1975, The Uniform Crime Reports," p. 224.

Some critics of police handling of domestic assaults assert that use of the term "domestic disturbance" is symptomatic of the problem faced by women seeking police aid. Eisenberg and Micklow assert that applying the

ill-defined term "domestic disturbance" to acts ranging from verbal arguments to beatings indicates police indifference to wife-beating. Eisenberg and Micklow, "The Assaulted Wife: Catch-22 Revisited," *Women Rights Law Reporter*, vol. 3 (1977), pp. 138, 139-40, cited by Marjory D. Fields, "Wife Beating: Government Intervention Policies and Practices," in U.S. Commission on Civil Rights, *Battered Women: Issues of Public Policy* (1978), p. 233. On page 3 of the same Commission publication, Del Martin notes, "The police term 'domestic disturbance' is not synonymous with 'wife beating'. . . Police seem to think that few 'domestic disturbances' are really violent." (On the next page, Martin adds, "Although many have rebelled against feminist attempts to de-sex the language, suddenly for some reason it becomes the vogue when discussing domestic violence." She cites the police practice of referring to assailants and victims without reference to gender or family role, and the use by social scientists of terms like "family murder.")

covered by part-time police officers, about 50 percent of it: 50 percent of the population and about 50 percent of the land area of the State. These men have other jobs to go to. They are many times trained in other professions. They have to go into these situations at night without any training, any prior experience, and try to make decisions. They don't want to look foolish any more than anybody else does, so sometimes they make the wrong call just to protect themselves. (p. 213)

Chief Burke emphasized that "someone has got to supply the dollar and cents to train police officers." (p. 214)

Dorie Shaw of the New Hampshire Police Standards and Training Council reported that her agency had lobbied very strongly on behalf of State legislation which:

... brought the part-time police officers under the jurisdiction of the Police Training Council for the first time. Now we can mandate a minimum number of hours for the part-time officers in the State as well. We have not had that jurisdiction upto this time, although we have provided part-time training for the past five years in this area. (p. 175)

She outlined the step-up in training concerning family violence:

... we are going to be doing a multi-location training session, beginning in September around the State, on the new legislation [see chapter 5]. We have taken this approach primarily because it's the only way to reach not only the part-time officers, but most of the officers in the State, because they simply cannot come into training whenever we are in Concord. . . .

In addition to that, we will be running [a] one-week, advanced training, specialized course in family intervention in the springtime, and we do hope to bring up people from New York to help train us for that. (pp. 175-76)

Olivia Henry suggested that police responding to domestic assaults could employ some of the techniques now utilized by the New York Police Department in hostage situations. The hostage spe-

<sup>3</sup> Rape and assault are, of course, different crimes. Although marital rape is an abuse commonly experienced by battered women (see chapter 1, note 6), it is difficult to see the applicability to domestic assaults of techniques acquired in rape investigation courses. Of greater relevance would be an examination of social and legal attitudes through history toward the two crimes. In both crimes, women have too frequently been denied redress because of the blaming-the-victim syndrome, social stigmatization of

cialists use psychological tactics to reduce the tensions and dangers in those situations. (p. 65)

Advisory Committee member Catherine Menninger, a member of the Governor's Commission on Crime and Delinquency, asked whether the New Hampshire Police Standards and Training Council had developed domestic assault guidelines. Sgt. George Miville of the Manchester Police Department said that the guidelines had been prepared, and that they were similar to guidelines promulgated by the FBI that he had encountered during training out of the State. Sgt. Miville also reported that he teaches the new guidelines as a staff member of the New Hampshire Police Academy:

... everyone going through the police academy—the 10-week academy—has, unfortunately, only five hours. Everyone wants more hours. I want more hours too, and I think I can justifiably request more. But all I have is four or five hours of it now.

Every new officer is being trained in domestic violence and how to handle the domestic violence cases. (pp. 49-50)

Chief Walchak stated that training should not merely focus on the incident itself but should make officers "aware of both the causes of the disturbances and also the resources available to the victim." (p. 139) He said that the patrol division has increased its emphasis on referrals to other agencies and types of social services. (p. 141) Chief Walchak described the training of Concord's police officers:

To date, all officers assigned to the patrol division have received the first 12 hours of a 16-hour training program which addresses domestic violence. The training program has been broken into four four-hour blocks of instruction, which cover the handling of domestic disturbance calls, the battered woman dilemma, rape investigation,<sup>3</sup> and available community services.

The intent of this training program has been not only to apprise our personnel of the way in which to handle these types of calls, but also of the means available to reduce the likelihood of re-occurrence. (pp. 139-40)

victims, and the requirement of a higher level of proof than in crimes whose victims are not primarily women. These parallels are elaborated in M.D. Pagelow, "Blaming the Victim: Parallels in Crimes Against Women—Rape and Battering" (paper prepared for presentation at the Annual Meeting of the Society for the Study of Social Problems, Chicago, Ill., Sept. 3, 1977).

Chief Walchak said that his department employs an officer specifically assigned to investigate crimes against women and children.

The Female Victim/Offender Investigator is receiving specialized training in areas involving domestic violence, and is then providing instruction to others in the department. Thus far, the officer has attended courses or seminars dealing with violence in the family, child abuse and neglect, sex crime investigation, crisis intervention, and police instructor training. (p. 141)

Chief Walchak also emphasized that officers are directed to urge victims to contact services such as the Mediation Program (described in chapter 3 of this report) and the Concord Task Force on Battered Women. In turn, these agencies have participated in the police training program. (p. 140)

While it is evident that police leadership is convinced of the need for training and aware of problems that may result from the lack of it, it may be years before such training brings uniformity at the patrol level, particularly in rural jurisdictions. The subsequent sections of this chapter, by pointing out problem areas in the police response to domestic violence, may help set priorities for elements of such training.<sup>4</sup>

### Police Capability: Authority

One deficient area of police training cited by several panelists was interpretation of legal issues related to domestic violence. Attorney Campbell Harvey said, "I think sometimes the police are a little too free to give out legal advice that is, in fact, incorrect." (p. 120) While some points of confusion involved relatively specific matters, such as the effect of divorce proceedings on the woman's right to make a criminal complaint, it also became apparent during the course of the Consultation that there were varying interpretations in the broad, crucial area of police authority to intervene to protect abused women.

Chief Brian Burke of the Lee Police Department explained that police officers responding to domestic assault calls typically understand their scope for intervention in terms of "those rules and regulations. . . usually adopted by the Chief and adopted by the political powers. They have to operate within

<sup>4</sup> Elements of standard police training materials and practices that lead to ineffective handling of domestic assaults are discussed by Marjory D.

those guidelines." (p. 246) Chief Burke described the police authority as interpreted in his department:

I feel in this State. . . that all criminal acts are acts against the State. In New Hampshire, when you see an indictment. . . it's "The State versus. . ." All acts are not acts against the person, but it's against the State.

I personally believe that, if it's a crime against the State, the State should prosecute that crime. . . (pp. 229-30)

From the premise that assault is a crime against the State, it follows that the police officer has as much right as the victim to sign a complaint. Burke continued:

There have been cases of domestic violence where we have signed the complaint. . . The woman has come in the next day and wanted to drop the charges. If we have sufficient evidence to proceed without her testimony, or we feel that we should subpoena her and put her on the stand or get sufficient evidence from her at that time, we will continue to prosecute. We will not terminate the prosecution at the request of the woman. (pp. 229-30)

Where it is police practice to take a statement from the victim and sign the complaint, the woman who is intimidated by her assailant, confused, or uninformed about her rights will still receive a measure of police protection. The law thus serves all women rather than only those with the resources to utilize the law to protect themselves.

Jean R. Wallin, a representative in the New Hampshire Legislature who has urged domestic violence law reform, commented, "We wish all police departments in the State had that particular attitude." (p. 230)

Chief Burke pointed out that his policy does not necessarily provide immediate protection for victims of domestic assault because there are steps between the entering of a complaint and the making of an arrest. (See chapter 5 for changes in this process since the Consultation.) First, Chief Burke noted that an officer who decides that an arrest of the assailant is necessary to protect the woman must in most instances obtain a warrant to make the arrest. This is because most domestic assaults in New Hampshire are classed as misdemeanors, and a

Fields, co-author of *A Handbook for Beaten Women*, in *Battered Women: Issues of Public Policy*, pp. 229-49.

warrantless arrest is not allowed for a misdemeanor unless the officer has witnessed the crime, which would be very unusual in a domestic incident. (p. 210) Second, obtaining a warrant means that a complaint must be signed before a justice of the peace. To find a justice of the peace, often at odd hours, the officer must leave the scene of the incident, which gives the assailant time to escape or may leave the victim unprotected in the presence of the assailant. Moreover, the justice of the peace is not obligated to issue a warrant, though Chief Burke reported that they do issue it "in probably 99 out of 100 cases." (p. 211)

In contrast to the Lee Police Department, which seems to be committed despite the obstacles to a policy of intervention to reduce domestic violence, the Concord Police Department seems to interpret police authority in a more narrow, passive way. For example, Chief David Walchak stated that police efforts on behalf of battered women ". . . take the undivided attention and support of the person who is assaulted. There is just little else that your police could do to respond, unless they have the full cooperation of the person who is assaulted." (p. 180) Similarly, in Manchester, according to Sgt. George Miville, the issuing of a warrant "requires that the victim go to the police department and sign a complaint." (p. 46) Sgt. Miville said:

If no one is being beaten in front of me right now and I'm convinced as I walk out no one will be, I have to walk away from the situation. . . . Even if I don't want to, I have to. (p. 87)

These interpretations of police authority omit the possibility that the officer can develop independent evidence and sign the complaint himself or herself.

Regarding these differences, Chief Burke offered this explanation:

. . . it depends on if the particular court you're in supports that philosophy. . . and there are some district courts that do not support the police bringing in crimes against the State. (p. 230)

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I hope that probably the majority of the police administrators have the same philosophy that I do in reference to the State being the prosecutor in criminal violations. The problem that exists is what they're mandated, what

they're allowed in their local courts in many cases. (p. 232)

Sgt. Miville also cited the judicial context for police authority, observing that ". . . each department has to deal with that particular court that happens to be in that jurisdiction, he has to live with it, as do the people in that area." (pp. 48-49) Miville said that some judges ". . . act strongly on domestic complaints, even of a so-called minor nature like slapping; and some of them don't want to see you unless they see blood." (p. 43)

Chief Walchak said of court attitudes toward domestic assaults in his jurisdiction that ". . . there's some feeling. . . that these are private complaints and are really not a police matter and that they all should be brought privately." (p. 148) He also emphasized that the limitations on police authority originate beyond departmental policy, and he urged that the Advisory Committee ". . . address that issue of giving us more tools to work with, to handle the issue while it's hot." (p. 180) (Legal changes affecting police authority are discussed in chapter 5.)

Most panelists agreed that, in deciding to arrest, police must be cognizant of prosecutor, judge, and jury attitudes that may result in the charges being thrown out, but there are examples from testimony at the Consultation that these external forces are not entirely determinative of police capability to protect battered women. In an already mentioned example, some departments felt it impossible to proceed without active participation of the victim, while Chief Burke of Lee found a basis for intervention in "acts against the State" by use of "other evidence—photographs of the bruises. . . other witnesses, circumstantial evidence, people hearing, for instance, the chainsaw running and she had a chainsaw cut. . ." (p. 246) Another example concerns possible false arrest charges against the police in cases where a prosecuting witness later wished to drop the charges. Chief Burke expressed that fear in this way: "We don't want to be left holding a person in jail the next morning with no witness to the crime and nothing to back up our decision." (p. 211) His department seems secure against such charges in its policy of documenting probable cause to arrest through written statements from the victim and witnesses and other extrinsic evidence. In contrast, Chief Walchak recounted a case in Concord in which police and prosecutors felt obliged to release an arrested assailant to avoid false imprisonment

jeopardy despite the facts that the victim had discussed her history of abuse with the arresting officer and that the couple's 12-year-old child had witnessed the incident and called police at her mother's request. (pp. 142-45)

In summary, at least to some degree, police authority to address domestic assaults varies according to departmental practices and procedures, rather than being entirely determined by the judicial climate.

A second area of confusion regarding police authority concerned the police role in enforcing restraining orders. (See chapter 5 for changes in State law regarding restraining orders since the Consultation.) Attorney Harvey and Sgt. Miville agreed that a restraining order typically was issued pursuant to divorce proceedings and therefore was originally a civil rather than a criminal matter. Sgt. Miville then explained that the police role in the enforcement of such orders is informal:

. . . the police have no power of enforcing a restraining order.

In Manchester we are called very often to enforce stricter restraining orders. Of course, we can't. But we do have what is called "reading the riot act" to a person with a restraining order and advising him that we are aware of this restraining order, and we can advise the victim or the aggrieved person to see her own attorney and go back to the court that issued the restraining order and to bring a complaint. But the police, if they wanted to, can't enforce a restraining order. You're limited by the courts. (p. 43)

Attorney Harvey reported that in her experience many police officers are mistaken concerning their understanding of the validity of restraining orders. She said that many police believe that the order becomes null if the couple resumes living together, but "as a lawyer, I don't believe that is correct. I think the only power that can modify a court order is the court and not the parties involved." (p. 120)

### Police Performance

Chief Walchak of the Concord Police Department described the typical handling of a domestic assault call:

In the majority of instances, the police are called to intervene in domestic disturbances after the situation has erupted into a full-fledged

altercation—an altercation which during the officer's presence is only verbal. Yet, once the officer leaves the scene, he or she knows full well that the altercation may become more violent.

The successful handling of this type of situation is difficult. The officer knows that to eliminate the possibility of continued violence, one of the two—or often more—participants in the disturbance must be removed from the other.

Unfortunately, the officer has had little legal authority to remove either of the participants from their home.

In the past, the intervening police officers have attempted to persuade one of the participants of a domestic dispute to voluntarily leave their home for the night or until tempers have cooled. The victim was advised of the legal restraints which prohibited the officer from taking further action. The officer then cleared the scene, hoping he or she would not again receive a call to return. (pp. 137-38)

Most panelists at the Consultation agreed that in the three communities whose police departments were represented at the Consultation—Lee, Concord, and Manchester—officers adhered for the most part to such an approach. The problems ascribed to this approach have to do with practices and policies like those described in the preceding section of this chapter, i.e., the victim is left unaided in the presence of an assailant who may reasonably infer from the police response that he can attack her with impunity. In contrast to this often ineffective but generally uniform procedure, rural police were charged by many victims and other panelists with frequent gross failures to perform their duties at even a minimal level.

James Curley, of the Legal Assistance Office in the town of Berlin (pop. 15,000), reported, "I've had at least two clients in two years where the husband is so bad in town, the town is so small, that the police will not respond to the case because they are afraid of the man." (p. 97)

Ms. "C" recounted that ". . . after I pressed charges, my ex-husband continued to come to the house and beat my daughter and I. I called the police and told them he was still doing this. They never called me back or came up. . . ." (p. 149)

Campbell Harvey submitted two affidavits filed by her clients:

[1]. . .my home was only minutes away from the police station. . . .One time my husband was threatening to commit suicide and to kill me. . . .I called the police; they showed up an hour and 20 minutes later saying there were only three cruisers and they had to investigate a car accident. This was after the police had been advised by my attorney that he was dangerous, and they should respond immediately if I called for help.

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[2]. . .One time he threw me down a flight of stairs and broke eight of my toes. I went to the police and told them I wanted to file charges, but the police, who are good friends with my husband, tried to talk me out of it. . . .I already had a restraining order. . .so I insisted on pressing charges anyway.

The next day, while I was in the back yard hanging clothes, my husband broke into my apartment again, stole a lot of my things, and put them in our car. My neighbor saw him and called the police. Before the police came, I saw what he was doing and although I was on crutches and could barely walk, I tried to stop him. I was holding onto the car when a policeman came up behind me, pulled my hands behind me, spraining my wrist. He let my husband drive away, then arrested *me* because he said I had broken the mirror on the car. I tried to explain that the car was mine and he was stealing things that belonged to me, but the policeman put *me* under arrest anyway. . . .When I got to the police station, they told me they would drop the charges against me only if I agreed to drop the charges I had brought against my husband the day before.<sup>5</sup>

Donna Larson-Denman, a para-legal with New Hampshire Legal Assistance in Berlin, observed that in many rural areas women have known the police chief all their lives and that "the police department is well aware of who's being beaten up in town and who isn't." (p. 55) She said that such women often do not file criminal charges. That is not surprising, given what Ms. Larson-Denman describes as the typical experience of the woman who files a complaint in such circumstances:

. . .the victim is usually then put through a very insulting and degrading session with the police, who most often, more than likely, know

<sup>5</sup> These affidavits are on file in the New England Regional Office of the U.S. Commission on Civil Rights, Boston, Massachusetts.

the victim personally, know her husband personally, think the husband is such a great guy and can't understand why on earth she's doing this to him and what she did to bring about this battering situation.

The police department usually tries to cool out the complaint, talk to the victim and say that things are going to be much worse for you afterwards. We can't possibly see how much worse the situation can be after the victim is battered, abused, has had guns put to her head, has been strangled, endured murder attempts. But the police departments in our area think that things could get worse for the client, so they try to discourage her from doing this. (pp. 55-56)

As suggested in chapter 1, the police in rural areas seem to reflect the values of a culture that believes domestic violence should be kept from public view. To counter this tendency, Mr. Larson-Denman said that at her agency, "We always advise our clients to press criminal charges. We feel that this is the only way that the police department is going to become more aware of the situation. . . ." (p. 55)

Sgt. Miville and Chiefs Burke and Walchak asserted that police behavior such as that described in the affidavits and by the panelists is not tolerated in their departments. Sgt. Miville added, "I would strongly recommend that you go to the Attorney General's Office if you have any kind of dissatisfaction with that local police agency." (p. 100)

### Charge-filing Fees

Several persons at the Consultation reported that in the city of Berlin, a \$12 fee has been required of some persons attempting to lodge assault complaints. Para-legal Donna Larson-Denman stated:

We have found that after a woman is able to escape from her situation, run down to the police department which is pretty centrally located in the community, usually without her pocketbook, usually without any funds, the first thing that she is presented with at the complaint desk is, "Sure you can file a complaint. Where is your \$12?"

Very often, the second place she comes to after the police station is our office [New Hampshire Legal Assistance]; once we get

involved. . .we don't hear about the \$12 fee anymore.

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Apparently from what we can tell, it is only extended to women who are going to enter the police station to press charges against their husband for criminal assault, or boyfriend. (pp. 90-91)

James Curley, of the same legal assistance office, had talked with the clerk of the local court about the fee: "I asked him on what authority it was based. There was no authority." (p. 97) Curley added that the fee had even been asked of a woman whose ex-husband had broken into her home three years after their divorce. Mr. Curley asserted, "That fee is being assessed to deter people from filing these criminal complaints." (p. 97)

## The Judicial System

In the previous chapter, representatives of police departments asserted that working within the guidelines set by local courts sometimes prevents them from adequately protecting battered women. A reciprocal view was voiced by Hillsborough County Attorney Ray Cloutier, who said his work is hampered by "police investigations [that] are oftentimes inadequate or nonexistent, the thinking being that most of these cases fold anyway." (p. 125) Indeed, the entire discussion of the judicial system disclosed real obstacles, perceived obstacles, and inadequacies as extensive as those besetting the police, as described in the previous chapter.

### Prosecution

Prosecutor Cloutier explained first that as a county attorney he deals with the Superior Court, which hears misdemeanor assault cases only as a result of an appeal made from a district court. Therefore, in those misdemeanor assault cases he sees, considerable time may have passed since the assault, in that the Superior Court trial usually occurs "from a period of three months to a year later." (p. 123) Mr. Cloutier reported that during this period a reconciliation may have occurred or one of the parties may have filed for divorce. Such a development is often accompanied by a request by the plaintiff that the matter be dropped. Other developments that can undercut the case include the woman's moving from the State and leaving no forwarding address or being intimidated by new threats from the assailant (understandable developments, it should be pointed out, where police protection is not adequate). Mr. Cloutier added that

at the appellate level of the judicial system, the victim's unwillingness to go through a second trial is also a factor.

Summarizing the status of misdemeanor assault cases, Mr. Cloutier said:

... they are low priority cases and they are coupled with the workload of appeal cases, of motor vehicle offenses, DWI [driving while intoxicated], and other cases. The prosecutors at the Superior Court level are unable to react for that reason. (p. 124)

Regarding this case load, Peter Haebler of the Advisory Committee asked whether there was any priority order distinguishing victimless crimes (such as most motor vehicle offenses) from those with victims (such as wife-beating). Mr. Cloutier responded that cases are ranked only by order of arrival in the office, and that implementing a priority system would require passage of a State law. (pp. 160-62)

More serious charges arising from domestic violence—aggravated assault or attempted murder—come to the county attorney's office following a finding of probable cause in the district court or they are submitted directly by police departments for grand jury indictments. (p. 124) Even in these serious cases, complained Prosecutor Cloutier, "the rules of the Superior Court and the procedure do not allow the prosecutors to deal effectively with the battered women cases." (p. 124)

As in misdemeanor cases, the charges may be dropped because the woman is intimidated, because there is a reconciliation, or because dropping the

charges is part of a divorce settlement. Mr. Cloutier listed additional difficulties:

... in prosecuting these cases, the prosecutor always finds himself between the man and the woman. The husband's or male friend's lawyer is always describing the incident as a lover's quarrel. The lawyer for the defendant will make numerous motions or take depositions causing the woman to rebel or refuse to cooperate with the prosecutor, or often believe that the prosecutor, a male, is siding with the male defendant.

Finally, these are difficult cases to present to a judge or jury. Oftentimes there are no witnesses. The testimony is contradictory. ... Also, the thinking is that if he's so bad, why has she been with him for so many years and had so many children. (p. 125)

Mr. Cloutier also suggested the existence of a pattern in which "usually, if an indictment is returned, the defendant will be successful in having the charges dropped if he's from an upper or middle class income bracket." (p. 124).

As was the case with police efforts to obtain complaints from victims, the recurrent theme in the discussion of the prosecutor's difficulties was the failure of the victim to actively cooperate. Mr. Cloutier asserted:

You're assuming that the women are desirous of having the complaint prosecuted and the prosecutor is not going forward. I submit to you that that is a falsehood. ... If the woman wishes to go forward in Hillsborough County, she will have her day in court. (p. 169)

To this characterization of the situation, Sylvia Gail, coordinator of the Rape Committee of New Hampshire, responded that victim uncooperativeness "has not been my experience in either rape or battered victims. That's why it's foreign to me." (p. 169)

<sup>1</sup> Affidavit submitted by Campbell Harvey, Attorney, New Hampshire Legal Assistance, Manchester, New Hampshire, and on file in the New England Regional Office of the U.S. Commission on Civil Rights, Boston, Massachusetts.

<sup>2</sup> A useful discussion of the prosecution of spouse abuse cases is found in Terry Fromson, "The Prosecutor's Responsibility in Spouse Abuse Cases," National District Attorneys Association, *The Victim Advocate* (1978). In this report on a conference in Memphis, Tennessee, in 1978, Fromson recounts the assertion by some prosecutors that:

... the presumption that a victim will not cooperate... is an invalid excuse for not prosecuting. They argue that such speculation ignores the fact that some reasons for victim noncooperation—such as long continuances, impersonal contact with prosecutors, and the victim's lack of protection pending trial—are failures of the system which should be corrected.

Participants also noted that the attention focused on victim noncooperation has probably spawned the existence of a "self-fulfilling

169) Earlier, she had commended Mr. Cloutier for his office's "excellent track record in prosecuting rape cases," a crime in which under-reporting and victim reluctance to cooperate in public proceedings are also notorious.

While it is a fact that battered women often do fail to pursue their complaints through the courts, it is also the case that court officials are not merely exasperated bystanders to the indecisiveness of battered women. Many women fail to pursue their complaints aggressively because they have no confidence that the outcome of the judicial proceedings will produce either protection or redress for them. As one victim stated at the end of an affidavit detailing her repeated rebuffs and denials of justice from the police and courts, "What has happened to me sure doesn't make me respect the legal system."<sup>1</sup> If the obstacles to successful prosecution are discouraging to prosecutors, then it is to be expected that plaintiffs will feel the same way.<sup>2</sup>

Some of the factors that deter victims are not systemic but rather are found in personal attitudes of court officials. Mr. Cloutier remarked, for example, "If a woman has been living with a man for 15 years and she's been assaulted on a daily basis, [it] seems to me that the woman does not wish to file the complaint and go forward to a successful conclusion at the trial." (p. 171) This ignores the evidence presented by other panelists that numerous forces serve to trap women in their homes, that changing consciousness and the advent of supportive services may embolden women, and that people often simply reach a breaking point.<sup>3</sup>

Another example, indeed one of the forces that traps women in violent homes, is given by Mr. Cloutier's remark that "I think the big problem that we have here is that we're trying to keep the family unit together in one sense." (p. 153) If the State is committed to keeping the beaten wife with the

prophecy" in spouse assault cases. That is, if prosecutors believe that these complainants are apt to drop charges, the prosecutors in fact become less encouraging and supportive of victims of spouse assault and, thus, subtly encourage them not to follow through with prosecution.

Fromson, "The Prosecutor's Responsibilities in Spouse Abuse Cases," p. 8, in *The Victim Advocate*.

<sup>3</sup> Fromson writes that the suggestion that prosecution be conditional upon the termination of cohabitation evoked a "strong reaction" at the Memphis conference because:

... it would be unfair to a victim who cannot leave home because she has no other place to go. It also has the effect of telling the abuser that it is acceptable to beat someone so long as you continue to live together.

Fromson suggests, "The legal system could help the victim by requiring the man to vacate the house as a condition of bond or probation or by use of injunctive relief." *Ibid.*, p. 9.

abusive husband, it is not surprising that that woman is unenthusiastic about utilizing the judicial process. Attorney Campbell Harvey asserted, "I really question the wisdom of a justice system that is promoting the maintenance of a family in which a child is beaten and a wife is beaten." (p. 157) In addition, Mr. Cloutier explained his reluctance to use a 12-year-old daughter as a witness in a wife-beating case on the grounds that "I think it's going to leave scars throughout both of their lives." (p. 154) Such thinking ignores the evidence that growing up in a violent home may be even more damaging, as described in chapter 1.

Attitudes such as these may indeed be the foundation underlying the systemic obstacles faced by battered women seeking justice. References to "priority cases," "court rules," and "procedures" give the impression that court officials are passive participants in a neutral, immutable system. In fact, such systems reflect personal values and invariably admit a fair degree of personal discretion in their daily operations.

In addition to the conditions that make prosecution difficult and to the attitudes of prosecutors that may undercut their own efforts, it may be that there is a need for greater professional training. Legal Assistance Attorney Campbell Harvey offered the following example of a prosecutorial lapse which occurred in Hillsborough County. The boyfriend was cutting the client's throat:

...when the police walked in. They thought that was a fairly serious offense and tried to bring a felony charge, aggravated assault. The charges go up to the county attorney's office in Manchester. . . .

The felony charges were refused and it was referred back to the police as a misdemeanor. . . . The chief of police in that town told us that the county attorney's office did not wish to prosecute that case as a felony because the boyfriend had found his girlfriend in bed with another man that morning. . . . I called the county prosecutor's office and . . . asked them if they had talked to either the arresting officer or the victim, and they said no. [Emphasis added.] (pp. 116-17)

Ms. Harvey said that after her office's inquiry the county attorney resumed the prosecution as felony assault.

## Court Outcomes

Several panelists pointed out that when a domestic violence case goes before the court, the criteria for determining the validity of the complaint are likely to be far different than those encountered by the victim in her dealings with a hot line or task force, a legal services attorney, or even the police and prosecutor. Sgt. Miville of the Manchester Police Department explained:

...many organizations such as the task force will listen to a woman's story and if it sounds like it should be taken to court and some action taken against the assailant, they may in good conscience try to get the other side of the story from the aggressor or the man. But this man, who is not compelled to give his side of the story, very often is uncooperative. (p. 104)

In contrast, in the court:

...the man does give his side or gets a good attorney and gives a very plausible side of his story, although it may not be correct.

You can understand how court decisions sometimes turn out adversely, because the courts and the police are obliged to dig deeply into both sides and it very often changes the color of the story. (p. 104-05)

Sgt. Miville described district court handling of battered wife cases in Manchester, where there are two full-time judges and one associate:

...following an arrest, the husband will appear in court, generally within a week. If he pleads guilty, then the case generally ends at that time. He's given a fine or maybe a small prison sentence, or maybe they require the probation department to investigate that particular family situation and return to court at a given date. (p. 84)

When the assailant pleads not guilty, a trial is held three or four weeks later. During this period, according to Sgt. Miville, the husband often tries and succeeds in recovering the trust of his wife, with the result that in the courtroom, "All of a sudden she'll say, 'Your Honor, I don't remember if he hit me or if I fell against the door.' So the whole thing is thrown out." (pp. 84-85)

Sgt. Miville said that after several such episodes involving the same couple, it may be that:

...the court will come out and make a statement like, addressing the police officer, "If she comes in and makes a complaint to you about her husband anymore, I don't want you to take it." It's more or less giving a license to the guy to go ahead and just about kill her. (p. 85)

Campbell Harvey presented statistics on dispositions of domestic assault cases in Manchester District Court during a four-month period of 1978. The 20 cases, which cannot be regarded as an exhaustive study, are cases in which the defendant pleaded not guilty when arraigned and subsequently went to trial. Somewhat surprisingly, given the many assertions by panelists at the Consultation that victims are reluctant to see cases through, in only five of the 20 cases were the charges dropped due to "lack of prosecution" (i.e., the victim failed to serve as witness).

In two of the remaining 15 cases, the defendants waived probable cause and were prosecuted in Superior Court on felony charges (one man with a prior record of assault had choked his wife unconscious, and the other man with no prior record had cut his wife's head with a rock). The other cases were decided by judges in the district court. Ms. Harvey reported that of these 15 assaults, one produced a 60-day sentence on an unrelated charge, four received fines of from \$35 to \$100, and 11 were continued for sentencing or given suspended sentences. (pp. 117-28)<sup>4</sup> She concluded that "I think that there is a very real problem in this State in terms of the judges." (p. 120)

While sentencing may leave much to be desired, there at least exists at the lower court level, on the basis of this modest study and contrary to police and prosecutor assertions, a good possibility that an assailant will be judged guilty. In the Superior Court, other factors reportedly reduce the likelihood of a guilty verdict.

The Superior Court hears felonies and appeals, which are decided by juries, as compared to district courts in which misdemeanors (as domestic assaults are usually classified) are decided by judges. County Attorney Cloutier told the Consultation, "...you come up here and you accept what the battered woman says. In Superior Court, she has to prove it before six or 12 people beyond a reasonable doubt." (p. 149)

<sup>4</sup> Ms. Harvey's presentation at the Consultation is augmented here by data from the charts submitted to the Advisory Committee. The chart is on file in the New England Regional Office of the U.S. Commission on Civil Rights, Boston, Massachusetts.

Some of the factors bearing on whether the defendant is convicted, according to Mr. Cloutier, include:

...type of injury, whether there is independent testimony in the form of an unbiased witness or good police testimony, whether the defendant is in an upper income or lower income bracket, and the number of years the parties have been together. (pp. 125-26)

Mr. Cloutier added that:

When a case comes to trial at the Superior Court level six months after, the emotion is not there, the witnesses are gone and circumstances have changed, and before a jury of men and women, probability of conviction is very small. (p. 147)

Judge William F. Batchelder of Belknap County Superior Court agreed:

...to try an assault case before a jury today for an assault that took place last Thanksgiving time, that jury is going to think long and hard, assuming those people are still living together—and they probably are—they're going to think long and hard before they come down with a conviction. (p. 174)

Judge Batchelder offered the following example of unpredictable jury behavior:

I had a case in Rockingham County where a person was beaten to within an inch of her life. I have never seen pictures in court as gory as these. The defendant, the man whom she was living with, was viewed by a policeman coming to the house, standing on the stairs with a tire iron in his hand and his pajamas were covered with blood from top to bottom. The tire iron was the weapon he used. There was some doubt in that case and the jury acquitted that man. (p. 174)

Of such jury behavior, Judge Batchelder observed, "We have a part of our psyche that likes to forgive people. . ." (p. 173)<sup>5</sup>

Even when a guilty verdict is returned, there is no certainty that the court will take vigorous action, in the form of sentencing, to chastise the assailant. County Attorney Cloutier discussed the issue of whether the guilty assailant should be jailed:

<sup>5</sup> Fromson asserts, "It is . . . the prosecutor's responsibility to help educate judges and juries." Ibid., p. 5.



Oftentimes, the woman opposes such a recommendation because there will be a loss of financial support, it would be socially embarrassing, and lifetime scars would be left on the children and the family unit will be destroyed. If a father is placed on probation, there is no counseling available, there is social stigma, and the assaults continue, either physical or verbal, and very often result in further violence of a more grievous manner. (p. 126)

In summary, Mr. Cloutier said, "I realize I have painted a bleak picture for the battered woman, but I've tried to give you the practical realities which the battered woman faces in our court system." (p. 126)

The patterns described above also prevail in rural areas, with the added complication that rural courts, like rural police, are often part-time and therefore less accessible and able to respond quickly.<sup>6</sup> Donna Larson-Denman described the situation:

If the victim is successful in pursuing this through the police department, pressing charges, and her husband is brought to court, not much happens in the North Country. The cases that . . . we've helped the woman pursue bringing criminal charges against her husband, if he pleads guilty he's given a suspended sentence, told never to do that again. However, it's perfectly all right to chase the victim down the street outside the police department and the judge refuses to see it.

Restraining orders, unfortunately, are not enforced. We have to go back to court on restraint charges. Because our court sits only twice a year, in the spring and the fall, our cases usually aren't brought up on the docket in time, and it very often happens that if we do press charges for the breaking of a restraint order, it takes one to several years for any court action to be taken, and by that time it's too late. The judge believes that the complaint is an old, stale complaint and throws it out, having no merit. (p. 57)

Dr. Sheila Stanley noted that part-time courts and lack of access to court services are particular problems in domestic violence cases, in that most incidents occur during evenings and weekends. (p. 105) Moreover, in rural areas, accessibility in distance is as much a problem as accessibility in scheduling. For example, Campbell Harvey report-

<sup>6</sup> Fromson points out one potential advantage that courts in small communities have over those in larger ones: in smaller communities where

ed that one of her clients dropped charges because she could not afford the round-trip taxi fare to the arraignment, an understandable situation in that most battered women escaping their homes are practically without economic resources. (p. 114)

### Court Efficiency

Earlier in this chapter, the court practice of lumping misdemeanor assaults with victimless crimes in a first-come, first-served approach to scheduling was described. Campbell Harvey suggested that the same lack of urgency about domestic assault can be found in other areas of court operations. In one instance, in which a divorced woman's ex-husband had assaulted and threatened to kill her:

. . . first . . . we tried to modify her divorce decree and the clerk of the court refused to accept those papers. We then filed what we called "petition for temporary restraining order," but it had the wrong title, so the clerk refused to file those papers. We finally filed what we called "title of bill equity," and that was accepted. . . . the judge took his time reading it, deciding that anything had to be done [and] issued a restraining order that was effective for seven days, four days after it had started its effect. So, in effect, she had a restraining order that was good for three days. The entire procedure took over 30. . . (p. 112)

In another case, in which the husband of a woman who had filed for divorce had threatened to burn her house down and had actually assaulted not only her but the police:

. . . we told the clerk of the court that this lady's life was in danger. . . . We asked for a criminal contempt hearing, which meant it had to be in front of the judge. That was in October. That has not yet been heard [June]. She was divorced in the spring, so obviously we stopped it. (p. 114)

Ms. Harvey summarized that "a lot of work needs to be done in the judicial system." (p. 181)

### The Concord Mediation Project

Given the numerous and widely-held dissatisfactions with the traditional judicial handling of domestic assaults, innovations must be looked to for solutions. One novel program that was being imple-

personal reputation is an important consideration, the assailant sometimes may be deterred by the mere filing of criminal charges. Ibid., p. 6.

mented at the time of the Consultation is the mediation project of the Concord District Court.

Assailants are given the option of going into court or into the mediation program. Felicity Lavelle, who directs the one-year pilot project, described its basic thrust:

What is mediation all about? A mediator is actually . . . a person in the middle. . . . The mediator does not take sides with either party. We're not about to find guilt or innocence. That's beside the point. What we are trying to do is help people resolve a particular conflict.

According to Supreme Court Judge Charles Douglas III,

. . . the court system felt there should be an alternative to the traditional methods of [either] sending a cop out on a call and having him tell the people this is a civil matter or domestic matter, go see your lawyer or go get a divorce or do something, but don't bother the police department. . . [or]

\* \* \*

. . . we'll arrest the guy, make him post bail. That will take care of next week's grocery money. He'll have to hire a lawyer; there goes some more money. Maybe we'll put him in jail for 30 days; there goes his job. And when he gets out he goes home and nothing is changed. (pp. 194-95)

Judge Douglas said the decision was made to experiment with treating domestic assaults ". . . as something a little different than street crime." (p. 195)

Ms. Lavelle explained one of the principal premises underlying the program:

People come to us in a crisis and it's really key to get at those people as quickly as possible, because when people are in a crisis, their defenses are down and it's at that time. . . . more of a likelihood of them being willing to explore options, being willing to try different things. When they feel like they're at their wit's end, they'll try anything at that time. (p. 200)

As will be recalled from chapter 1, many abusers are characterized by low tolerance of frustration and many violent households by poor communication. The mediation program seeks to take the desperation produced by stress and shift it from violence to a

willingness to try communicating. Ms. Lavelle continued:

. . . it's the role of the mediator to start drawing out the people, to start having the people talk about what's going on, then to have the other side hear, in a particular situation. . . . what it feels like from a wife's point of view and have the wife hear what the husband is going through.

Most times, the particular people involved never talk to one another; they never share their feelings. Even while they're in a mediation session, they won't talk to each other. They'll talk to the mediator, and the mediator will have to recite what that person has just said. Sometimes the mediator will change the language a little bit so it won't be quite as hostile. (pp. 201-02)

The mediation program, by improving communication between the couple, seeks to identify not only points of conflict but also solutions. The solutions, according to Ms. Lavelle, become the basis for a "contract" between the man and woman concerning their future behavior and relationship.

. . . if we are able to come up with a list of suggestions that each party thinks will solve this particular dilemma, the mediators will then write up the disputants' recommendations. . . . It's not written up in some special legalese, but it's their contract so that they can understand it, and they sign it.

The whole philosophy behind that being that since they come up with the idea, it's not somebody saying, "This is what you have to do," that they'll have more of an investment in carrying out those particular resolutions. . . . Hopefully it's their ideas, and usually with the people we're dealing with, this is the first time in their lives that somebody is saying, "Hey, you can take some responsibility over your life. You can take some control over this particular situation." Most of them are floored when they think that that is a possibility. They're quite impressed and they like the idea that somebody treats them with a little respect and is interested in the ideas that they have. It's amazing, the ideas that start coming out. They're really creative. (pp. 204-05)

Ms. Lavelle pointed out that, although the contract may be derived and phrased non-legally, in instances where the parties have been referred by the court

any violation of such contracts is considered contempt of court. (pp. 249-50)

Pains are taken in the mediation project to make participation as convenient as possible. Sessions are scheduled around work hours and other obligations. (p. 201) Also, mediators are matched with the parties involved—male-female mediation teams in husband and wife disputes, older person-younger person teams for parent-child disputes, recovered alcoholics for couples where alcohol is involved. (p. 202) In addition, where the mediation project makes referrals for counseling or other services, “. . . we go with them and set up the appointment for them, make the introductions for them, to make it as easy as possible for these people.” (p. 206)

Judge Douglas emphasized that the mediation project is not a court diversion project like those some other communities have started to unclog the courts. Of 300 domestic assault calls each year in Concord, only about 20 go to the district court. He said:

. . . with a docket of thousands of cases, 20 isn't going to make any difference. But what concerns us is the other 280 cases that never came to court, that never got in front of the judge, but that indicate there is a problem in the community and that the “system” isn't able to respond adequately to it. (p. 196).

<sup>7</sup> A similar dispute resolution system in Miami, Florida, is reported to have had a 94.9 percent success rate in its first six months. The period from complaint to hearing was 7.2 days as compared to 94.3 days in the criminal court system. The cost per case was \$26.40 for the community dispute center as compared to about \$250 for the justice system. F. Dellapa,

Along the same line, Chief Brian Burke of the Lee Police Department commented, “I'm happy to hear about the mediation program in Concord because I've hoped that this type of program would develop throughout the State and help alleviate these situations that policemen are only partially trained to handle. (p. 209)

The mediation project is supported by a Comprehensive Employment and Training Act (CETA) grant for Ms. Lavelle's position and by \$5,000 in Law Enforcement Assistance Administration (LEAA) funds for training and overhead. (p. 197)

Although Concord's mediation program is a pilot project and the only one of its kind in New Hampshire, it is not unprecedented. Felicity Lavelle reported that in Dorchester, Massachusetts, such a program has operated for four years. In that program, whose clients almost exclusively are referred by the court, 86 percent of the time the mediated contract has not been broken by the parties to it, according to Ms. Lavelle. (p. 199)<sup>7</sup>

Judge Douglas summarized the significance of the project:

We don't know if it's going to work. . . . if it does work, it may be an alternative that will fit. It's not going to solve all the problems, but it may at least fit into the puzzle as one of the pieces that will help you ultimately solve this puzzle. (p. 197)

“Mediation and the Community Dispute Center,” in Maria Roy, *Battered Women: A Psychosociological Study of Domestic Violence* (New York: Van Nostrand Reinhold, 1977), abstracted by U.S. Department of Justice, National Criminal Justice Reference Service (NCJRS), “Bibliography on Battered Women,” document 55.

## Chapter 4

# Social Services

Concord's mediation program is an official acknowledgment, in the form of sponsorship by the Concord District Court, that some types of social services may be more effective in combatting domestic violence than traditional legal methods. The same conclusion is shared by many persons concerned about domestic assaults, who at their own initiative, and often without significant official support, have been attempting to aid battered women and end domestic assaults in New Hampshire.

Lillie Pendleton, director of the Keene Women's Crisis Services, observed:

There are already people in the State, 11 or 12 groups of women, most of whom are very badly paid, trying to do these things. They are trying to provide emergency shelter, a place for the women to go. They're trying to do counseling, trying to help with economics, trying to work on this level, and they don't have any money and they don't have any big agencies behind them. (p. 167) [See appendix B for a list of these groups.]

Susan Bruce set forth an agenda for the social services approach to the problems of battered women, as seen from the perspective of “the planning committee for ‘The Project,’” a group including the New Hampshire Welfare Council and some battered women task forces. “The Project,” it is hoped, will enhance communication and cooperation among all the groups—volunteer groups and professional agencies—concerned with domestic violence in New Hampshire. The strategies are to decrease the general public's acceptance of domestic violence and to increase accessibility to and quality

of services provided to both those abused and those who abuse. (p. 221)

The objectives of “The Project,” according to Ms. Bruce, are:

- “to design and implement and coordinate a program aimed at eliminating attitudes which support or condone domestic violence”;
- “to provide for and encourage an interdisciplinary approach to the resolution of domestic violence situations”;
- “to make available quality training and technical assistance to all those who provide direct services to victims of domestic violence situations”;
- “to identify service gaps, both geographical and type of service, and encourage the development of appropriate programs to fill those gaps”;
- “to develop a mechanism by which goals common to all service groups may be identified and advocated for in an organized and expeditious fashion”;
- “to research, compile, and analyze all known data relative to the causes and effects of domestic violence, especially in regard to New Hampshire, so that efficient and productive programs addressing the causes and/or effects of domestic violence may be promoted.” (pp. 221-22)

Ms. Bruce reported that her group had not yet sought to involve State agencies in planning or implementing programs, but that it was in the process of planning a comprehensive, Statewide program of community education aimed at eliminating attitudes that condone domestic violence. (p. 240) Adding that school teachers had contacted her

concerning what they might do on behalf of children that they suspected were being beaten and who were likely to become violent themselves, she said that her group would attempt to alter the "whole philosophy of teaching." (pp. 240-41) She acknowledged, however, that:

...we might have a whole lot of trouble actually getting programs in the schools that deal with sex role stereotypes. . . . If we can't even get sex education in there—which actually perpetuates sex role stereotypes to a certain extent—I don't see how we can think that it would be very easy to get these programs in the schools. (p. 239)

### Legal Assistance

The services provided by legal aid offices have been touched on in other chapters. The legal services they perform fill a great need for battered women, who often cannot afford private attorneys. Moreover, Campbell Harvey remarked:

I think lawyers. . . have been callous and insensitive to the problems of battered victims. The private bar charges, frequently, excessive rates simply to avoid these cases. There needs to be a whole lot of consciousness-raising in the bar of how to deal with victims of family violence. (p. 121)

Although these agencies often represent the victim in attempting to secure her safety through criminal justice and judicial institutions, they also play crucial roles in helping the victim to understand her situation, to make decisions about her future, to obtain the aid of social service agencies, and often to obtain a divorce. Donna Larson-Denman, of the Berlin office of New Hampshire Legal Assistance,<sup>1</sup> said:

Lately, we have been pretty successful in helping victims of domestic violence. We have no shelter in northern New Hampshire. We are trying to get a shelter system going.

We do have a type of emergency shelter system. Now that the word is out in the community that a woman does have a place to go, that women can get some help, that this is a criminal assault charge. . . not just a family

<sup>1</sup> New Hampshire Legal Assistance provides legal assistance in noncriminal proceedings to persons who cannot afford legal services. Like other qualified legal assistance programs around the country, its funds and guidelines come from the Legal Services Corporation, a quasi-official Federal agency established by the Legal Services Corporation Act of 1974.

dispute. . . we have a lot more women coming into our offices for help. (p. 58)

She noted that during the past year her office had talked to nearly 300 women about divorces. However, the office was able to take only emergency cases, those in which the women or children had been battered within the past month. Ms. Larson-Denman said, "There's a very large amount of people we can't even begin to help. Particularly in the rural area, it's a very common, prevalent problem." (p. 58)

### Task Forces and Shelters

Ms. "D," a Consultation panelist and battering victim, had contacted a legal aid office and been referred to the local women's task force. During the difficult period in which she filed for divorce:

...these task forces that are available. . . helped me a lot, having the support and knowing that there's other women going through it, because when you're in a situation like this you feel very guilty and ashamed. You don't talk to anybody about it.

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The support I got from women in the group gave me the push that I needed.

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...I've been divorced for over a year now and I've been with the support group for a year and a half, and I'm there because I know how much it helped me out and now I'm there for support for the women coming in. . . (pp. 186-88)

Lee Haskell, coordinator of the Manchester Area Task Force on Battered Women, described the work of that group. It began in 1977 at the Manchester YWCA with volunteer members representing city agencies including the police department, welfare office, mental health agencies, and others. Ms. Haskell cited interagency cooperation as one of the group's great strengths. (p. 67)

Ms. Haskell said that providing shelter for battered women was the top priority for the Manches-

In 1980, the Legal Services Corporation is focusing on violence against women. In October 1979, it established in Washington, D.C., the National Backup Center on Women and Family Law to carry out research, informational, and liaison activities that will support the efforts of local legal assistance units.

ter Task Force, and she described the group's efforts to do so:

Right now we have a temporary arrangement with the city of Manchester. They have rented eight apartment units in a downtown building and. . . keys are available 24 hours a day at the police station. We, with one of our volunteers, meet the woman and house her there when it's appropriate. But we're not happy with that arrangement: the woman goes there alone, she may not know anyone there, no telephone in the building. . . .

We are also very hard at work at setting up host homes, people who are willing to have a battered woman come and stay for a short period of time. I think Concord is doing that, and we'd like to have that happen more in Manchester.

We were also successful this winter in going through the city to the Community Improvement Program. . . . That is the way in which the Federal grant money is distributed through-communities. . . . We banded together with 10 city agencies and told them that we needed money for emergency housing, and we were successful in that request. We were given. . . between \$75,000 and \$100,000 to purchase a shelter, plus additional monies to renovate whatever structure we build.

But there's a catch. . . in that it is for a multi-purpose shelter. The safest way to house battered women is in anonymous locations. I don't think it's ever going to be possible in the city of Manchester to be anonymous. So the alternate route is to have excellent security; we're working on that with the police and other agencies.

Some of the other things that we hope to do in that shelter project is to possibly locate the battered women and their children in a separate building. At the very least, we have made a requirement in our work with that [project], that they be housed separately with a separate entrance and separate programs will be made available for them. (pp. 69-70)

The Portsmouth Task Force Against Family Violence also places a top priority on shelter. Kate Lincoln, staff advocate for the task force's shelter, "A Safe Place," described the services provided in Portsmouth. Three years prior, she recounted, ". . . two VISTA workers in Portsmouth organized a meeting of community agencies to focus on the problem of battered women and to draw those

interested into a group to work on it. Thus, the task force was formed." (pp. 188-89) Ms. Lincoln noted that, to document the need for the shelter, in 1976 she and her colleagues had examined "domestic disturbance" cases in police files, and letters of inquiry to the city's social service agencies, identifying 310 calls for help the shelter might have served. (p. 189)

Ms. Lincoln described the orientation of the group:

The philosophy of our organization centers around a strong belief that the victims of battering are not sick or masochistic but, rather, are the victims of oppression. We believe that within the security of a refuge from violence, the attitude of mutual support or peer counseling can help the victims of battering to break out of their violent situations. (p. 189)

As has been the case in Manchester, the Portsmouth task force used makeshift arrangements prior to the opening of "A Safe Place." A dozen women were housed in volunteer homes, and some of these women became members of a support group operated by the VISTA volunteers during the year before the shelter opened. (p. 189)

Ms. Lincoln said that currently her organization is "able to house 10 people in the shelter and at least seven more in a small network of host homes in the area." (p. 190) She reported that from the opening of the shelter in April 1979 until the Consultation in mid-June, the shelter housed 15 women and 22 children. (p. 191)

Ms. Lincoln described life in "A Safe Place":

Nonviolence is a rule of the shelter, by either word or action, and women are encouraged to work problems out with their children without spanking. Residents have the responsibility for food shopping, preparation, child care, and housekeeping, and work out decisionmaking at regular resident meetings. (p. 191)

In both Manchester and Portsmouth, the task forces place an emphasis on providing not merely relief but advocacy. Lee Haskell stated:

We're training volunteers to deal with a battered woman. I think what they need is a smart friend, somebody to be objective, who will listen and who knows the city, knows what agencies are available. We work very hard to make that available. We've had training programs all winter and we now have a group of

volunteers numbering 54. They're available to do advocacy work. . . (p. 71)

Kate Lincoln said the advocates at "A Safe Place":

. . . assist residents in gaining legal counsel, act as liaison with the police, assist victims in securing medical attention and welfare assistance, accompany persons to court, and even help residents find other permanent housing. (p. 190)

Both groups operate 24-hour crisis telephone lines. In Manchester, this service is staffed by volunteers who complete an eight-week training program involving police and medical and legal professionals. (p. 71)

The task forces also sponsor support groups of the kind found so valuable by "Ms. D." In Portsmouth such groups meet weekly; in Manchester, the groups are not well attended, according to Lee Haskell, who said that on the basis of her conversations with other task forces this seems to be a widespread problem where such groups meet outside shelters. (p. 68)

Counseling is also provided to individual victims, although Kate Lincoln pointed out that her group refers drug, alcohol, and severe emotional problems to other agencies. (pp. 191-92) Lee Haskell said that, once the Manchester shelter opens, her group will seek to expand counseling to include "parenting skills, training and money management, things as simply as writing in a checkbook. We'd like to help with job skills, job training." (p. 72) She also expressed the conviction that a good shelter program must involve well-planned care for the children involved and a program for men. The ultimate counseling goal, as she saw it, must be working with entire families: "To just deal with the women is often to put a Band-aid on the situation." (pp. 72-73)

The two task forces draw staff and financial support from a variety of sources. The Manchester Task Force, as a program sponsored by the YWCA, enjoys such benefits as nonprofit status and use of office space and telephones. In 1979, the group was awarded a \$10,000 grant from the State Crime Commission. The task force has continued to look to the VISTA program for paid staff, receiving two positions in its first year and three in its second year. (p. 68)

"A Safe Place" has paid five staff members from a CETA grant sponsored by the Portsmouth YWCA, and the shelter's maintenance is financed by dona-

tions and small fundraising projects carried out by the task force. Also, a fee is charged to residents: \$2.50 per day for individuals and \$5 for families. Kate Lincoln added that the city of Portsmouth has provided \$1,200 for the shelter, and that local town and city welfare agencies have assisted victims in meeting the residence fee. (p. 190)

### **Integrating Services and the Community**

Both representatives of these task forces emphasized the importance of cooperation with other groups and government agencies in their communities if they are to be effective. For example, Kate Lincoln, after recounting some difficulties her group has had in dealing with city agencies, said, "I feel that these problems will be somewhat lessened as our authenticity grows in the community." (p. 193) In Manchester, the battered women task force puts its program before community groups by sponsoring a speakers' bureau. Lee Haskell said that on average two volunteer speakers on battered women issues appear before community, church, and civic organizations each month. (p. 68)

In addition to the immediate programmatic benefits of rooting battered woman services firmly within the framework of the many services the community normally offers its citizens, there is a broader implication to such an approach. It will prevent the formation of an isolated, "ghettoized" service system for battered women that is equivalent to tacit toleration of the problem. Susan Bruce illustrated this danger:

I can see little safety zones that are set up all over the United States that women can go to and do whatever they want to do. If they happen to get in a battered situation, they just zip out the door into the safety zone. I can hear the husband now saying, "But your honor, she knew I was mad. She knew damn well I was going to hit her again and yet she stayed right here. She didn't go to the shelter. . . . She stayed here. She asked for it, your honor, and she deserved what she got." (pp. 224-25)

In other words, strategies aimed at minimizing the damage of domestic violence may take for granted that the problem is going to continue to exist. An emphasis on the expedient solution of escape may overlook the crucial problem of the unequal treatment of women by the courts and police, and may

ignore the fundamental objectives of identifying causes and eradicating them. Ms. Bruce cited one standard practice in dealing with domestic assault that embodies this fallacy:

We talked a lot about, "Well, let's see, we can save her and take . . . her out of the house." I was sitting in the back and I felt like saying, "Why the hell does she have to leave the house? She lives there." (p. 224)

Campbell Harvey struck the same theme, emphasizing the necessity for equipping battered women to enjoy their safety and rights within society rather than aiding their escape into an alternative system:

. . . I think that it's important for us not to create a separate system, as we have for juveniles, for poor battered women, simply because battered women do not appear at this point capable of advocating for themselves. I think what we ought to try to do is to get battered women to advocate for themselves. Hopefully, the bill that's going into effect next fall [see chapter 5] will be a first step towards helping battered women help themselves.

But I don't think you want to set up a system that's going to have someone else coddling battered women through. I feel very strongly about that. (p. 158)

## The 1979 Law Reforms

Dr. Murray Straus of the Family Violence Research Program at the University of New Hampshire told those at the Consultation, ". . .the old common law. . .gave a husband the right to physically chastise [his wife]. . .\*\*\*So it's part of our legal heritage, and there are many disabilities remaining in the law against women which continue that." (pp. 26-27).

Although legal obstacles may be of ancient origin, they are not immutable, as Belknap County Superior Court Judge William F. Batchelder explained:

The justice system is nothing more nor less at any given time than what society's perception of reasonableness is, as given to us by the New Hampshire Legislature. . .If you think it's the justice system that's discriminating against this block of citizenry, I must take issue with that, because if there is any discrimination, it's in the law that we people have to deal with. That comes from two sources: the legislature and the constitution. That can be amended by amending the constitution and rewriting the laws. (pp. 158-59).

In 1979, New Hampshire took the option of rewriting its laws in the interest of improving the safety of women in their homes.

Legislator Jean Wallin identified an April 1978 conference ("Focus on Family Violence: The Battered Woman"), as the starting point for an effort to push reforms through the State legislature. (p. 215) Concurrently with this development, there appears to have been a "thaw" in State government attitude toward the problems of women, as reflected in appointments to key State agencies. Governor Hugh

Gallen told the Consultation that he had named new members to the Commission on the Status of Women and that he expected that agency to ". . .take a new direction so it does what it should: deal with the real problems of women in New Hampshire." (p. 11) Also, Advisory Committee Chairperson Sylvia Chaplain, noting that her fellow Committee member Catherine Menninger had been appointed to the State Commission on Crime and Delinquency, said, "There are other new commissioners who are extremely responsive to the needs of women." (p. 183)

The product of the changing political climate in New Hampshire was a number of revisions of State law that offer more options to the abused woman seeking safety and redress, that give more authority for police to intervene in dangerous domestic situations, that provide a better chance for the judicial system to address the underlying causes of outbreaks of domestic violence, and that call for better data-gathering and reporting on domestic assault. (These reforms appear in the New Hampshire Revised Statutes Annotated, Chapter 173-B. Excerpts from this chapter are included in appendix A.) Many are pleased that New Hampshire law now specifically addresses domestic violence. However, Campbell Harvey chose to see the new law as perhaps one of a public symbol of changing political and social attitudes toward domestic assaults than as embodying substantive departures from inadequate old laws:

. . .the bill that was just passed, almost every provision of it, was not. . .necessary, because the laws existed in New Hampshire to protect battered women before the passage of that law.

The passage of the new law is simply an intention to intervene, an intent to enforce the rights that have been so far.

There is no intent to discriminate in the [old] assault statute or any other statute intended to protect the citizens of New Hampshire. . .[yet] the battered women have not in the past been protected. (p. 160)

Representative Wallin identified the "Statement of Purpose" as the most important element of the reform. (p. 216) It reads:

I. It is the public policy of this State to prevent and deter domestic violence through equal enforcement of the criminal laws and the provision of judicial relief for domestic violence victims.

II. It is the purpose of this act to preserve and protect the family unit for all family or household members by entitling victims of domestic violence to immediate and effective police protection and judicial relief. This act shall be liberally construed to the end that its purpose may be fulfilled.

To judges and prosecutors who are reluctant to put abusive husbands in jail or under restraining orders because that would divide the family, the "Statement of Purpose" says that the true cornerstone of family integrity is the safety of the family's individual members.

### "Equal Enforcement of the Criminal Laws"

House Bill 809, as the reform measure was labeled in the legislature, proposed to enable police to intervene more effectively in domestic violence situations by expanding police authority to arrest without a warrant. That change is now codified in Chapter 594 of New Hampshire Revised Statutes Annotated. (See appendix A.) As was explained in chapter 2, warrants had been required for misdemeanor arrests unless the crime occurred in the officer's presence, with the exception of some "driving while intoxicated" offenses. The reform, as Chief Brian Burke explained, "creates a second exception to that," which is "a domestic violence situation where the police officer has probable cause to believe that the violence took place within six hours of the time of arrest." (p. 229) Chief David Walchak commented, ". . .that six-hour provi-

so. . .is going to help us" (p. 156), and Sgt. George Miville explained how:

The victim would get involved in some court action, but only as far as being a witness. She would be subpoenaed to appear in court as a witness. The principal complainant would be the police officer, but he would have to have evidence upon arrival that the beating did occur: bruises, testimony of neighbors, thin walls, what they heard, screaming, maybe what some of the children told them, overturned furniture, all of these things that would lead any reasonable person to believe that an assault did take place. . .

Very often it's the fear of retaliation that stops the woman from signing a complaint against her husband. Now the signing of a complaint would be done by a police officer or chief of police in that community. So the onus is not left on the victim to sign a complaint against the assailant—[although it] doesn't let her off the hook completely, because she would have to testify. (pp. 47-48)

The reforms also involve the police to a greater degree in enforcement of restraining orders. (See appendix A.) Chief Burke, who said that he personally believes that restraining orders are civil matters that the police should not be called upon to enforce, explained that the new law:

. . .makes it mandatory for the courts to advise the police agencies of restraining orders in their areas, and it mandates that they must update the information on those restraining orders. . .[When a] restraining order exists and the party is in particular places in violation of that restraining order, then he has committed a crime of criminal trespass and we can make the arrest, because it would be a crime committed in our jurisdiction. (pp. 212-13)

From police comments here, and from the police representatives' complaints in chapter 2 about the limitations on their officers, it would seem that the police would firmly have backed passage of the changes in the law. Sgt. Miville of the Manchester Police Department both confirmed and qualified this inference:

. . .speaking for my department and my chief—we're the largest city in the State—and also I could safely speak for the chief of Nashua, second-largest city, they are strongly for the passage of this new domestic violence bill.

We found some opposition to some parts of it . . . from more rural police chiefs. It seems that there's a part of this bill that seems to extend police powers; oddly enough, we have police officers that don't want their power extended. . . .

I can agree with that somewhat, especially when it comes to entering people's homes. [There is a] feeling in this country . . . that a man's home is his castle. We kind of shy away from what goes on in his castle. So, there is some opposition more in the rural areas than in the cities. (pp. 50-51)

These remarks recall Dr. Straus's discussion in chapter 1 of the effects of honoring "family privacy" upon keeping domestic violence from view.

While most panelists applauded the imminent expansion of police authority promised by the implementation of the law reforms, Superior Court Judge Batchelder added a word of caution:

There are some areas of inhumane activity that are not susceptible to a quick response in the legal system. The legal system is good, but it's not perfect, and for every lady who says the man with whom she is living, if he beats her, should be locked up—that quick movement of the law coming in to protect the human being— . . . there is another person standing before me talking about due process.

\*\*\*

. . . in order to get a quick response to a domestic situation where there is violence or the threat of violence, how much of this do we want to give up? (pp. 136, 151-52)

### "Provision of Judicial Relief"

The domestic violence law reforms are also expected to make the judicial system more accessible to and usable by battered women. For example, the new law allows domestic violence victims to seek protective restraining orders from both district and superior courts without filing for divorce. Attorney Campbell Harvey said that:

The reason for both [district and superior court] is to provide the relief for the rural wife where the battering husband is buddies with the judge and the chief of police, or whatever. She can go to the superior court and file for civil relief there. (p. 247)

Ms. Harvey also pointed out that the new law lowers the economic barriers to using the judicial process by eliminating filing fees (see appendix A), although provision of the new law only applies to temporary restraining order applications and in Ms. Harvey's estimate would not eliminate the criminal complaint fees described in chapter 2. (pp. 100-01, 247) The new law also permits *pro se* complaints (the victim representing herself) and allows a broad range of victims—cohabitants, divorced persons, the elderly—to seek relief.

Representative Wallin emphasized that the new law requires that judicial authorities make victims aware of the rights and remedies to which they are entitled. The law states that the clerk of the court shall advise the victim of five possible court orders that she can request the judge to issue. (See appendix A.) The police officer responding to the victim's call for assistance has a similar obligation to inform her of her legal alternatives. (See appendix A.) Representative Wallin said that much of the law ". . . deals with information, information to the victim and information to the assailant, so that each knows the rights and each knows what is going to be done in any case." (pp. 218-19)

She said that both parties are to receive copies of any orders issued by the court and that any order is to state, "in more or less reasonable English, 'A willful violation of this order is contempt and may result in imprisonment.'" (p. 219) (See appendix A.)

The reformed law provides for more types of court orders than formerly. Ms. Wallin described them:

. . . there are civil orders which can be gotten through this particular act without having to file for divorce—protective orders which, for instance, direct the defendant to refrain from abusing or interfering with the plaintiff; enjoin the defendant from entering the premises where the plaintiff resides; grant to the plaintiff the exclusive right, use, or possession of household furnishings; direct the defendant to pay financial support to the plaintiff for minor children; recommend that the defendant retain counseling or some other attention that the court finds appropriate. (pp. 217-18) (See appendix A.)

Expressing a lack of confidence in imprisonment of the offender as an adequate solution to domestic violence, Representative Wallin suggested that the new law will challenge the creativity of judges:

. . . there are all kinds of relief that judges may, upon their thoughts, do, and I think that the whole idea that one is an innovative judge is a helpful thing, as long as the purpose of this act is fulfilled. (p. 218)

Courts are also obligated by the new law to play a more forceful role in seeing that protective orders are obeyed. When it is alleged that the defendant has violated the order, the court must summon him to appear and show cause within 14 days why he should not be punished for contempt. (See appendix A.) Sgt. Miville remarked, "That is something a little bit stronger than now exists, and it will help." (p. 42)

### Potential Problems

The new law is an important advance in the struggle to protect women in their homes because it provides them better access to authorities better empowered to intervene in dangerous situations. However, it does not address some long-standing problems, such as the fact that courts may be closed evenings and weekends, a condition that Campbell Harvey called "the major problem" remaining after the implementation of the law. (p. 121)

Judge Charles Douglas of the State Supreme Court voiced the fear that the law might be administratively cumbersome:

. . . I don't know how you're going to update or keep updated local police departments with who has a restraining order out. For instance, let's assume that the restraining order is against a man who lives in Manchester to stay out of his wife's home or his ex-wife's home in Derry. Well, for openers, you got two counties. Does Manchester keep track of it, or does it just fall on the Derry Police Department to keep track of it? How often are the county clerks going to have to update this? . . . All I'm suggesting is that there are some very practical problems, and after January 1, after six months of this thing, it gets all out of shape with the courts. I would suggest that it's very easy to pass a law, but it's a lot harder to implement it. (pp. 235-36)

The judge pointed out that good legislation can be discredited by problems in implementation:

. . . it will become a joke if you don't take care of those details, because after the first few months of everyone realizing—the women, the cops, the judges, and the clerks—that this thing is all just a lot of paper, then you might as well not have passed it. (pp. 235-37)

Judge Douglas's sobering scenario is a reminder that not only the letter of the law, but the commitment, diligence, professionalism, and—with new laws—patience and ingenuity of those who work in the criminal justice and judicial systems are crucial factors in the pursuit of justice.

## Conclusion

For the New Hampshire Advisory Committee to the U.S. Commission on Civil Rights, the crux of the domestic assault issue in New Hampshire is whether State and local governments are providing physical safety to citizens without discrimination.

Evidence was presented at the Consultation that such protection is often less available to citizens when those citizens are partners in marriages or conjugal relationships. In the overwhelming number of these cases, it is the *female* member of the household who is at risk yet denied the full protection of the law. This condition is alleged to result in part from the sexist belief encountered in all quarters and classes of society that a certain level of violence by the male upon the female is consistent with a "healthy" imbalance of power in such relationships, or at least not a sign of trouble in the relationship. The risk to women that occurs when authorities tolerate such violence is compounded by the special vulnerability of most homemakers, who typically lack the resources to defend themselves or escape the dangerous home.

Participants in the Consultation suggested a number of approaches that government might take to attack domestic violence. One course is to enable women to escape the dangerous situation. Dr. Murray Straus said that the number one priority should be the creation of shelters or safe houses. (p. 29) Dr. Sheila Stanley amplified this with a call for the organization of task forces at the community level to provide emergency housing, legal aid, and job training that would lead to economic independence. (p. 82) Another strategy emphasized improving existing services and protections. Kate Lincoln

called for greater awareness by mental health agencies of the problems of battered women, for improved police training, and for better reporting by public agencies of cases of battering. (p. 139) Dr. Stanley and Olivia Henry urged that educational programs provide healthy role models and impart communication and conflict resolution skills. (p. 64) Campbell Harvey pointed out that "the police, the judges, the prosecutors, and the lawyers are communities that are distinct. . . and can be more easily educated than the general public." (p. 181)

On the other hand, testimony also revealed the intractability of the problem. Representatives of the criminal justice and judicial systems made numerous statements that could variously be interpreted as evasions or confessions of helplessness. Police officers lamented the limitations set for them in many jurisdictions by prosecutorial attitudes and by the courts, prosecutors referred to shoddy police investigations and restrictive court procedures and rules, and a judge passed the responsibility to the public by blaming defects in the laws passed by elected legislators. These complaints suggest that the institutions of the criminal justice and judicial systems, rather than being power centers ready to be used by aggressive officials, are merely bureaucracies where power is diffused and officials are enfeebled.

Another factor undercutting the effort to form a government response to domestic assaults concerns the style in which government representatives and their critics discuss government responsibilities and performance. Panelists at the Consultation showed a tendency to cite "worst cases" rather than typical performance or procedural or systemic matters. A

victim or advocate would describe police behavior that all present agreed was derelict, or police would cite an instance in which what all present agreed was thorough police work had failed to bring a prosecution—all of which took the focus away from the complicated middle area of policy and typical practice. Public policy develops through analysis and dialogue rather than anecdotal discourse, yet discussion of domestic assault seems fixed upon the latter.

These difficulties, along with concerns (described in chapter 1) about the privacy and integrity of the family, raise a question often heard these days: *Is government intervention in this problem desirable or practicable?* It has become something of a vogue to jeer at the proposition that government can address complicated, pressing social problems. The assumption has become prevalent that government too readily mounts esoteric programs costing huge sums that produce vague benefits for miniscule, marginal elements of the population while impinging on the prerogatives of the majority.

That is *not* the case regarding the government role in preventing domestic assaults.

Is preventing violence "esoteric"? Hardly, for there is no more ancient, widespread, or defensible service for government than ensuring the physical safety of citizens.

Would an attack on domestic violence be costly? Certainly most efforts to improve government services involve some cost, but in this case it seems likely that there would be an overall *saving*. There are indications that the total damage of domestic violence at its current level—not only health and hospitalization costs but remedial education, juvenile justice, and mental health programs whose clients

are very often from violent homes—outweighs the costs of the counseling and mediation programs, higher police and criminal court vigilance, and shelter systems aimed at preventing or minimizing that damage.

Would the beneficiaries of government action be merely a small or fringe element of the population? No, for the number of victims of domestic assaults is by most estimates very great. Additional beneficiaries would be the children who might observe and learn habits of violence from the behavior of their parents. Moreover, the public stands to benefit, for it is the public that suffers when the violent behavior practiced or learned in the home is applied outside the home.

Would a government campaign against domestic assaults impinge on personal privacy or freedom? This was a concern expressed by some panelists at the Consultation who saw State action as potentially subverting family integrity or intruding upon family privacy. However, there need be no inherent conflict between the authority of the State and the health of the marriage or family unit—imaginative, supportive intervention can enhance security within the household while at the same time reducing the problems and burdens the violent household creates for the community.

For these reasons, the New Hampshire Advisory Committee applauds New Hampshire's initiative in passing stronger domestic violence laws in June 1979. From its Consultation, the Advisory Committee is well aware of the hopes attached to the new law and of potential problems in it. The Committee will evaluate the implementation of the new law in light of this information, and will make recommendations when they seem appropriate.

## Appendix A

### New Hampshire Revised Statutes Annotated (RSA)

#### Excerpts from New Chapter 173-B

#### Protection of Persons From Domestic Violence

##### 173-B:1 Definitions.

As used in this chapter:

I. "Abuse" means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or purposely or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;

(b) Purposefully placing or attempting to place another in fear of imminent bodily injury either by physical menace or by threats to commit a crime against the person of the other;

(c) Attempting to or engaging in sexual penetration with another under any of the circumstances outlined in RSA 632-A:2.

II. "Family or Household Member" means:

(a) Spouses, ex-spouses, persons cohabitating with each other, persons who cohabitated with each other for more than one year but who no longer share the same residence, and

(b) Parents and other persons related by consanguinity or affinity other than minor children who reside with the defendant.

[173-B:2, Jurisdiction, omitted.]

##### 173-B:3 Commencement of Proceedings; Hearing.

I. Any person may seek relief pursuant to RSA 173-B:4 by filing a petition in the county or district where the plaintiff or defendant resides alleging abuse by the defendant. Notice of the pendency of the action shall be given to the defendant. No filing fee shall be charged for such a petition and the plaintiff may proceed without legal counsel. Any proceeding under this chapter shall not preclude any other available civil or criminal remedies.

II. The clerks of the superior courts and the clerks of the district courts shall supply forms for petitions for relief under this chapter designed to facilitate *pro se* proceedings.

III. If the defendant, upon entry of any action in the district court under this section, within 5 days of the entry thereof or such additional time as the district court may for good cause allow, files in the district court a brief statement setting forth that:

(a) There is pending in the superior court a cause arising out of the same situation on which the district court action is based, and

(b) Accompanies his brief statement with an affidavit under oath supporting the same, then, no further proceeding shall be had in the district court but the cause shall be at once transferred to the superior court to be heard and tried as if originally entered in the superior court, the original entry fee and cost of transferring the action to be paid by the defendant but recoverable as costs if the defendant shall prevail. If no petition to remove is filed, the cause shall be heard by the justice or special justice in the district court and the findings of fact shall be final but questions of law may be transferred to the supreme court in the same manner as from the superior court.

IV. The court shall hold a hearing within 30 days of the filing of a petition under this section. 173-B:4 Relief.

I. Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse, which relief may include:

(a) Protective orders:

(1) Directing the defendant to refrain from abusing or interfering in any way with the person or liberty of the plaintiff; or

(2) Enjoining the defendant from entering the premises wherein the plaintiff resides unless the defendant exclusively owns or leases and pays for the premises and the defendant has no legal duty to support the plaintiff;

(b) Other relief:

(1) Granting to the plaintiff the exclusive right of use and possession of the household furniture and furnishings unless the defendant exclusively owns the household furniture and furnishings and the defendant has no legal duty to support the plaintiff;

(2) Awarding temporary custody of the parties' minor children to either party, or, where appropriate to the division of welfare, provided that

(i) Where custody of the parties' minor children may be appropriate with the division of welfare, the division of welfare shall receive actual notice of the hearing 10 days prior to said hearing, provided that, if necessary, said hearing may be continued 10 days to provide the division adequate notice;

(ii) The division of welfare may move at any time to rescind their custody of the parties' minor children.

(3) Establishing temporary visitation rights with regard to the parties' minor children.

(4) Directing the defendant to pay financial support to the plaintiff or minor children unless the defendant has no legal duty to support the plaintiff or minor children;

(5) Recommending that the defendant attend counseling or such other treatment as the court may deem appropriate; or

(6) Ordering the defendant to pay the person abused monetary compensation for losses suffered as a direct result of the abuse which may include, but not be limited to, loss of earnings or support, medical expenses and out-of-pocket losses for injuries sustained, moving or shelter expenses and reasonable attorney's fees.

II. No order made under this section shall supercede or affect any court order pertaining to right to possession of household residence or household furniture, custody of children pursuant to RSA 169, support or custody made under RSA 458 or affect title to real or personal property.

III. Any order under this section shall be for a fixed period of time not to exceed one year.

IV. Both parties shall be issued written copies of any orders issued by the court and all orders shall bear the following language: "A willful violation of this order is contempt of court and may result in imprisonment."

[173-B:5, Guardian Ad Litem, omitted.]

173-B:6 Temporary Relief.

Upon a showing of an immediate and present danger of abuse, the court may enter such temporary orders as it deems necessary to protect the plaintiff with or without actual notice to defendant. If temporary orders are made *ex parte*, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing thereon. Such hearing shall be held no later than 5 days after the request is received by the clerk. Such hearing may constitute the final hearing described in RSA 173-B:3, IV. Such temporary relief may include:

I. As a protective order, directing the defendant to refrain from abusing or interfering in any way with the person or liberty of the plaintiff;

II. As a protective order, restraining the defendant from entering the residence where the plaintiff resides except when the defendant is accompanied by a peace officer and wishes to enter for the sole purpose of retrieving his personal property; and

III. Awarding custody of the parties' minor children to either party or, where appropriate, and upon actual notice, to the division of welfare.

##### 173-B:7 Notification.

A copy of any order made under this chapter which prohibits any person from abusing or interfering with the person or liberty of another or which affects either party's access to or possession of either party's residence shall be transmitted forthwith to the local law enforcement agency having jurisdiction to enforce said order. Law enforcement agencies shall establish procedures whereby a peace officer at the scene of an alleged violation of such an order may be informed of the existence and terms of such order.

##### 173-B:8 Violation of Protective Orders.

Upon notice by any person alleging that the defendant has violated any protective order issued under this chapter, the court shall issue a summons to the defendant, requiring the defendant to appear and show cause within 14 days why he should not be found in contempt of court and punished therefore.

##### 173-B:9 Protection by Peace Officers.

Whenever any peace officer has reason to believe that a family or household member has been abused, that officer shall use all means within reason to prevent further abuse.

##### 173-B:10 Notice to Victim.

I. All peace officers shall give the victim of abuse immediate and adequate notice of his right to go to the district or superior court of his county to



file a criminal or civil complaint against his attacker and to obtain a restraining order.

II. It shall be the responsibility of the clerk of the court to advise the victim to request the judge to issue an order:

- (a) Restraining your attacker from abusing you;
- (b) Directing your attacker to leave the household;
- (c) Giving you custody of your minor children;
- (d) Directing your attacker to support you and your minor children if your attacker has a legal obligation to support you; or
- (e) Directing your attacker to pay you for your financial losses due to any injuries you have suffered due to the attack.

[173-B:11, Emergency Care; Limitation of Liability, omitted.]

#### Amendment to Chapter 106

106-B:14 Criminal Records, Reports.

I. With the approval of the commissioner of safety, the director shall make such rules and regulations as may be necessary to secure records and other information relative to persons who have been convicted of a felony or an attempt to commit a felony within the state, or who are known to be habitual criminals, or who have been placed under arrest in criminal proceedings. Such records and information shall not be open to the inspection of any person except those who may be authorized to inspect the same by the director. The clerks of the superior and municipal courts, or if there is no clerk the justice thereof, sheriffs, deputy sheriffs, police officers, jailers, and superintendents of houses of correction shall secure and forward to the director

all such information as he may direct relative to persons brought before said courts or arrested or in the custody of such officers. Any person violating the provisions of this section or any rule or regulation made hereunder shall be guilty of a violation, for each offense.

II. The director shall submit an annual report to the general court relative to domestic assaults based on the records and information acquired pursuant to RSA 106-B:14, I. The report shall be a compilation of the number of assaults on family or household members and other such data as the director may deem appropriate.

#### Amendment to Chapter 594

594:10 Arrest Without a Warrant

I. An arrest by a peace officer without a warrant on a charge of misdemeanor is lawful whenever he has reasonable ground to believe that the person to be arrested has committed a misdemeanor in his presence or whenever he has probable cause to believe that the person to be arrested has assaulted a family or household member as defined in RSA 173-B:1, II within the past 6 hours.

[Amendment to RSA 597:6-B(supp), Hearing Before a Justice and Petition to Superior Court to Review Bail, omitted. Amendment to RSA 597:7, Detention for Default or Breach of Conditions, omitted. Amendment to RSA 635:2, II(b), Notice of Order, omitted. Amendment to RSA 651:2, VI, Conditional Discharge, omitted. Amendment to RSA 651:4, I, Presentence Investigation Report, omitted.]

Approved: June 23, 1979

Effective date: August 22, 1979

## Appendix B

### ORGANIZATIONS SERVING BATTERED WOMEN IN NEW HAMPSHIRE

New Hampshire Coalition on Battered Women  
72 Concord Street  
Manchester, N.H. 03101

CONTACT: Lee Haskell or Liz Hebbel

PROVIDING: Coalition of area groups for information sharing  
625-5785

Manchester Area Task Force on Battered Women  
72 Concord Street

Manchester, N.H. 03101

CONTACT: Lee Haskell or Mimi McNamee

PROVIDING: Very limited shelter; support groups; advocacy  
625-5785 (office)  
668-2299 (crisis line)

Concord Task Force on Battered Women  
20 South Main Street

Concord, N.H. 03301

CONTACT: Sue Wood or Carol Segal

PROVIDING: Host homes; advocacy  
1-800-852-3311

Nashua Rape and Assault Committee  
P.O. Box 217

Nashua, N.H. 03061

CONTACT: Sylvia Gale

PROVIDING: Advocacy

889-5762 (office)

883-3044 (crisis line)

Seacoast Task Force on Family Violence  
"A Safe Place"

P.O. Box 674

Portsmouth, N.H. 03801

CONTACT: Kathryn Mason

PROVIDING: Shelter; advocacy

436-3896 (office)

1-800-852-3311 (crisis line)

Stafford County Task Force on Domestic Violence  
P.O. Box 363

Dover, N.H. 03820

CONTACT: Betty Stowell or June Glutting

PROVIDING: Support group; advocacy

1-800-582-7183

Women's Supportive Services

48 Tremont Square

Claremont, N.H. 03743

CONTACT: Catherine Bennett

PROVIDING: Host homes; advocacy

543-0214

Upper Valley Coalition on Family Violence

Box 126

Hanover, N.H. 03755

CONTACT: Peggy Hewes

PROVIDING: Host homes; advocacy

448-4553

Berlin Task Force on Battered Women

N.H. Legal Assistance

Pleasant Street

Berlin, N.H. 03570

CONTACT: Donna Larson

752-1102

Women's Crisis Services of Monadnock Region

12 West Street

Keene, N.H. 03431

CONTACT: Lilly Pendleton or Peggy Murray

PROVIDING: Host homes; advocacy

352-3782

SOURCE: "Help for Battered Women," *Women-Wise*, Spring/Summer 1979, p.8. (*Women-Wise* is published quarterly by the New Hampshire Feminist Health Center, 38 South Main Street, Concord, N.H. 03301.)

**END**