Judicial Response to Intra-Family Violence

Raymond I. Parnas
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I. INTRODUCTION

[Wife assaulters] engage in behavior that foretells of serious hostile acts towards their spouses, which has implications for courts handling their minor offenses.¹ Traditional litigation did little except ratify a breakdown in the family. . . . [Due to late nineteenth and early twentieth century developments] the attempt was more at reconciliation, or at getting at the roots of tension through . . . adjustments of the family budget, or through more subtle analyses by social worker or psychiatrist.²

The apparent increase of crime in the United States and recent concern over the incidence of violence in American life has caused increasing attention to be directed toward the statistically significant number of crimes of violence which occur between relatives and intimates. Summarizing its statistics for aggravated assaults and murders occurring in the United States in 1967, the FBI stated, "[m]ost aggravated assaults occur within the family unit or among neighbors or acquaintances. The victim and offender relationship, as well as the very nature of the attack, makes this crime similar to murder."³ These statistics infer, and our own experience verifies, the even greater magnitude of simple assaults occurring between relatives and inti-

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** This article completes the author's empirical study of the community response to intra-family violence. See Parnas, The Police Response to the Domestic Disturbance, 1967 Wis. L. Rev. 914; Parnas, The Response of Some Relevant Community Resources to Intra-family Violence, 44 Ind. L.J. 159 (1969). Like the previous studies, the bulk of this article is primarily derived from field observations, interviews and documents made available to the writer by the cooperation of the agencies discussed. (However, Part III on selected practices of courts other than Chicago, covered in Part II, and New York, covered in Part IV, stems largely from the reports of field observations made in 1956-57 for the American Bar Foundation, Survey of the Administration of Criminal Justice). The expenses of the field research conducted intermittently during 1966-68 were underwritten by the Ford Foundation and the Walter E. Meyer Research Institute of Law. The writer's sincere appreciation is extended to all those who aided in this study.
The goal of the courts, as well as quasi-judicial agencies, is to remedy private and public wrongdoing. Attempts are made to prevent continued and more severe wrongs by those wrongdoers involved, as well as to deter similar wrongs by others not yet having direct contact with the system. One of the traditional functions of courts has been to implement many of society’s official correctional efforts, often, in criminal and quasi-criminal cases, through a judge’s discretionary choice of disposition alternatives after adjudication. In addition, some correctional agencies exercising a pre-adjudication function are found within court structures, particularly those dealing with family matters. Accordingly, for example, in the most common case of intra-family violence, wifebeating, the police, courts and other relevant public or private agencies should seek to prevent, by an appropriate correctional response to the problem, a repetition of the beating or its exaggeration into aggravated assault or homicide.

The purpose of this article is to describe the actual response of some courts and their related agencies to cases in which relief from intra-family violence is requested. The purpose of the inquiry is to determine: (1) whether the actual response of the courts and their attached agencies is consistent with the goal of preventing repetition of intra-family violence; (2) which practices appear to be most effective in accomplishing this goal, and (3) what would be a more adequate court response to the problem within the realm of available and practical alternatives. The responses of the following courts are described: (1) Chicago’s Court of Domestic Relations; (2) selected practices of other courts in Detroit and Milwaukee; (3) a specialized court: The City-Wide Family Offenses Term of the New York City Family Court.

II. CHICAGO’S COURT OF DOMESTIC RELATIONS

A. History of the Court

In 1905, the Illinois legislature created the Municipal Court of Chicago as “the first unified metropolitan court exercising limited civil and criminal jurisdiction under the administrative

supervision of a chief justice." Administrative matters such as the creation of additional branch courts and the formulation of rules of practice were left to the discretion of the chief justice either alone or in conjunction with associate judges. Thus the judges of the Municipal Court were said to have a wider range of authority over the administration of their court system than any court in the United States.

It was this freedom that enabled the Municipal Court to develop social services and branches that brought it the name of "The Poor Man's Court." Behind this concept was the philosophy that the court must serve the people, not only by dispensing justice, but also by helping to correct or prevent the social ills that in part bring about violations of the law.

Almost from the beginning, the Municipal Court of Chicago established specialized branches that later were studied and adopted by other cities throughout the nation. The first specialized branch was the Court of Domestic Relations, designed to handle problems of family life.

In 1962, a judicial reorganization amendment to the Illinois Constitution was ratified which established a more flexible court system having within itself the administrative authority to remedy overlapping court jurisdictions, to alleviate court calendar congestion, to establish special courts and court services to meet local social needs, and to upgrade the practices and image of the lower courts. Under the amendment, 21 circuit court complexes were established in Illinois. Thus, for example, the Cook County Circuit Court (which includes Chicago) replaced 161 independent courts to become the largest trial court in the United States. Each circuit court was given "unlimited original jurisdiction of all justiciable matters." Following the format of the old Municipal Court of Chicago, but enlarging upon it, the amendment invested the chief judge of each circuit with "general administrative authority . . . including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court."
Although the Municipal Court of Chicago was abolished in form by the new court reorganization act, in fact neither it nor its branches ceased to exist. The Circuit Court of Cook County is divided into two major departments—the County Department and the Municipal Department. The Municipal Department is, in turn, divided into six districts, with the old Municipal Court of Chicago together with its branch courts making up Municipal District one. The Chief Justice of the Municipal Court became the Presiding Judge of Municipal District one and there appears to be little change in the makeup or day-to-day workings of the branch courts.

The Court of Domestic Relations was established as a branch of the old Municipal Court in 1911. Despite the 1905 enactment that left the “jurisdiction” of any newly created branch court to the discretion of the chief justice, the Court of Domestic Relations has never been assigned all family related problems. In part, this was due to the limited jurisdiction of the old Municipal Court as a whole, which for example, had no jurisdiction over felonies. Thus a husband charged with having committed a felony against his wife could not be brought before the Court of Domestic Relations. While jurisdictional limitations are no longer a factor under the new judicial article, which leaves the “jurisdiction” of any court in the circuit court system to the judgment of the Chief Judge, the family “jurisdiction” of the Court of Domestic Relations is substantially the same now as it was in earlier years—non-support, paternity, disorderly conduct and other misdemeanor assault and battery charges between relatives, and contributing to the dependency, delinquency or sexual delinquency of a juvenile. Separation, divorce, adoption,
felonies between relatives and offenses by juveniles have never been a part of this court's function, and these causes are today fragmented among other courts. Thus it is still possible for the affairs of one family to be under adjudication simultaneously in two or more of the following courts: Court of Domestic Relations, Juvenile Court (formerly known as Family Court), Boy's Court, Women's Court, Felony Court, Divorce Court, Welfare Court, County Court and Probate Court. Clearly, the Court of Domestic Relations has never been as comprehensive a court as its name implied. Moreover, the court's jurisdiction is not even limited to domestic matters. In 1966, in addition to its prior "jurisdiction," the Court of Domestic Relations was assigned all misdemeanor cases (except "disorderly safekeeping arrests") arising out of Police Districts seven, eight and nine. Thus the "Court of Domestic Relations" title is now even more of a misnomer.

B. The Social Service Department

[The Social Service Department] provides social services at the request of presiding judges of branch courts. [It] interviews individuals seeking court action as a remedy for problems, determines eligibility for such action, and makes referrals to appropriate community resources. [It] provides [continuing supervisory] casework service to: husbands and wives eligible for court action under the Non-Support Law; unmarried parents eligible for court action under the Paternity Act; youths 17 to 21 years referred for supervision by judges of Boys Courts; women over 18 years referred for supervision by judge of Women's Court. [It] provides counseling and referral service to alcoholic men referred by judges of Monroe St. and Chicago Ave. Courts.

Social workers have been a part of the Court of Domestic Relations since its inception in 1911. However, although originating in that branch court, the Social Service Department was an arm of the entire Municipal Court as it is now a part of the entire circuit court. Thus, relevant cases can be referred to this department from any court in the system. Nonetheless,

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24. See Novoselsky, A True "Family Court" under the Judicial Article, 39 Chicago B. Record 225 (1958); Edmunds, Jurisdiction of the Courts, 1952 U. ILL. L.F. 496.
27. Social Service Dep't Briefs 1 (No. 3, Sept. 1963).
28. 1964 Annual Report, supra note 9, at 22.
most social services rendered still pertain to cases within the "jurisdiction" of the Court of Domestic Relations, particularly nonsupport and paternity matters.29

The vast majority of individuals coming to this department seek its services voluntarily, usually as a result of advice from police, court personnel, friends, attorneys and other social agencies, rather than from coercive court referrals. Thus, of the 11,561 requests for social service for domestic relation problems in 1965, only 395 were referrals from presiding judges.30 However, of the multifarious domestic problems coming to its attention, only nonsupport and paternity matters are accepted for continuing casework service. Thus, only about 14 percent of the requests for service in 1965 remained in the department beyond the intake consultation.31 A little more than 50 percent of those not retained for continuing service were referred to other community resources—predominantly to the state's attorney for warrant consideration and occasionally to Public Aid, Family Service or Legal Aid.32 In the cases that it keeps, the Social Service Department whenever possible initially attempts to remedy requests for service without resorting to court action.33 Thus, of the 2,370 nonsupport cases terminated in 1962 and 1963, 80 percent were handled without court action.34 Processing and supervision of those cases requiring court action are continued after the support decree is entered until satisfactory termination.

No information is available on how many persons referred to the Social Service Department actually follow through and

29. Social Service Dep't Briefs 1 (No. 4, June 1964).
30. Social Service Dep't Briefs 1 (No. 10, Nov. 1966). For each of the years 1961 through 1965, the police have accounted for the greatest number of referrals of persons with domestic relations problems to the Social Service Department. Id. See notes 28 & 30 supra. This number of referrals increased from 1,885 in 1961 to 3,418 in 1965. See note 27 supra. Such referrals constituted 30 percent of the total requests for service in the latter year. See Social Service Dep't Briefs 1 (No. 10, Nov. 1966). There were 50 more police referrals in 1964 than in 1965. Id.
32. Id. at 2.
33. Social Service Dep't Briefs 2 (No. 4, June 1964). The Department states: "In many nonsupport cases reconciliation between the marriage partners is effected. In other cases the couple may separate or remain separated but a voluntary support plan is agreed upon. If the husband refuses to cooperate the caseworker schedules the case for court." Id.
34. Id.
contact the department, but it seems that many such persons probably do not make this first contact. Those who overcome their initial ignorance, inertia, fear or hostility, and do come in, most likely have a better chance of being helped than the others anyway. Thus, in a sense, a natural screening process has already taken place. Furthermore, one can reasonably assume that a great many of those who make contact initially, only to be referred elsewhere, will not undertake the effort a second time, particularly since they may view their original effort as fruitless.

Not only do the police account for the greatest number of referrals, but they appear to refer domestic disputants to the Social Service Department more frequently than anywhere else. Yet, unless initial intake consultation reveals a support problem or perhaps some serious question of a child’s welfare, the domestic disputant will usually be referred to the State’s Attorney for warrant consideration or to some appropriate private community resource for further consultation, if any action is recommended at all. Thus most known domestic disputants will have been in contact with the police or the Social Service Department, or, in many cases, both, without receiving any substantial assistance—diagnostic, curative or continuing.

35. But many of those persons thus screened out are, by definition, probably more in need of help than those who come in, even though the probability of success with the former may be lower. Programs to reach out to those persons who tend not to make contact with social agencies are essential. See generally Parnas, The Response of Some Relevant Community Resources to Intra-Family Violence, 44 IND. L.J. 159 (1969).

36. See text following note 85 infra for discussion of court referrals.

37. Parnas, supra note 4, at 933. It is interesting to note, however, that the New York Police Department’s Family Crisis Intervention Unit has shown some evidence of changing more traditional referral patterns of police intervention in family difficulties. Where, overwhelmingly, the traditionally trained patrolman refers families to courts, the trained men of the FCIU refer more frequently to a wide range of social welfare and mental health facilities. While, where arrest is not indicated, 85% of the referrals by the comparison precinct are to courts, only about 46% of the unit’s referrals are to courts. Grantee’s Q. PROGRESS REP. TO U.S. DEP’T OF JUSTICE, OFFICE OF LAW ENFORCEMENT ASSISTANCE, grant no. 157, at 6 (April 20, 1968). The FCIU’s lower rate of court referrals may be due to the unit’s use of a complete resource file of the closest community agencies available for referral. See Parnas, supra note 35, at 180 n.73.

38. See text accompanying note 32 supra and illustrations 17-19 infra.

39. For a discussion of the police practice of adjustment without arrest see generally Parnas, supra note 4. See also Parnas, supra note
C. **The Psychiatric Institute**

In 1914, the first adult court psychiatric clinic in the United States was established by the chief justice of the old Municipal Court of Chicago. Like the Social Service Department, the Psychiatric Institute was an arm of the Municipal Court of Chicago until January 1, 1964, when it was made a part of the entire Circuit Court of Cook County. The Institute described itself as follows:

> Functioning as an out-patient clinic, it examines all adults referred by the Circuit Court Judges, the Social Service Department of the Court, and the House of Correction. Thus it provides a valuable service to the judges and to the community in the treatment and disposition of cases of alcoholism, attempted suicide, sex offenses, **assault and marital problems**. From the many thousands of cases which pass before the courts of our metropolitan area, over 6,000 are referred for these special examinations each year. In addition to the cases examined, about 5,000 relatives and complainants are interviewed. A psychiatric clinic team-approach is utilized. Each patient is given a psychiatric and psychological examination. A psychiatric social history and statements from complainants, arresting officers or other agencies are obtained. Finally, a report of the diagnosis and recommendations is prepared and sent to the referring judge.

Five postdiagnostic categories have been established, which classify patients as those: (1) in need of hospitalization for mental treatment; (2) mentally retarded; (3) in need of mental treatment on an outpatient basis; (4) in need of help other than mental treatment, and (5) normal but having characterological problems. Recommendations based on the diagnosis include commitment to various institutions, trial without further recommendation, probation, referral to Alcholics Anonymous, marital counseling and separation or divorce.

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35, at 178 n.71.

40. [Fiftieth Ann. Rep. of the Psychiatric Institute of the Mun. Dep't Cir. Ct. of Cook County (1964) [Hereinafter cited as Fiftieth Annual Report].](#)

41. Id. at 1, 2 (emphasis added).

42. Id. at 2.

43. See, e.g., [1966 Annual Rep. of the Psychiatric Institute 4 (hereinafter cited as 1966 Annual Report)]. The recommendations for that year were as follows:

<table>
<thead>
<tr>
<th>Service</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitment to Mental Hospitals</td>
<td>1,623</td>
</tr>
<tr>
<td>Commitment to Mental Defective Schools</td>
<td>14</td>
</tr>
<tr>
<td>Referrals to Outpatient Psychiatric Clinics</td>
<td>529</td>
</tr>
<tr>
<td>Referrals for Neurological Clinic</td>
<td>17</td>
</tr>
<tr>
<td>Home for Aged</td>
<td>17</td>
</tr>
<tr>
<td>Placement in Alcoholic Treatment Centers</td>
<td>31</td>
</tr>
<tr>
<td>Trial on the Evidence</td>
<td>1,646</td>
</tr>
</tbody>
</table>
Unlike the Social Service Department, the bulk of referrals to the Psychiatric Institute comes from the courts. Of 5,539 requests for examination in 1966 in which the source of referral is known, all but 133 were referred by the various branches of the Circuit Court of Cook County; the Court of Domestic Relations, the largest source of referrals, provided 974. On the other hand, there were only five direct referrals by the police department in 1966.\(^4\) Corresponding to the proportionately high Court of Domestic Relations' referral figure for 1966 is the fact that in the three years from 1964 through 1966, domestic relations discord was the primary cause of referral.\(^4\)^

It must be noted, however, that the usual court-involved domestic disturbances, such as those arising out of "normal" incompatibility, "normal" personality differences and "normal" family problems of budget and discipline are not generally referred to the Institute. The referral of domestic disputants from the Court of Domestic Relations to the Psychiatric Institute usually involves matters of alcoholism, recidivism, apparent mental illness or some other unusual aspect.\(^4\)^

**D. COURT DISPOSITION OF DOMESTIC DISTURBANCES**

The amount of intra-family violence which comes before

| Multiple Recommendations—i.e., Probation, Alcoholics Anonymous, Marital Counseling 
| or Separation or Divorce | 1,650 |
| Cases of Epilepsy Discovered | 34 |

\(^4\) Id. at 2. These figures reflect only those persons who actually contacted the Psychiatric Institute. The difference in the source of known referrals to the Social Service Department and the Psychiatric Institute can in part be understood in terms of the different type of services rendered and accordingly, the different mentality of their clients. No doubt appropriate persons going to either may be personally benefited, but the "accused" rarely goes to either of his own volition. Human nature generally obstructs such self revelations. The woman who goes voluntarily to the Social Service Department does so not in the belief that she has contributed to her condition (although she may have) but rather because of the alleged intentional irresponsibility or abusiveness of her husband or lover of whom she complains. Thus she is requesting corrective (and often vindictive) action toward someone other than herself. On the other hand, a lack of understanding, the still present stigma of mental illness, and fear of commitment to an institution present persistent obstacles to action by relatives and intimates of those in possible need of psychiatric assistance.


\(^4\) Interview with Dr. Edward J. Kelleher, Director of the Psychiatric Institute, in Chicago, Dec. 6, 1956.
this court (or any other court) is a very small portion of that violence which actually occurs. Most domestic disputes are not called to police attention, and of those which are, most are adjusted by the police without an arrest being made. None-theless, as many as 50 percent of the cases on the docket of the Court of Domestic Relations on any given day may involve intra-family violence. The accused in a domestic dispute is usually charged with a violation of the city ordinance against disorderly conduct. However, there may also be a smattering of state misdemeanor charges—assault, battery and aggravated assault.

The courtroom in Chicago's Court of Domestic Relations, located in the Police Headquarters Building, each morning overflows with the parties, their witnesses, friends, relatives and children. When a case is called by the clerk, the parties, witnesses and counsel, if any, come forward to stand before the bench. The state's attorney stands to one side of the bench also facing the parties. In addition to clerks and bailiffs, the judge is assisted on either side by a court sergeant representing the police department and by one or more members of the Social Service Department primarily to provide the records on nonsupport matters. Even to a greater extent than police response to intra-family violence, the court response depends largely on the expressed or apparent desires of the victims.

1. **Summary Dismissal with Prejudice on Victim's Absence or Request**

   Generally the victim, who is usually either the wife or mistress of the accused, is the complainant. Probably because of this relationship, in over half of these cases she either requests dismissal of the charges or fails to appear at all when the case is called. Either action—her expressed desire for dismissal or her apparent disinterest in pressing charges manifested by her failure to appear—inevitably results in the court's summary dismissal of the matter with prejudice.

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47. See Parnas, *supra* note 4; Parnas *supra* note 35, at 178 n.71.
49. *Id.* at 920 n.27.
50. See also, F. McClintock, *Crimes of Violence* 155 n.2 (1963): In a large number of cases arising from domestic disputes the parties had more or less composed their differences before the case came up for trial. Not infrequently the charges were withdrawn.
51. For the effect of this practice on police policy see Parnas, *The Police Response to the Domestic Disturbance* 1967 Wis. L. Rev. 814.
Illustration 1: A man is charged with disorderly conduct on complaint of his wife. Both parties appear. The woman states that they have been married two years and have one child. She also states that she sustained a cut over her eye requiring medical attention in the alleged fight with her husband resulting in the present charge. Then she states that they are living together again and she thinks it will work out. She requests dismissal of the charge. At this, the court enters an order of "Dismissal With Prejudice" and the parties leave.

Illustration 2: The defendant appears alone. The judge asks, "Where's your wife?" Defendant answers, "She's sleeping." The judge replies, "Go home. Dismissed with prejudice."

Frequently the accused will have been held in custody overnight. However, whether he has been in custody or not, the judge, upon hearing the victim's request for dismissal or upon

The presence of a dangerous weapon, particularly a gun, in a domestic dispute may cause authorities to alter their general response to these incidents. For example, the state's attorney refused to concur in the victim's request to drop all charges in the following observed case:

A middle-aged couple appeared before the court. The man was charged with assault and battery and the unlawful use of a weapon. The woman told the court that she and her husband were back together again so she didn't want to prosecute. The state agreed to drop the assault and battery charges but the court proceeded to hear the unlawful use of weapon charge. The arresting officer identified the shotgun involved, and testified to finding a bullet hole in the floor and to admissions of the defendant. The wife then stated for the first time that she had been wrestling with the defendant and that caused the gun to go off. The court dismissed the defendant.

52. Substantial use of case illustrations is made throughout this article. The primary purpose behind their use is to describe actual court responses to particular concrete situations. Kephart has indicated some of the limitations in using such case examples for more generalized purposes:

No matter how heart-rending the story, the case-history approach has little research value unless it provides hypotheses which can then be tested statistically on large numbers of cases. If the number is large enough—thousands of cases for instance, important variables such as sex, age, I.Q., race, neighborhood, type of offense, etc., can be controlled so as to yield vital information about the factor being studied, e.g., anxiety feelings. Taken by itself, a given case-history has little research value since there is no way of controlling the necessary variables; to put it another way, an individual case-history can be chosen so as to "prove" most any point.

her absence in court, will simply tell the accused to “go home.” Even if the accused, not in custody, fails to appear, the case will be dismissed with prejudice upon absence or request by the victim. In short, neither the absence of the complainant nor the absence of the accused in the presence of a complainant requesting dismissal will cause the matter to be held over for a second call of the docket.

2. *The Issuance of an Arrest Warrant on Victim’s Continued Desire for Action in the Defendant’s Absence*

Usually a defendant arrested on a charge of disorderly conduct and subsequently released pending court disposition will appear in court at the appointed time. If he fails to do so, he

53. The “go home” disposition is similar to the disposition of drunk and disorderly safekeeping arrests. In the typical drunk case, after a night’s protective custody, the judge may ask the accused if he is sober and whether he has a place to go. Upon receiving the routine affirmative, the accused is usually released. In several other ways, however, the drunk is dissimilar from the domestic disputant. The primary difference is that the conduct of the accused in a domestic dispute has in some direct way endangered an individual or individuals other than himself. Thus there is a victim or potential victim other than the accused; there is a complainant other than the police, and the accused will usually, if not arrested, remain, or if arrested or told to leave, return to close proximity with the victim because of their relationship. Taking the offender in a domestic dispute into custody may temporarily protect both the accused and his victim as well as avoid the immediate and complete breakdown of the existing family relationship. But, on the other hand, such arrest and incarceration may precipitate such a final disruption. Usually none of the above stated complicating social factors are present with law enforcement’s treatment of the drunk. Of course, alcohol alone, whether seen as a cause of alcoholism or as a secondary cause of a myriad of other public offenses (including domestic disputes), has its own complicating social factors and presents one of the most imperative correctional problems confronting our society today.

One of the initial hurdles in tackling any social problem is the need to make early contact with the persons needing help. A traditional role of the police in carrying out their crime prevention and law enforcement functions has been to make such early contact with public drunks, domestic disputants and most other categories of individuals in need of help. However, their duties do not include making and implementing decisions as to the kind of treatment or correction necessary. The availability of correctional alternatives depends on the legislature and existing community resources, and the court can choose only from within the framework given it. A choice of “go home” fails to recognize the importance to society and to the individual of following up in some more relevant fashion the significant initial contact which has been accomplished. It must be recognized, however, that the resources provided to the court often make alternative dispositions difficult. See section V infra.
forfeits a $25.00 bond posted as a condition of release, and this prospect undoubtedly acts as an incentive to appear. On the rare occasions when the complainant appears in court in the absence of the defendant and continues to press charges, however, the court will order an arrest warrant to be issued. The judge then informs the complainant that she will be notified when the defendant has been apprehended.

Illustration 3: Complainant appears alone. In response to the judge's question of the whereabouts of the defendant, her husband, she states he is probably home. She further states that she can't go home because he has threatened to kill her. The judge orders an arrest warrant issued.

3. Hearing—Both Parties Present and Victim's Continued Desire for Action

When both parties are present and the complainant does not indicate a desire to dismiss charges, the defendant is arraigned at once. The defendant will not usually be represented by counsel. Requests for continuances in order to retain counsel are rare but will be granted and a public defender may be provided if requested. A state's attorney presents the case for the complainant.

The clerk informs the defendant of the nature of the charges and asks him how he pleads. If the plea is "not guilty" he is asked whether he wants a jury trial or a trial "by this court right now." This writer observed no requests for jury trials. If the plea is "guilty," as it usually is, the judge explains the maximum sentence which he can impose, asks the defendant if he understands and then again asks him if he "insists" on entering a plea of guilty. Whether the defendant changes his plea to "not guilty" or insists on entering his original "guilty" plea, the parties and witnesses, if any, are sworn simultaneously and testimony is taken. The state's attorney, who has only moments before met the complainant and her witnesses for the first time, then presents his case by simply establishing the complainant's identity and asking her to state the circumstances of her complaint against the defendant. The judge will then conduct the rest of the hearing.

Due to extensive screening by police and victim, cases coming before the court for hearing rarely involve any serious ques-

54. See Parnas, supra note 51, at 941, n.97.
tion of innocence. If the issue is not initially what correctional disposition to make following a guilty plea, the defendant’s statement, usually in mitigation rather than in defense, following a not guilty plea makes the correctional issue the central one. Thus the judge’s primary concern during the hearing is to determine how he will dispose of a guilty defendant. Although he does not usually attempt to learn the couple’s underlying problem by extensive probing, the judge generally allows the parties to say whatever they wish, giving them almost complete freedom to bring up past offenses, infidelity, alcoholism, mental illness or other grievances which may affect his ultimate determination.

4. Methods Employed at the Hearing

The methods used to deal with domestic disputants naturally depend upon a particular judge’s attitudes and philosophy as well as the facts of the case. However, one or more of three methods is used to dispose of these cases. A lecture in some form is usually given; a “peace bond” is frequently ordered, and a referral to the Social Service Department or Psychiatric Institute is occasionally made. In a rare case a fine or a short term in the House of Correction may be imposed.

(a) The Lecture

Somewhat like the juvenile courts, the Court of Domestic Relations has had a reputation as something more than a mere dispenser of punishment. The role of the court often includes an attempt to get at the problem giving rise to the violation, implementing to some degree society’s expressed concern for children and the preservation of families. Thus the judge of the Domestic Relations Court often assumes the mixed role of exercising the strong arm of authority tempered by a helping hand.

Illustration 4: On his wife’s complaint, a man pleads guilty to a charge of disorderly conduct. The complainant states that her husband is a good man when he is sober but when he has been drinking he curses in front of their three children and forces her and the children to leave the house. The defendant admits to drinking on weekends and calling his wife names. In his behalf he states that he has always supported her, which she admits. The judge at first takes a conciliatory approach toward their problem by emphasizing
the length of their marriage and pointing out that they should not be fighting after so many years together. In behalf of the defendant he tells the complainant that, "A hardworking guy is entitled to some beers." Assuming a more "judicial" role in behalf of the complainant he tells the defendant that although he is entitled to a few beers he apparently drinks too much. "In order to keep a hold on you, I'm putting you on a $1,000 'peace bond.'" Finally, to make sure the defendant knows the court means business, the judge sternly tells him, in the best of television dialogue, "If you ever come back here again I'll throw the book at you."

Due to the familial context of these cases, the court usually asks about the duration of the marriage and the number and ages of the parties' children. The parties are often asked what effect they think their fighting has on their children, or a direct comment is made as to the detrimental effect of such conduct on the children. One judge tells couples with children, "I warn you both. I'm not concerned about either of you. I'm just concerned about the children."

No matter what role he assumes, even if he is the most knowledgeable, perceptive, compassionate and communicative judge imaginable, probably only temporary relief from violence can be accomplished by such a lecture before the next case in the day's long docket. Perhaps the best one could hope for under these circumstances would be a judge who was a master diagnostician having at his disposal an adequate range of appropriate and willing correctional resources to which he could refer the disputants appearing before him. Such temporary relief as is now achieved is likely accomplished simply by the display of authority, represented in the first instance by the presence of the police and reinforced by the accused's appearance in court. Perhaps the reason for the lecture is the hope that a rather crude but obviously authoritative reprimand will have a quieting effect on the relatively unsophisticated persons whose marital discord brings them before the Court of Domestic Relations.

55. See text accompanying notes 58-76 infra.
56. The Circuit Court of Cook County has a consultation service but this "free professional counseling . . . is provided only to those with an action already pending in the Divorce Division and who exhibit a willingness to have counseling." Parnas, supra note 35, at 160 n.4.
57. See Parnas, supra note 51, at 915; Little, The Domestic Illness Profile Seen in a Family Court Setting, 5 CAN. J. OF CORREC. 246 (1963).
The statutes of most states reflect the common law principle that under certain circumstances, as a matter of preventive law, a court may order a person to give security against future breaches of the peace.\textsuperscript{59} The proceeding is usually based on threat of harm, independent of any offense actually committed, but a few jurisdictions order security for future good behavior as a part of the sentence of a convicted offender.\textsuperscript{60}

Illinois statutes provide for a procedure whereby judges and magistrates "may require persons to give security to keep the peace, or for their good behavior."\textsuperscript{61} On complaint "that a person has threatened or is about to commit an offense against the person or property of another . . ."\textsuperscript{62} the judge, if "satisfied that there is danger that such offense will be committed . . ." shall issue an arrest warrant.\textsuperscript{63} The judge may also, without process, invoke this proceeding against any person who "commits or threatens to commit an offense against the person or property of another . . ." in the judge's presence.\textsuperscript{64} When both sides have been heard,\textsuperscript{65} if there is "no just reason to fear the commission of the offense, the defendant shall be discharged . . ." and costs may be assessed against the complainant if the judge believes the "prosecution was commenced maliciously without probable cause. . .\textsuperscript{66}

If, however, there is just reason to fear the commission of such offense, the defendant shall be required to give a recognizance, with sufficient security, in such sum as the judge or magistrate may direct, to keep the peace towards all people of this state, and especially towards the person against whom or whose property there is reason to fear the offense may be committed, for such time, not exceeding 12 months, as the judge or magistrate may order . . .\textsuperscript{67}

\textsuperscript{58} Discussion of the history and prevalence of peace bond procedures as well as the constitutional issues which might be raised against their use in any form are outside the scope of this article. See generally, Note, Peace and Behavior Bonds, 52 Va. L. Rev. 914 (1966); Note, "Preventive Justice"—Bonds to Keep the Peace and for Good Behavior, 88 U. Pa. L. Rev. 381 (1940); 12 Am. Jur. 2d, Breach of Peace §§ 41-51, at 692-701 (1964).

\textsuperscript{59} See, e.g., Minn. Stat. § 625.01 (1967).


For such an order to be entered, "it shall not be necessary to show a conviction of the defendant of an offense against the person or property of another." 68 Failure to provide the ordered recognizance shall result in commitment to jail for the period covered by the ordered recognizance or until such recognizance is made. 69 Appeal from such a proceeding was explicitly provided for by the Illinois statutes until 1965 when the sections so providing were repealed. 70

The Illinois Supreme Court explained the purpose of Illinois statutory peace bond procedure as follows:

It is the intention of the statute to provide a method by which threatened breaches of the peace against persons or property may be prevented. The statute does not make the uttering of a threat or the intent of a person to commit an offense against the person or property of another a criminal offense within the legal meaning of the term "criminal offense." A person arrested under the act is not to be fined or committed to jail for the making of such threat or because he may have intended to commit such offense.... He is merely required, under the statute, to give such reasonable security as will act as a deterrent against the consummation of such supposed threat or intent to violate the law in the respect legislated against. While the statute is silent on the subject of the amount of the bond that the magistrate may impose... the discretion committed to the magistrate must be exercised reasonably and neither arbitrarily nor tyrannically, ever having in mind that the object of the statute is not to deprive the defendant of his liberty, but merely to exact of him security that he shall keep the peace for the length of time, within the statutory limits, as may be adjudged by the magistrate. The bond required is in the nature of a bail bond. 71

The peace bond is by far the predominant sanction used by the Court of Domestic Relations in dealing with intra-family violence. 72 However, the procedure invoked is rarely if ever based solely on a complaint asserting defendant's threat or other evidence of imminent harm. Instead, the parties appear before the Court, usually on disorderly conduct charges, and the judge orders a peace bond as part or all of the sentence for the offense.

Despite the aforementioned statutory and judicial authorization, the judges interviewed stated that as used in their court,

70. Law of Mar. 27, 1874, §§ 9-12, [1874] Ill. R.S. 348 (repealed 1965).
72. A similar device, the order of protection, is the predominant sanction used by New York City's Family Offenses Term. See a discussion thereof at text accompanying notes 168-70 infra.
the peace bond procedure was a complete sham. With no explanation of the procedure, but only an occasional warning to leave his wife alone or a threat to “throw the book” at him next time, the defendant will be ordered placed on a peace bond. He is then motioned toward a clerk as the next case on the docket is called. The clerk directs him to sign his name to a list of peace bond signatures. No money deposit, other security, sureties or any additional action on his or any other person’s part is required. A rare question by the defendant as to what is expected of him after having been sternly admonished and placed under the usual $1000.00 peace bond is met with the simple answer, “sign your name and you’re free to go.” On hearing this, he quickly signs and leaves without further question. The paper that he has signed is simply a blank general complaint form with the term “Peace Bond” and the date written across the top margin. All of the signatures for a day’s peace bonds are made in the body of the same blank complaint form. Usually, but not always, the clerk indicates the amount of the bond alongside each signature. No explanation, conditions or agreements of any kind are contained on this paper, nor is the defendant given any indication of his obligations under the peace bond.

Judges readily acknowledge that the peace bond as they use it is presumably unenforceable. Nonetheless, they firmly believe that imposition of the bond frequently has a beneficial effect on subsequent conduct so long as the defendant believes it is enforceable. The defendant is not deprived of liberty or property by the imposition of the bond, nor will he be so deprived by any breach of the bond per se, for prosecutions for bond violations never occur. But when clothed in judicial robes the words “$1000.00 peace bond” are ominous and authoritative. The frequency of imposing the bond is probably increased under these conditions, for where the defendant is unharmed and the sanction is effective, the court need not take up valuable time in determining the substantive and procedural questions for imposing a valid peace bond on a case by case basis. The following examples indicate the role the peace bond plays in some divergent situations:

Illustration 5: A man was charged with battery on his wife’s complaint. Although the court file could not be found, the hearing proceeded since the woman indicated that all she wanted was a peace bond.

Illustration 6: A defendant placed on a peace bond for beating his estranged wife asked if he could visit his
JUDICIAL RESPONSE TO VIOLENCE

children. When the wife objected because she was afraid of further harm, the judge stated that the peace bond would prevent such harm. At her request that he not be allowed to visit the children at her home, the judge made it a "condition of the peace bond" that he visit them at reasonable times but away from home.73

Illustration 7: A woman was arrested on a warrant sworn out by her husband. Testimony clearly indicated that disturbances frequently occurred between the parties but each accused the other of being the cause. The judge placed both parties on $1000.00 peace bonds.74

Although peace bond signatories are not returned to court on charges of violation of their bonds, they do frequently return on one or more subsequent charges of disorderly conduct, which would be a violation of a valid bond. Though the court should know the history of the accused's prior court record so that the most appropriate and meaningful disposition can be rendered, past daily peace bond lists do not appear to be available for ready referral, much less scrutinized as a matter of course. The judge will be aware of a previous peace bond only if he recalls a prior case (which is made difficult by the similarity and number of such cases and by the fact that judges rotate out as often as every three months) or is so informed by one of the parties. On those occasions when past history is known, some judges indicate that they customarily fine the defendant for the subsequent offense rather than repeating what obviously proved to be an ineffective peace bond procedure in the prior case. But where the prior imposition of a peace bond fails to come to light, the judge will usually order another such bond, unaware of the failure

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73. There does not appear to be any authority for placing such a condition on a peace bond by a judge of the Court of Domestic Relations. In New York, however, express statutory authority is provided for just such a condition. See text accompanying note 168 infra.

74. In English Magistrates' Courts:
Often after hearing the evidence in a trifling charge of assault the magistrates may come to the conclusion that both parties are to blame, a quarrelsome pair who need to be bound over not for their own benefit but for that of their longsuffering neighbours. In some cases they may decide that the person aggrieved in a charge of assault is not the informant but the defendant. In such circumstances they may let the accused go and order the accuser to enter into a recognizance. These instances show what a supple instrument the power to bind over may become.

of the first. Even when the imposition of a prior peace bond is known, sometimes it will simply be continued or increased.

Notwithstanding the benevolent motives and rationale of the court, it is highly doubtful whether a court should employ such questionable practices. But while the present practice is admittedly at variance with the statute, the statute does not appear to abrogate the judge's common law discretion to impose peace bonds upon conviction of an appropriate offense. In the vast majority of cases where there is a sufficient basis for conviction in the first place, all that would appear to be required to legitimize the present function of the sham peace bond is the use of a valid unsecured personal recognizance form requiring the defendant to maintain good behavior, rather than the uninformative and presumably unenforceable blank complaint form used now. As with the present procedure, the defendant need only sign the form and he would be free to go. Although such a recognizance form could be enforceable upon breach, the state may choose to invoke its long-standing tradition of prosecutorial discretion and choose not to do so. The court could thus preserve informality, ease and rapidity, the defendant would not suffer deprivation of liberty and property and the state could bring charges of violation only when it chose to do so; in short, the advantages of the present system could be retained. The main advantage to legitimizing the essential features of the sham peace bond might be an increase in the potential effectiveness of the bond on influencing the individual defendant's behavior. A brief but informative recognizance, read and signed by the defendant in court, with a copy provided to him, would reiterate

75. Surely, it must be conceded at the outset that illegal or unauthorized conduct by public officials is a net evil, regardless of offsetting advantages. It is that, if only because it breeds general disrespect for the law. It is also that because it leads to the unbridled and oppressive. So, too, it must be conceded that discretion—even legally permissible discretion—involves great hazard. It makes easy the arbitrary, the discriminatory, and the oppressive. It produces inequality of treatment. It offers a fertile bed for corruption. It is conducive to the development of a police state—or, at least, a police-minded state.


76. While it is true that Ill. Ann. Stat. § 200-6 (Smith-Hurd Supp. 1969) provides that “the defendant shall be required to give a recognizance, with sufficient security . . .” (emphasis added), Ill. Ann. Stat. § 102-19 (1963) defines recognizance as “an undertaking without security entered into by a person by which he binds himself to comply with such conditions as are set forth therein and which may provide for the forfeiture of a sum set by the court on failure to comply with the conditions thereof.” (emphasis added).
and elaborate upon the judge's lecture and whatever explanation of the sanction he may have given, thereby strengthening the impact upon the defendant. Those cases in which a peace bond would not substantively lie would, of course, have to be excluded from the procedure.

More importantly, the questionable peace bond practices of the Court of Domestic Relations dramatically point out that the central problem facing that court is that of appropriate sentencing alternatives. Even where available alternatives are as limited as they are, the court must have the knowledge necessary to choose the most appropriate one or degree. Accordingly, whether present peace bond practices are legitimized or not, a cumulative alphabetical index, easily compiled by using the proposed individually signed peace bond forms or, better yet, an index of all disputants appearing before the court, could be an immediate source of information to be consulted after a finding of guilt in each case. This would tend to reduce repeated though unwitting impositions of peace bonds (or personal recognizance forms) where they have proven ineffective in prior actions.

(c) Referral

While the typical domestic dispute is tried immediately and ends quickly with the imposition of a peace bond, a few cases may be referred, either before or after final sentencing. Usually only those cases involving nonsupport, mental illness or alcoholism are referred before final sentencing and they are sent either to the court's Social Service Department or Psychiatric Institute. The more typical domestic dispute, if referred at all to these or other facilities, is almost always referred after sentencing, usually as an aside or afterthought.

The judge's decision to refer is wholly discretionary, but if he is to make an informed decision he must have sufficient knowledge of the case and the parties. At present, such knowledge stems almost entirely from the parties' demeanor and their unsolicited testimony. Thus the difference between a case in which the parties are not referred and one in which they are may simply depend upon the aggressiveness of the parties during their appearance before the judge. However, the probability that a referral of some kind will be made increases if certain facts become known to the judge. Some such facts are:

1. The parties have been recently married.
2. The parties have been married for many years.
3. The parties have been separated.
4. A party threatens divorce or separation.
5. There have been repeated disputes between the parties.
6. There is evidence of alcoholism.
7. There is evidence of mental defect or illness.
8. There is evidence of nonsupport or child neglect.

Motivation to refer cases also depends, at least in part, upon the judge's estimate of the probability of successful counseling or treatment and his knowledge of appropriate and willing referral resources. The basic criterion apparently used by judges to determine the probability of successful counseling is the interest of the parties themselves. But social agencies today are beginning to realize that by definition those persons least interested in helping themselves are generally those most in need of help.\textsuperscript{77} While the judge can make counseling a part of the sentence of a guilty party, he cannot similarly compel the innocent party (usually the complainant wife) to submit to counseling.\textsuperscript{78} Sometimes the judge simply tells the parties that he wants them to talk to the Social Service Department or the Psychiatric Institute before he disposes of the matter. Unless the complainant objects on her own initiative, the case is continued, but both parties remain to be escorted to the assigned department for at least an initial interview. Alternately, the judge may inform the complainant that he will simply dismiss her complaint if she refuses counseling. The latter strategy is of limited success. For example:

Illustration 8: A young couple with one child appeared before the court. They had been married for one year but had been separated for the past seven months. The judge suggested counseling, but the wife refused. The judge stated that he couldn't compel her to submit to counseling but that he would dismiss charges against her husband unless she gave it a chance. She declined, and the case was dismissed.

Often the court will attempt to refer if alcoholism is thought to be involved, even though the parties usually are no more eager to be counseled than parties in disputes not involving alcoholism. The reluctance of the parties to undergo counseling is mitigated

\textsuperscript{77} See generally Parnas, supra note 35.
somewhat by the fact that alcoholism (and mental disease) perhaps lend themselves more readily to one party analysis than does "simple" characterological marital discord or incompatibility, which is more often taken to imply difficulties on both sides of a relationship. Because the party apparently at fault can be compelled to undergo counseling, referral is more often considered. However, some of these efforts, such as an unsupervised post-sentencing referral, may be minimal and thus probably ineffective.

Illustration 9: A father had his twenty-seven-year-old son arrested on a charge of disorderly conduct. The defendant was unmarried and lived with his parents, whom he paid for his room and board. He stated that he had been on a drinking binge for three weeks since his union went on strike. He admitted however, that he had been drinking since he was 17 and knew he needed help. He was shaking very badly. The father stated that his wife was becoming a nervous wreck and he wanted his son to move out. The defendant voluntarily gave his house key to his father. The judge put him on a $1000.00 peace bond and told him to get help, whereupon the state's attorney, on his own initiative, provided the defendant with a note bearing the address of an outpatient alcoholic clinic.

Illustration 10: A man was arrested on a warrant sworn out by his wife. The complainant stated that the defendant was an alcoholic. He has been in an institution twice without improvement. They have three children and the wife says he is a good man when he is not drinking. She wants him to go to Alcoholics Anonymous. The defendant admits his drinking problem and agrees. Although the state's attorney recommends the Psychiatric Institute, the judge places the defendant on a peace bond and "continues" the case for one year "conditioned upon his going to A.A. during that time."79

Cases of alcoholism contributing to family disorder are often sent directly to the Psychiatric Institute before final disposition and continued for a month pending the Institute's examination and recommendations:

Illustration 11: Complainants had their brother ar-

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79. For a brief discussion of Alcoholics Anonymous and domestic disputants see Parnas, supra note 35, at 148-51.
rested. They stated that the defendant drank heavily and while under the influence had pushed their mother down the stairs. They further stated that he had been sent to the Psychiatric Institute about one year before and, although his conduct was better for a few weeks thereafter, it deteriorated. All parties were sent to the Psychiatric Institute.

At least two additional factors probably account for the fact that the Court of Domestic Relations more frequently makes referrals of marital disputants who have problems of alcoholism or mental illness than of the typical disputant who has more "normal" problems. First, there are many more "normal" disputants than disputants who are alcoholics or sufferers of mental disease. Second, the Psychiatric Institute can offer somewhat individualized treatment for most of the mentally ill and many of the alcoholics referred by the court, whereas there is no court-attached agency similarly capable of handling the problems of the typical domestic disputant. 80

The relatively few cases not involving alcoholism or mental illness which are referred for marital counseling are usually sent to the court's Social Service Department despite the fact that it undertakes no continuing counseling service in cases other than paternity and nonsupport. 81 Accordingly, unless one of these issues appears in the initial intake discussion, the Social Service Department will simply tell the parties to reappear in court on the continance date without further consultations or will suggest a referral to a private agency in the interim. For example:

Illustration 12: A young attractive couple appears before the court. She had been pregnant when they got married three years before and they now have two children. The man had been arrested on complaint of his wife for assault and disorderly conduct. The woman states that the husband came home drunk and threw her out of the house. The husband states that his wife left home voluntarily at 2:00 a.m. and stayed away all night before he found her. Because of their youth, the judge referred them to the Social Service Department for counseling.

80. But see text accompanying note 141 infra for the agencies available to the New York City Family Offenses Term.
81. See text accompanying notes 30-39 supra.
The parties were apparently quite frank in their intake interview. The woman stated that her husband uses sex as a weapon over her, sometimes abstaining when she desires it. The man stated that because of a recent hysterectomy his wife is overly concerned about her femininity. Despite the apparent quick rapport gained by the interviewer in developing an issue of obvious and deep conflict which might have been pursued to some better understanding and lessening of tensions, the case was assigned for supervision only because in the course of the discussion the wife mentioned the possibility of a support problem. But although the couple was given an appointment (with a different caseworker) to discuss the support problem, they did not appear for this appointment nor did they answer the subsequent letter sent to them by the Social Service Department. Two months later they filed cross complaints on similar charges. When neither appeared for this case it was dismissed.

Illustration 13: Another young couple appeared before the court. The man was charged with disorderly conduct. His wife stated that he tried to strangle her, punched his sister and then tried to stab himself. The man states that he got drunk after his wife told him she was going to get a divorce and he doesn't remember what happened. Because of their youth, the judge referred the couple to the Social Service Department and continued the case for six weeks with a warning to the defendant not to harm his wife in the interim.

The intake interview was apparently unproductive. The complainant simply stated that they had fought once or twice before but the police had not been called then. No attempt was made to discover the cause of their problem. Marital counseling possibilities were explained to the couple but the wife said she only wanted a divorce. The couple was dismissed without further discussion. A report indicating the wife's unwillingness to undertake counseling was to be given the judge when they appeared on the continuance date, but no action was taken in the intervening period.

(d) Fine or Incarceration

In only one set of circumstances is a fine used with any reg-
ularity. When it comes to the attention of the judge that the defendant had been put on a peace bond during the previous year, a fine rather than another peace bond is sometimes ordered for the subsequent offense. Such fines generally are set at $100.00 or $200.00.

Occasionally other particular situations may also seem to call for a fine. In one such case the judge imposed a fine because the parties "had the nerve" to openly admit to a long illegal common law relationship.

A jail sentence is ordered even less frequently than a fine. The only situation observed was as follows:

Illustration 14: The complainant states that she and her husband have been separated several times due to his heavy drinking. She states that in the incident in question he beat her until she finally broke away and ran outside in her nightgown to call the police. Her husband was gone when they arrived but she secured a warrant for his arrest. She states that she was hospitalized for a week due to his beating and corroborates this claim with photographs of her injuries and a doctor's written statement. She further states that they are now separated and she has filed for divorce. In his behalf, the husband simply states that they were wrestling and she slipped and fell. The judge got furious at what appeared to be a blatant lie in view of the complainant's evidence. Although she indicated that she would be satisfied with a peace bond, the defendant was sentenced to 15 days in the House of Correction.

Judges tend to feel that neither a fine nor incarceration is appropriate for most intra-family violence.82 Because most defendants appearing before the court are poor, the whole family suffers the loss of any amount paid as a fine whether the de-

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82. See text accompanying notes 172-74 infra. In England, McClintock found that 25 percent of those persons found guilty of violent offenses involving family strife or neighborhood disputes were institutionalized. More than 30 percent were fined and "40% were given absolute or conditional discharges after a finding of guilt. It is quite clear that in such cases the courts did not feel that more drastic action was required in order to preserve law and order and prevent further crime." F. Mcclintock, Crimes of Violence 155 (1963).

A Canadian study of a limited number of intra-family offenders concluded that "except in severe cases, they are seldom referred to penitentiaries, but are usually given suspended sentences, fines and short prison terms." Cormier, et al., Family Conflicts and Criminal Behavior, 3 CAN. J. OF CORREC. 20 (1961).
fendant pays it out of his pocket, goes in debt, or as sometimes happens, obtains the funds from the complainant herself. If the fine is not paid (or if a jail sentence is ordered in the first place) the defendant goes to jail, usually losing his job or whatever job opportunity he has, leaving the family without his support or the hope of his support until his release. Such conditions only acerbate the continual frustrations of debt and insecurity which may well have produced the original discord.

But perhaps the most important sentencing consideration when dealing with domestic disputants is the simple fact that most of the parties will resume living together either immediately or after incarceration no matter what sentence is imposed. This fact may, in part, account for the prevalent use of the peace bond. The imposition of fine or a jail sentence resulting from a relative or intimate's complaint may well tend to aggravate an already inflamed situation when the parties are once again thrown back into their emotional relationship.

Thus it would appear that any wide use of either a fine or a jail sentence to deal with domestic disputes would have at least two negative results: (1) the family involved would be moved toward or placed on welfare (something courts recognize and try to avoid), and (2) the family relationship would at best be aggravated and at worst suffer a complete and permanent breakdown.83

III. SELECTED PRACTICES OF OTHER COURTS

A. DETROIT84

The Detroit Police Department's Misdemeanor Complaint Bureau provides a unique preliminary quasi-judicial forum in which the police try to settle domestic disputes, thus screening out many cases which would otherwise be resolved in court. The Bureau uses a variety of informal procedures: lectures, mediation attempts, "continuances" to provide a cooling off

83. Cormier, supra note 82, at 35.
84. The data for the discussion of Detroit practice (as well as that of Milwaukee in the following section) is based on the reports of field observations made in 1956-57 for the American Bar Foundation, Survey of the Administration of Criminal Justice. See note ** supra. Accordingly, because of the lapse of over 12 years since this data was gathered, the use of the past tense in the description of these courts' operations was deemed preferable although the practices in whole or in part may be currently as described.
period, "peace bonds" or a combination of these.\textsuperscript{85} Those cases that are not satisfactorily resolved at the police level are usually referred to an assistant prosecuting attorney.\textsuperscript{86} If a complaint is filed, the court usually places the defendant on probation, though legitimate use of the peace bond is available.\textsuperscript{87} For example:

Illustration 15: The couple appearing before the judge had four children. The defendant was charged with assault and battery against his wife. He admitted hitting his wife but attempted to explain it as being a result of her nagging. The judge lectured the couple and stated (like the Chicago judges) that "the people that really suffer are the children." He placed the defendant on probation for one year "on condition" that he not mistreat his wife and that he abstain from drinking.

Where probation has been imposed and a subsequent incident or another violation of probation occurs, probation may be merely continued or extended because of the absence of more appropriate alternatives and the possible harmful effects of fine or incarceration on the offender's family:

Illustration 16: The defendant was charged with assault and battery against his wife. This was the second time in the past year he had been before the court on such a charge. On the previous charge he had been put on probation for one year which had not yet expired. The parties were separated and the wife was in the process of securing a divorce. It was alleged that when the defendant got drunk he attempted to break down the door to his wife's home. Probation was extended for an additional year.

Illustration 17: A man was brought before the court as a probation violator. He had been placed on probation only three days before. He failed to appear for his first appointment with the probation officer. His wife did appear, however, and told the officer that since her husband had been placed on probation he had become drunk, had broken down the door, cursed in

\textsuperscript{85} For a more complete discussion of the operations of Detroit's Misdemeanor Complaint Bureau see Parnas, \textit{supra} note 51, at 945-47.
\textsuperscript{86} \textit{Id.} at 946.
front of the children and created a general disturbance. The probation officer had the man arrested and recommended to the judge that a short jail sentence was in order in view of the immediacy of the violation and the fact that the offender had a previous conviction for assault and battery. The judge, however, refused to incarcerate the offender because he “liked that check coming in.” The fact that the wife was presently working whereas the husband was not apparently did not make any difference to the judge. (The probation officer later told the observer that the offender was a rough, uneducated man who apparently demanded to be master in his own house and didn’t like to be told what he could or could not do. The officer predicted that the man would be back before the court on subsequent similar offenses.)

Depending upon the jurisdiction, a court’s imposition of probation can result in no supervision whatever, extensive supervision or anything in between these extremes. In Detroit, the Domestic Relations Division of the Wayne County Probation Department supervised all probation cases involving family problems, including assaults and batteries between spouses. Most probationers were directed to report to the probation office about thrice monthly, and one field visit each two months was generally made by the probation officer. Supervision can range from mere form—the bookkeeping accomplishment of the requisite number of office and field visits—to substantial personal efforts to remedy some of the problems of the probationer and/or his family. An example of the latter is as follows:

Illustration 18: A man cut his mother-in-law with a knife during a drunken brawl. He was placed on one-year probation and ordered to make restitution of the victim’s hospital expenses. A field visit to the probationer’s home revealed that it was a filthy one-room apartment over a bar. The probationer worked regularly and made $2.15 an hour and was therefore able to pay more than the $10.00 per week rent he presently paid although the probation officer suspected the man and his wife of drinking up his earnings. The presence of the couple’s two-year-old child in such an unhealthy environment caused the officer to exert considerable verbal pressure upon the family to move.

In some situations however, the court may consider proba-
tion, even with continuing supervision, to be of little use and therefore refuse to impose it, but neglect to order more appropriate action to fill the parties' need:

Illustration 19: The defendant was accused by his wife of assault and battery. Although he stated she struck him first, he pleaded guilty to the charge. Because of the complainant's unusual and belligerent behavior at trial, a presentence investigation was ordered and revealed that the parties had reversed the usual role of husband and wife, perhaps because of a partial disability of the husband. The woman worked and was the sole support of the family while the man remained home doing the housework and cooking. Both parties drank a great deal. The wife, a very dominant person, appeared to be mentally disturbed and had been in a mental institution recently. The judge found the husband guilty but suspended sentence without condition. (The judge later remarked to the observer that the Probation Department would not be able to affect this couple's conduct.)

B. MILWAUKEE

A judge of one of Milwaukee's misdemeanor courts established a comparatively comprehensive system of handling matters of intra-family violence coming before his court. He instituted a three-day cooling-off period between the time of the spouse's complaint and the issuance of a warrant on that complaint in common drunk or assault cases. The judge also pooled many of the techniques previously discussed so that he would have a wider source of knowledge of the case and a broader choice of alternative dispositions.

A most interesting aspect of this court's procedure was the active participation of certain court personnel in quasi-judicial tasks. For example, as a matter of course in this court, the judge's secretary-court reporter held pretrial conferences with the parties in cases involving family problems. As each such case was subsequently called, the secretary-court reporter would describe to the judge the nature of the family problem, the present attitude of the parties toward each other and the case, and in some cases would suggest disposition. This practice not

88. See note 84 supra.
89. See Parnas, supra note 51, at 947-48.
only expedited the handling of cases but also disposed of them in a more knowledgeable and proper fashion than the court otherwise might.

Illustration 20: A man was alleged to have assaulted his wife. Upon information provided the judge by his secretary-court reporter after discussion with the disputants, the judge stated that he would not ask the defendant to enter a plea but rather would refer the case to probation since apparently only a minor disagreement was involved and both had expressed their willingness to conciliate their differences and remain together. He urged them to cooperate with the probation staff and stated that he would formally dispose of the case after receiving a report from the probation department.

Illustration 21: In another case of alleged assault on the wife the secretary-court reporter's pretrial conferences again resulted in the parties' expressing a desire for reconciliation. Accordingly, the matter was continued for six months and the parties were told that if they did not have any trouble during that time it would be dismissed. They had indicated a desire to discuss their problems further with a counselor whom they had contacted previously at the St. Vincent de Paul Society and the judge urged them to follow this through.

A few members of the probation department appeared to resent the use of nonprofessionals in this pretrial screening process, but one doubts that the probation staff would have been willing, or indeed able, to have all such pretrial screening duties placed on their shoulders along with their other considerable chores. Moreover, by involving court personnel in the substantive work of the court, there is an increase in the efficiency and comprehensiveness of the court as a social institution and a stimulation of the court personnel's interest in the function of the judiciary and their role therein. For example, in addition to the use of the judge's secretary-court reporter for family pretrial conferences, the Milwaukee court gave the court-assigned police officer the responsibility of providing voluntary chest X-rays to defendants in common drunk cases, and the task of following up outpatient psychiatric referral cases and collecting their examination records for the judge prior to the court return date. The officer stated that ordinarily his job would be little more than protector of the court, but that under the present
procedures he was operating efficiently, and his job was much more interesting.

Another interesting device used by the Milwaukee Misdemeanor Court is the continuance for cause on the court's own motion. This preliminary disposition was made in family cases where the defendant, usually a first offender, may have appeared technically guilty of a minor offense, but the judge was reluctant to give him a conviction record. Such pretrial judicial knowledge of guilt might have been the result of a pretrial investigation by the probation staff, or, more likely the secretary-reporter's pretrial conference. The continuance often included referral to the probation department for an initial conference and irregular contacts thereafter (informal probation), but sometimes there was no contact with probation whatever. In any event, this disposition would consist of a continuance for a number of months and the judge's explicit suggestion or promise that the case would be dismissed upon the return date if no additional trouble between the parties came to the court's attention during the interim. Thus, the prevention of a record of conviction appears to rationalize what would otherwise be the questionable practice of a judge receiving information about a case in advance of trial, informally disposing of the case, and staying formal adjudication and disposition until a subsequent showing of good behavior.90

The judge of this Milwaukee misdemeanor court stated that the defendant was "his own probation officer" in those cases where an unsupervised continuance without judgment was ordered with dismissal promised on good behavior, or where judgment was entered but sentence was suspended without probation. According to the judge, the people who appeared before him were well aware that if they returned on another charge they would be dealt with more severely. Thus the intended and presumed effect of these dispositions is comparable to use of the peace bond by the Chicago courts.

Though not usually involved in the initial family pretrial conference, the probation department, unlike its Chicago counterpart, quite frequently became involved in the court's disposition of domestic disputes through presentence investigations and probation supervision. The presentence investigation permitted inadequate time for investigators to be thorough and for the judge to analyze their report. Perhaps in recognition of these limita-

90. See note 75 supra.
tions, the judge indicated that he usually called for a present-
tence investigation only when he had already tentatively decided
upon probation, thus appearing to rely on the investigation and
accompanying recommendation before making the formal dis-
position of the case to the supervising agency. There is no doubt
that such a report contributes to a more informed use of the
judge’s sentencing discretion than would otherwise be the case.
For example, the summary section of a presentence report of a
man found guilty of being drunk and disorderly on complaint of
his wife read in part as follows:

The wife does not wish to divorce her husband, but wishes
some means that would prevent her husband from drinking to
excess, and beating her and threatening the children. It appears
to the investigating officer that the wife fears what would
happen to her if the defendant was incarcerated. The investi-
gating officer feels that, perhaps, a period of probation may
help in this situation to get a better and more thorough picture
of what is taking place. Probation is recommended.

As already seen in the Chicago and Detroit practices, recog-
nition of the adverse effect of fine or incarceration on members
of the defendant’s family sometimes results in alternative dis-
positions even in cases involving rather marked violence. Under
these circumstances active probation supervision may be essen-
tial to prevent further violence in particularly emotional family
situations.

Illustration 22: The defendant-wife slashed her hus-
band’s alleged paramour almost to death. She was
charged with assault with intent to do great bodily
harm. Despite the severity of the offense, she was only
placed on probation for two years, primarily because
she had five small children to care for. Her probation
record indicated that her probation officer (a woman)
visited the home monthly, and sometimes twice monthly.
The record further indicated that the probationer had
again become very suspicious of her husband’s activities
and feelings toward the victim. Supervision consisted
of continually warning the probationer to stay away
from the victim and urging her to have more confi-
dence in her husband—stressing the fact that he brought
his paychecks home and stayed home at night. The
probation officer also suggested that the family move
to larger quarters, on the assumption that the crowded
conditions, inadequate furnishings and general physical
surroundings depressed the entire emotional situation.
The probation officer's field visit to the offender's home can be an important means of increasing the officer's knowledge of the offender and his family. In observing the scene of the domestic difficulties, the officer can perhaps more fully understand the family's problems than he can solely from the offender's visits to the probation office.

One observer summarized the statement of a Milwaukee probation officer as follows:

In the office, the probationers are somewhat out of their element and tend to prepare themselves for the experience, cleaning themselves, getting off alcohol, and generally being on the defensive. However, when she has occasion to go into [their] homes and surroundings . . . the bars tend to be down . . . [and] the attitudes of the probationers in this more familiar setting are likely to come out.

After observing this probation officer on home visits, the reporter noted:

She knew most of the facts and circumstances concerning the environmental situation in which the subject was living and could report them without referral to notes and could explain an up-to-date family and social situation confronting her probationers.

She had a good relationship with the probationers visited. All received [her] in what appeared . . . to be a friendly manner. None appeared to express any sort of antagonism and all expressed a willingness to talk to her concerning [their] problems.

Another Milwaukee probation officer in discussing the effectiveness of the home visit made the following interesting distinction between the probation officer and the police officer in dealing with family situations:

[A home visit] hastens the feeling on the part of probationers that you are not a "copper." [The] probationer and the entire family begin to feel that the probation officer is simply not a police officer checking up and investigating and trying to get something on a probationer.91

The probation officer, like police, prosecutors, judges and other participants in the administration of justice, is daily confronted with situations calling for an immediate decision to deal most appropriately with both typical and atypical human problems. His choice of the degree of supervision and intervention required may be of vital importance to the improvement of the family relationship.

91. The probation officer, however, added this caveat: "[t]his doesn't obviate the fact that certain cases which seriously object to home visitations would consider the very technique as a police function rather than a case work function."
Illustration 23: A man was placed on probation for assaulting his wife. One day, purely by accident, the probation officer observed the wife going out with another man. When confronted with this information, the wife begged the officer not to tell the husband. Previously she had been spending much of the family's income for clothes, cosmetics and entertainment while she neglected her children. After this confrontation the home situation greatly improved. The husband never learned what had caused such a great change in his wife's personality and behavior. On his final discharge, his wife expressed gratitude to the probation officer.

Probation supervision often includes resort to other available community resources. A Milwaukee probation officer stated:

Most cases are minor, and you are "manipulating": helping them with their kids, seeing that the children have shoes to go to school, helping them manage their budget and similar types of problems . . . . However, . . . a probation officer . . . cannot do everything for a man, . . . other agencies have to be involved to help out.

Such "voluntary" referrals may be more effective than those attempted by the police of the courts. Due to his longer and closer contact with both offender and family, the probation officer may be more able to accurately determine their rehabilitative needs and is usually more aware of the available and appropriate resources. His continuing contact with the offender and his authority over the offender's freedom would seem to make his suggestions more appropriate and more likely to be followed than suggestions by the police or the courts. Two examples of referrals suggested by Milwaukee probation officers in their supervisory capacity follow:

Illustration 24: The judge placed a man on probation for beating his wife. The couple were in their early twenties and had two children. Due to the offender's inability to keep a job, there had been considerable financial stress and resulting tension in the family. After the beating the wife had threatened divorce or separation. The probation officer advised her to see her priest. Upon a subsequent visit the officer was informed that the wife had done so and the priest had suggested a six-month try at holding the marriage together. The wife indicated that things were better at home. They had had no further quarrels because the offender was now working regularly and reducing their debts.
Illustration 25: Probation was ordered for a man who beat up his wife. The defendant constantly accused his wife of running around with other men and of being a prostitute, and threatened to kill her. The probation officer recognized that the man was mentally ill and urged him to submit to a psychiatric examination. He was found to be psychotic with homicidal tendencies and subsequently was committed to an institution. The probation officer believed commitment probably prevented the wife's murder.

Probation officers often overlooked minor violations of the conditions of probation, particularly in cases involving drunkenness and family assaults. But the threat of probation revocation, even though unexpressed, was instrumental in some probationers' acceptance of their probation officer's suggestions. Direct resort to the revocation authority with no intent to actually revoke may sometimes be employed. For example, the revocation hearing may be used as an authoritarian proceeding to lecture or reprimand the probationer and/or other contributing family members:

Illustration 26: The probationer was originally arrested on her husband's complaint for being drunk and disorderly and refusing to take care of their children. She was placed on six months' probation. During the probation period the husband frequently complained of his wife's drinking to her probation officer. On the last occasion the husband suggested she be arrested and jailed. The probation officer knew, however, that the probationer never drank alone but was usually taken out by her husband or provided with some alcohol by him prior to her sprees. The probationer and her husband were brought before the court and it was shown that the drunk and disorderly spree of which the husband complained was instigated when he brought home a six-pack of beer. The judge, instead of lecturing the probationer, severely reprimanded her husband for contributing to her condition. (Because of the probation officer's part in bringing this information to the court, the husband warned her not to enter his home again. A call from the officer's supervisor informing the husband that any interference with the probation officer's duties would be a criminal violation deterred his physical obstruction to subsequent contacts. It may be ques-
tioned, however, whether this officer or any other officer was able to effectively communicate with the husband thereafter.)

Probation officers in Milwaukee also sometimes used the arrest-hold-release procedure as a supervisory device with no intent to revoke probation or even to conduct a revocation hearing.

Illustration 27: The probationer came home drunk and caused trouble. His wife called the probation officer rather than the police. The probation officer ordered him arrested, but when he sobered up, the wife forgave him and he was released.

IV. A SPECIALIZED COURT: THE CITY WIDE FAMILY OFFENSES TERM OF THE NEW YORK CITY FAMILY COURT

A. INTRODUCTION AND HISTORY

Most instances of intra-family violence in New York City come within the jurisdiction of the New York City Family Court, which has exclusive and original jurisdiction over intra-family offenses, as well as over neglect, support, paternity, adoption, juvenile delinquency and persons-in-need-of-supervision cases. In short, the Family Court has jurisdiction over substantially all aspects of family life except actions for separation, annulment or divorce which remain constitutionally reserved to the New York Supreme Court.

The Family Court was established in 1962 as an experimental court which would seek continual improvement of its services based on experience. The policy behind inclusion of family offense, in this judicial experiment was stated in the act itself:

In the past, wives and other members of the family who suffered from disorderly conduct or assaults by other members of the family or household were compelled to bring a “criminal charge” to invoke the jurisdiction of a court. Their purpose, with few exceptions, was not to secure a criminal conviction

93. N.Y. CONST., art. 6, § 7. See GOVERNOR’S MEMORANDUM OF APPROVAL OF CH. 686 IN N.Y. FAMILY CT. ACT at XXIII (McKinney 1963); N.Y. FAMILY CT. ACT § 114 (McKinney 1963).
and punishment, but practical help.

The family court is better equipped to render such help, and the purpose of this article is to create a civil proceeding for dealing with such instances of disorderly conduct and assaults. It authorizes the family court to enter orders of protection and support and contemplates conciliation procedures. If the family court concludes that these processes are inappropriate in a particular case, it is authorized to transfer the proceeding to an appropriate criminal court.

Though the court has original exclusive jurisdiction over "any proceeding concerning acts which would constitute disorderly conduct . . . [or an assault] between spouses or between parents and child or between members of the same family or household," the Act left to the courts the definition of such terms as family, household and assault. For the most part, subsequent decisions have construed these terms broadly in light of the enunciated policy behind family offense proceedings. For example, courts have held "members of the same family" to include in-laws not sharing the same household, "members of the same family" to include in-laws not sharing the same household, etc.
household" to include a male and female living under the same roof in a meretricious relationship, and "assault" as including both felonious and simple assaults. For the purposes of article 8 proceedings, a 1964 amendment extended the statutory definition of disorderly conduct to include "disorderly conduct not in a public place."

Although enactment of the Family Court Act in 1962 may have initiated a comprehensive, treatment-oriented approach to family disputes in most courts of the state, it was by no means new to the Borough of Manhattan. There, almost 20 years earlier, it had been found that the District Courts of Manhattan were not rendering meaningful service to the large numbers of family disputants. Accordingly, Home Term was created in Manhattan in 1946 as a Special Court of the New York City
Magistrates Court system to fill this need. The Home Term took jurisdiction of all criminal violations, other than felonies, occurring between relatives. The majority of its cases were initiated by a wife complaining of the disorderly conduct or simple assault of her husband. The Court's main objective was to effect "lasting adjustments of family difficulties, by applying the techniques and principles of social case work in an authoritarian setting, with or without the aid of a formal court hearing . . . ." In order to accomplish this, the court established centralized socio-legal facilities occupying its court rooms, chambers and waiting rooms, and encompassing clerical staff, probation staff and a psychiatric unit. In addition, recognizing that some couples refuse to take their problems to another agency and that others, although agreeing to do so, tend to get "lost" before they get there, the court provided rent free offices on its premises to be used as a social service unit by the Home Advisory Council, a privately incorporated agency. The Council provided religious and secular marital counselors for on the spot referral as well as an excellently equipped and maintained nursery for the children these disputants are so often forced to bring to court.

Although begun as an experiment because no similar court

came the province of a special court geared solely to this type of work.

Id.
103. Id. at 3.
104. Id. at 9.
105. Id. at 9, 15.
106. Id. at 6.
107. Id. at 26.
109. HOME TERM, supra note 102, at 23.
110. Although a case is not serviceable by the Social Service Unit unless there is voluntary acceptance of the agency by the clients, nevertheless, it is recognized that a number of clients express themselves as willing to attempt adjustment through this channel only because they know that they will remain in close proximity to the Court and that the Court will continue to retain jurisdiction.

Id. at 25.
111. See S. Fisher, supra note 108, at 1, 7. N.Y. FAMILY CT. ACT § 162 (McKinney 1963) in its general provisions adopts wholly the idea of Home Advisory's nursery facility by providing that "[s]o far as possible a waiting room with a competent person in charge shall be provided for the care of children brought to the family court under this act."
was known to exist elsewhere,\textsuperscript{112} Manhattan's Home Term soon became a fixture in the New York City court system. The existence and experience of Home Term was influential in the inclusion of intra-family offenses within the jurisdiction of the new Family Court created by the state legislature in 1962.\textsuperscript{118} In fact, Home Term's successor, the City Wide Family Offenses Term of the Family Court, appears to be essentially similar in philosophy and operation to Home Term, with the exception of the fact that Family Court is a civil rather than a criminal court and has jurisdiction over some felonies.

Any member of the respondent's family or household, a peace officer, any duly authorized agency or, on the court's motion, any other person may originate family offense proceedings\textsuperscript{114} by alleging an assault or disorderly conduct and praying for an order of protection, conciliation or transfer to an appropriate criminal court.\textsuperscript{115} In the fiscal year 1966-67, 13,037 cases, or 14 percent of the cases in the Family Court for the entire state of New York involved intra-family violence,\textsuperscript{116} and approximately 33 percent of these were handled by the City Wide Family Offense Term of New York City.\textsuperscript{117} About 85 percent of those seeking the court's assistance are wives who come personally to the court to originate proceedings.\textsuperscript{118}

B. The "Sift Desk"

A petition is not immediately completed, however, simply upon a statement of the proper allegations. The family offense proceedings provide for a preliminary procedure whereby the probation service may attempt "informally to adjust suitable

\textsuperscript{112} HOME TERM, supra note 102, at 3.
\textsuperscript{113} See, e.g., Comm. Comment to N.Y. FAMILY CT. ACT § 815 (McKinney 1963), now § 817 (McKinney Supp. 1969), which provides for the filing and consolidation of petitions for neglect, support or paternity where these matters arise in family proceedings states:

\textit{This section is based on the experience of Home Term in New York City showing that support and neglect problems are often involved in the family disorder reflected in disorderly conduct or assault by members of the same family or household.}

\textsuperscript{114} N.Y. FAMILY CT. ACT § 822 (McKinney 1963).
\textsuperscript{116} 1967 REPORT ON THE FAMILY COURT, supra note 115, at 352.
\textsuperscript{117} Id. at 374.
\textsuperscript{118} Id. at 375.
cases before a petition is filed. Such informal adjustment may be conducted only with the parties' acquiescence, within a limited time and with nondisclosure in any subsequent adjudicatory phases assured. The old Home Term stated the rationale for attempting to render such service on a pretrial level:

Court appearances, where persons are encouraged to voice their personal grievances in each others' presence, frequently tend only to aggravate an already tense situation. Helping people resolve the immediate issue which brought them into Court, thereby making court hearings unnecessary, is the initial aim of the Intake activity. This is only the first step which is followed by continued efforts to help the individual and family with their personal and environmental needs. The support and assistance of all available community facilities are enlisted to achieve this goal.

Like its predecessor, the City Wide Family Offenses Term emphasizes the importance of the initial sifting and sorting role of intake in properly channeling the cases coming to it. All persons coming to the court to initiate proceedings are given a number and asked to wait until called by the probation department member who is at the "sift desk," located in a small partitioned office adjacent to the waiting room. When a complainant is called, she will be asked to sit down and state her problem. If the matter does not appear to be within the court's jurisdiction the person will be referred elsewhere, occasionally to one of the on-the-premises agencies:

Illustration 28: A woman told the sift desk that she "just did not get along" with her husband. He had committed no assault or disorderly conduct, but he had threatened her on occasion. The probation officer advised her that she could get an attorney at Lawyer's Referral and seek a separation, but he recommended counseling as a possible resolution of the problem. The probation officer asked her religion and when she answered "Protestant" he asked if she would like to speak to the marital counselor on the premises, a minister representing the Protestant Council of the City of New York. She agreed to this and he immediately took her to the counselor before calling the next case.

121. HOME TERM, supra note 102, at 7.
In cases where there is at least a semblance of jurisdiction, the probation officer on the sift desk will usually make an appointment for both parties to undergo intake consultation at a preliminary conference to determine appropriate action.\textsuperscript{123} This appointment is usually made for two weeks in the future.\textsuperscript{124} A printed notice on the court's letterhead is then sent to the respondent informing him that a "complaint" has been made and affording him the "opportunity to give [his] side of the matter and to decide upon action to be taken" at the preliminary conference.\textsuperscript{125} At this point only a carbon copy of the notification form is kept as a record of this initial contact.

Many petitioners ask the probation officer manning the sift desk what to do if before the return date the respondent becomes violent again. The probation officer usually advises the petitioner to call the police, but the petitioner frequently replies "but they came and didn't do anything."\textsuperscript{126} To one petitioner who replied that "they wouldn't come at all,"\textsuperscript{127} the pro-

\textsuperscript{123} A printed slip of paper is given the petitioner informing her of the name of the probation officer and the date, time and place for her to return. On the back of this form, "Keep this card and bring it with you" is printed in English, Hebrew, Italian and Spanish. Form 50-3.

\textsuperscript{124} If the court's backlog is heavy these appointments can range up to five weeks after this initial contact. An estimated 70-80 percent keep the appointments if the interim is about two weeks with the percentage decreasing as the time period increases.

\textsuperscript{125} Notice to Respondent, Family Offense, Form 50-81.

\textsuperscript{126} Although they tend not to arrest, the police do usually attempt to adjust the domestic dispute and restore peace at least temporarily. See Parnas, note 51 supra. A form given to appropriate petitioners by the Sift Desk sets out a portion of ch. 9 of the Rules and Procedures of the New York City Police Dept' (080367):

\begin{quote}
59.1 When a person alleges that a member of his family, as defined in Sec. 812, engages in disorderly conduct toward such a person, the complainant shall be advised to make an application in the Family Offenses Term of the Family Court for a summons unless an arrest is required.

59.2 In cases involving simple assault not witnessed by the member of the force concerned, the complainant shall be advised to make application for a summons in the Family Offenses Term of the Family Court. If such complainant desires to make a civilian arrest, the member concerned shall render assistance as necessary . . .
\end{quote}

\textsuperscript{127} A recent Arkansas case arose out of a neighborhood dispute in which the police refused to respond to a telephone call to assist the caller in ridding his home of a friend who had been drinking and became belligerent and insulting. The police indicated they would come only if the caller came to the police station and swore out a warrant. Shortly thereafter, the caller shot and killed the friend and was convicted of manslaughter. Stout v. State, 244 Ark. 676, 426 S.W.2d 800 (1968).
probation officer advised calling the Police Commissioner and gave her the Commissioner's telephone number.

If, after notification, the respondent fails to appear and there has been no intervening misconduct reported, a final notice will be sent by the sift desk setting up a new appointment. If he does not appear for the second appointment, a summons is issued. If the petitioner does not appear for intake consultation, the case will be dropped, whether the respondent appears or not.

In some cases, although jurisdiction may be present, the complaint may be so de minimus or the petitioner so relieved simply by getting her complaint off her chest that the matter can be adjusted to her satisfaction at the sift desk without the need to call in the respondent or retain the case further. On the other hand, there are times when the probation officer will omit the notice for preliminary conference and ask the judge for an immediate summons or arrest warrant. This generally occurs when the petitioner has been obviously brutalized and is too terrified to return home without some immediate official action:

Illustration 29: The woman appearing before the sift desk had an extremely swollen and bruised eye and cheek. She was crying and appeared sick. She said her husband had beaten her that morning with an electric iron cord. The police came at her request but would not make an arrest without a warrant. They informed her where to get one. Because of her condition the probation officer asked her if she wanted to go through the notification process or have her husband arrested. She preferred the latter and the probation officer immediately arranged for her to see the judge in order to secure the warrant.

Occasionally a petitioner will be so afraid of her husband that she will not allow the sift desk to send a notification to her husband although there is not sufficient evidence for the probation officer to recommend a warrant. No alternative response to this situation appears to be used, and the petitioner may leave completely dissatisfied.

C. PRE-HEARING REFERRAL

1. Probation Staff Counseling

When the petitioner and respondent appear together initially or, as is more often the case, as a result of the notification proc-
ess, they are assigned to a probation officer for further discussion of their problem. The right to go before the judge at any time in the process, however, is always left open to them. If consultation commences, as it usually does, the assigned probation officer may interview each party separately before talking to them together. Whatever his strategy, a determination will be made by the probation officer after these initial consultations as to whether to continue his counseling, to refer the matter to extra-judicial social agencies or to the court's volunteer marital counselors, or to send the disputants to the court itself.

One example of a resolution worked out solely through counseling within the probation service is as follows:

Illustration 30: The petitioner, after having been beaten by her husband, had left him and had taken their children with her. Unaccountably, she had waited several weeks before coming to the court on this matter although her husband had not harmed her in the interim. In addition to the beating, she further stated that her husband had stabbed her in the back several months before, requiring her hospitalization. Although pressed at that time by the police and district attorney's office to bring proceedings against her husband, she had refused. Continuation of the separation was agreeable to both. A promise by the husband not to bother her in any way in the future satisfied her and she agreed to reasonable child visitation on his part. No court action was involved and the matter was closed.

2. On-the-premises Agency Counseling

The probation officer may determine that the disputants would be better helped by one of the voluntary marital counseling agencies on the premises. With the parties' agreement, they may be taken to the office of a minister representing the Protestant Council of the City of New York, clergy or lay case-workers representing the Catholic Charities, or a secular marital counselor, psychiatric social worker or trained lay counselors provided directly by Home Advisory Council. All counselors are professionals and do not hesitate to aid in stabilizing an invalid

128. These are persons either with a Master of Social Work degree or an undergraduate degree and two years of social work experience.
The annual progress reports of the representative of the Protestant Council reflect the problems of counseling these court-involved disputants:131

[They] continue to reflect the impact of stress and strain of urban life. Overcrowded living quarters, substandard housing, low wages, excessive drinking and early marriage continue to be among the problems of our clients.132

World conflict, Vietnam, transit strike, water shortage, no heat, no work, no food or clothing for children, sickness, accidents, or “we just can't talk to each other.” These are just a few of the problems our clients are seeking help to resolve.133

The Protestant Council suffers from a chronically undermanned staff.134 “Psychological short term therapeutic help” is the most it can currently offer its clients, though some financial assistance for the urgent needs of those not qualifying for welfare is also available.135 A total of four to six consultations, some with one

130. See Protestant Council of the City of N.Y., Marriage and Counseling Serv., Home Term Court, 1955 Progress Rep. 2.

131. PARTIAL CASE LOAD ANALYSIS OF COUNSELING SERVICE

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| Cases Closed                  | 213  | 167  | 199  | 250  | 306  | 1135  |
| Office Interviews             | 905  | 1010 | 1073 | 778  | 557  | 4623  |
| Letter Contacts               | 123  | 175  | 189  | 222  | 250  | 959   |
| Case Conferences with Court Staff | 141  | 174  | 177  | 225  | 131  | 848   |

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134. Id.

spouse and some with both, is usually the maximum possible contact of the counselor. Sometimes this is sufficient, and usually it is helpful, but frequently referral elsewhere is suggested, although the agency recognizes that

[i]n meeting the special needs of our clients, the court's resources, and community resources are limited and in some cases just is [sic] not available. Some clients are not motivated to follow through for help. There are others who have been referred to so many agencies until they have developed an agency phobia.137

Staff shortage does not appear to be as severe a problem for the Catholic Charities Unit although it provides some services to the criminal court as well as the Family Offenses Term. Since Catholic Charities has branch offices in various parts of New York City, clients will be referred out of the Family Offenses Term office to an office nearer their homes when they appear ready and willing to make the transfer. A subsequent telephone call to see that initial contact has been made with the branch office is apparently standard procedure, and the staff makes home visits as often as possible.138

3. Mental Health Service

Instead of, or in addition to, marital counseling, a probation officer may determine that his client is in need of the court's Mental Health Service. Formerly known as the Psychiatric Clinic of Home Term Court, this service has an interdisciplinary staff of 15 to 20 professionals, including psychiatrists, psychologists and psychiatric social workers.139 Out of about 15,000 families seen in the City-Wide Family Offenses Term in 1966, approximately 25 percent were referred to the Mental Health Service 136. Id. 137. PROTESTANT COUNCIL OF THE CITY OF N.Y. MARRIAGE AND FAMILY COUNSELING SERV., 1966 PROGRESS REP. 2-3. 138. Interview with Sister Marie Luchita, Supervisor of Catholic Charities Family Offenses Term Counseling Service, in New York City, June 1968. 139. See address by M. Fishman, Forces Affecting the Family Today: Constructive and Destructive—Legal Aspects 7, Third Annual New York Meeting for Mental Health in New York City, Oct. 7, 1967.
either by judges or by probation officers. In order to take a "much more wholistic approach to the multi-problem-family appearing in Family Court," the Clinic's functions are divided into three areas: (1) consultation (usually person to person) with the judge, probation officers, court officers and outside agencies; (2) diagnosis, and (3) treatment. In the words of the Service's director:

Every member of our staff, regardless of discipline, became a consultant to the Court; prepared to act in this capacity at any-time . . . .

Treatment techniques are in a constant state of development geared always to the needs of our particular patient population and the court. All forms of brief and long-term psychotherapy are utilized including conjoint and group therapy. Our alcoholism unit uses chemo-therapy as an adjunct to their treatment program.

. . . .

A short evaluation (or emergency screening) procedure was established which helps the court to make determinations about psychiatric hospitalization, temporary separation, visitation and custody on the same day that the family is before him. This procedure alone has reduced the number of people previously hospitalized by the court by 80 percent, avoiding much of the disruption and trauma connected to hospitalization. Conferences are held frequently in which the various professionals who make individual decisions concerning patients and who share a common purpose meet together to communicate and share knowledge from which plans are made and thus future decisions are influenced. These conferences often include judges and probation officers.

Our primary theme is that the course and outcome of a marriage are determined not merely by the personality difficulties of each partner but by the way the two personalities inter-
act. This interaction is the court's primary concern and became ours.\textsuperscript{143}

D. Court Appearance

1. Generally

Despite such efforts by the probation staff and Mental Health Services to resolve the petitioner's problem without the filing of a formal petition or a court appearance, a large percentage of cases nonetheless appear in court. Court appearances may result from arrest; inability to counsel, treat or refer satisfactorily because of a negative prognosis, lack of cooperation, or insufficient resources; a need for temporary commitment for psychiatric examination, or any other situation requiring the intercession of the court's authority. Thus the judge remains an extremely important part of the Family Offenses Term.

The Family Court Judge is somewhat different from his brethren on the trial bench. As one commentator has pointed out, "[W]hile he may occasionally have to engage in the trad-

\textsuperscript{143} M. Fishman, \textit{supra} note 139, at 7-8.

Although the charge brought before the court, usually by a wife, constitutes an assault or some form of disorderly conduct, this type of behavior most often has been going on for some time. Suddenly there is the decision to bring the matter to court. Each wife's decision to bring her husband to court constitutes, in a sense, the definition of his offense. How and when she makes this decision is a focus for study. We have found that some force has disturbed the equilibrium in the relationship and precipitated the court action.

Some of the patterns of interaction that we have observed are as follows: [citing V. Eisenstein \textit{et al.}, \textit{Neurotic Interaction in Marriage} (1956); Snell \textit{et al.}, \textit{The Wife Beater's Wife}, 11 Archives General Psychiatry 107 (1964).]

The husband's passivity and indecisiveness, sexual inadequacy; the wife's aggressiveness, masculinity, frigidity and masochism; both interacting in such a way that there is an alternation of passive and aggressive roles in order to achieve a working equilibrium. A disruption in the alternation of roles destroys the equilibrium.

Wives who have an emotional need to keep their husband drinking while protesting the need for a sober husband. If something happens to promote sobriety in the husband, it interferes with the established pattern of interaction.

Relationships where for years there has been a pattern of recurring assaults by the husband on the wife, which seemed to satisfy the masochistic needs of the wife and never before came to the attention of the Court.

There are times when the intervention of an adolescent child threatens to destroy the balance of a relationship where periods of violent behavior by the husband served to release him momentarily from his anxiety about his ineffectiveness as a man and at the same time satisfying his wife's masochistic needs and helping to deal with the guilt arising from her intense hostility toward her husband.

\textit{Id.} at 8-9.
tional judicial activity of rendering decisions on the basis of law, [he] is practically the director of a welfare agency engaged in diagnostic and therapeutic rather than strictly 'judicial pursuits.' ” The Family Court Act also reflects this difference:

"[T]he court is given a wide range of powers for dealing with the complexities of family life so that its action may fit the particular needs of those before it. The judges of the court are thus given a wide discretion and grave responsibilities . . . . Judges of the family court should . . . be familiar with areas of learning and practice that often are not supplied by the practice of law." The Act provides that the Mayor of New York appoint the family court judges for those counties comprising New York City; in making such appointment he is to “select persons who are especially qualified for the court's work by reason of their character, personality, tact, patience and common sense.”

The judges in the New York City Family Court are periodically rotated to all the Terms of the court. The Family Of-

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146. N.Y. FAMILY CT. ACT § 123 (McKinney 1963). But see N.Y. FAMILY CT. ACT § 133 (McKinney 1963) (judges to be elected in all other counties).
147. N.Y. FAMILY CT. ACT § 124 (McKinney 1963). A poll taken at an ABA meeting in Philadelphia in 1968, ranks the following five characteristics at the top of those needed by Family Law judges: (1) love of the law, (2) objectivity, including the ability to use and accept expert assistance, (3) reputation for character and integrity, (4) knowledge of relevant laws, and (5) knowledge of behavioral sciences. Judge Polow [of New Jersey, Chairman of the Subcommittee on Qualifications and Selection of the A.B.A's Section of Family Law, Committee on Family Law Judges] has also prepared a statement calling for legal training and experience as prerequisites for Family Law judges, along with the establishment of comprehensive Family Courts.

The Family Law. 3 (No. 34, July 1969). On the other hand, a member of the New York court's personnel with experience in both old Home Term and the present City Wide Family Offenses Term stated that neither background, experience nor education determine the various judges' responses to the cases coming before them. Their decisions, he said, are based on their individual personalities. Some judges, he said, have great difficulty arriving at any decision (see Illustration 36 infra) and they worry about the decision when it is finally rendered. Others make firm decisions without weighing the facts. Some refuse to send anyone to jail on the breach of an order of protection (see Illustration 36 infra). For the different criteria used by various judges for transferring cases to criminal court as stated by this informant, see text accompanying notes 157-63, infra.

148. The stay in the Family Offenses Term may be as short as one month. The writer while attending a retirement party for a member
fense Term is divided into two judicial parts and thus requires two judges. Part I hears all parties initially appearing on the matter at hand. Part II primarily provides the hearings for violations of orders of protection, but it may also dispose of cases in which Part I has made a finding of fact but has continued the case on referrals or for the preparation of reports. Part II may also assist Part I with any overload of initial hearings. All hearings are closed to the public, and only by leave of court may one observe the proceedings.

In Part I proceedings the parties and their attorneys wait outside the hearing room until they are called. The parties are separated by the width of a large conference table which abuts the judge's bench. The respondent is advised that he has "a right to be represented by counsel of his own choosing and to have an adjournment to send for counsel and consult with him."151

2. Pre-hearing Dismissal

A petitioner's request for dismissal of her petition will be granted, but the judge may nonetheless indicate his interest in the case. Although initially requesting complete dismissal, the petitioner and even the respondent may agree to a different disposition due to the continued expressed interest of the judge. Sometimes this interest can lead to attempts at reconciliation:

Illustration 31: Both parties appeared. In requesting dismissal of her petition, petitioner mentioned that she wanted a "legal separation." The judge said that he could not provide such a disposition and that, if that was what she wanted, she should see a lawyer. He then asked why she wanted a separation. The woman replied that she and her husband just could not get along. The judge asked if she would like to try counseling. She said yes, and her husband also replied affirmatively. The judge then asked what church they attended and when told they were Seventh Day Adventists he referred them to the representative of the Protestant Council for on-the-premises counseling.

of the court's personnel held in the offices of the probation department noted that a member of that department did not know that the person he was talking to was the judge assigned to the court at that time.

149. See text accompanying notes 167-74 infra.
150. See text accompanying notes 162 & 163 infra.
Sometimes, however, dismissal will be summary on request:

Illustration 32: A young couple had been living together for eight months in an invalid common law relationship. They appeared before the judge on the man’s petition alleging that the woman had cut him twice on the arm and once on the head. They were still living together. The judge granted the man’s request for dismissal without comment. (The judge later commented that it would have done no good to lecture them about their meretricious relationship. Had this been a validly married couple, said the judge, perhaps he would have suggested counseling or talked to the couple.)

3. Transfer

If the judge concludes that a criminal court would be a more appropriate forum than family court in a particular case, he may transfer the case to the appropriate criminal tribunal. The criteria for such transfers appear to vary from judge to judge. One may transfer all cases involving a stabbing or the presence of a gun. Another may transfer all cases in which there has been extensive injuries. Still another judge may never transfer anything. In fiscal 1966-67, only two percent of the cases disposed of by the judges of the Family Offense Term were transferred to a criminal court.

If neglect, nonsupport or paternity aspects develop as the case proceeds, the judge may order that such additional petitions be filed and the entire matter consolidated for hearing. This most frequently occurs with respect to support matters.

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152. See page 610 supra. In another illicit relationship where a child had been born to the couple the judge commented to them: “I need not tell you it’s not right to have out of wedlock children.” The statutory conditions allowable on imposition of an order of protection include an order of separation. See text accompanying note 163 infra. This could effectively terminate an illicit relationship for as long as one year. Query whether that is socially desirable on the basis of an illicit relationship alone and particularly, as in the above-mentioned situation, where there are children involved. See text accompanying note 130 supra.


154. See note 147 supra.


4. **Hearing and Post-hearing Disposition**

In those cases coming before the judge which are not dismissed, initially referred elsewhere or transferred to a criminal court, the facts are heard and the court determines whether the allegations of the petition are proven by a fair preponderance of the evidence. Only competent, material and relevant evidence is to be admitted and no reports of the probation service may be revealed to the court during the hearing.

At the conclusion of the hearing, the court makes findings of fact, and may initiate the dispositional hearing immediately thereafter. Alternatively, the court may make findings of fact and “adjourn the proceedings to enable it to make inquiry into the surroundings, conditions, and capacities of the persons involved” and reports thereof may be used by the judge in the dispositional hearing. At the conclusion of the dispositional hearing the court is authorized to enter an order:

(a) dismissing the petition, if the allegations of the petition are not established or if the court concludes that the court’s aid is not required; or
(b) suspending judgment for a period not in excess of six months; or
(c) placing the respondent on probation for a period not exceeding one year; or
(d) making an order of protection.

(a) **Dismissal**

In fiscal year 1966-67, 38 percent of the petitions disposed of in New York City were either withdrawn or dismissed. The corresponding figure for all other counties was 54 percent. The significantly lower rate for New York City is probably due to the fact that the intensive intake service available sifts out many cases where reconciliation or voluntary counseling is more appropriate than referral to court. Furthermore, the withdrawal and dismissal figure apparently also includes many cases in which

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158. N.Y. FAMILY CT. ACT § 832 (McKinney Supp. 1969). It is interesting to note that as first enacted this phase of the proceedings was termed “adjudicatory hearing” until the present amendment to “fact finding hearing” in 1963. N.Y. FAMILY CT. ACT § 832 (McKinney 1963), as amended, N.Y. FAMILY CT. ACT § 832 (McKinney Supp. 1969).
164. N.Y. FAMILY CT. ACT § 841 (McKinney 1963).
the court has referred the parties for counseling.

(b) Probation

Only about two percent of all family offense petitions in New York were disposed of by post-hearing probation. The rarity of such a disposition, according to the annual report, was "undoubtedly due, in large measure, to the lack of probation staff necessary to supervise any substantially greater number of cases." Probation would also seem an inappropriate disposition in view of the ample opportunity for pre-hearing counseling, which the parties, by their appearance in court, have rejected.

(c) Order of Protection

The vast majority of all family offense petitions not withdrawn or dismissed are disposed of by an order of protection. Generally, an order of protection sets forth "reasonable conditions of behavior to be observed for a period not in excess of one year." Specifically such an order may require a party:

(a) to stay away from the home, the other spouse or the child;
(b) to permit a parent to visit the child at stated periods;
(c) to abstain from offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded;
(d) to give proper attention to the care of the home;
(e) to refrain from acts of commission or omission that tend to make the home not a proper place for the child.

The court may also award custody of the child during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

The Family Court is also authorized to establish court rules to define further terms and conditions of an order of protection. Accordingly, rule 8.3 adds the following permissible terms and conditions to those set out above:

166. Id. at 376.
167. N.Y. FAMILY CT. ACT § 842 (McKinney 1963). Other members of the family may also be bound by an order of protection if they appear before the court. Id.
168. N.Y. FAMILY CT. ACT § 842 (McKinney 1963). For a general discussion of the use of orders of protection in other family court proceedings as well as family offenses see Note, Orders of Protection in Family Court Disputes, 2 COLUM. J. OF L. AND SOC. PROBLEMS 164 (1966).
(f) notify the Court or probation service immediately of any change of residence or employment;

(g) cooperate in seeking and accepting medical and/or psychiatric diagnosis and treatment, including family case work or child guidance for himself, his family or child.\textsuperscript{170}

Despite the authorization of treatment and counseling in (g) above, some judges refuse to include it in an order of protection because they believe it is fruitless to “order” unwilling parties to “cooperate in seeking and accepting” treatment.

Illustration 33: A young attractive couple, married only about nine months, appeared before the judge. The woman is 19 years old and has a child by another man who is in prison. The husband is represented by counsel. The woman alleges that her husband struck her. She admits that he provides food and a decent place to live for her and her child, but she expresses a desire for a divorce. The man denies having struck his wife. He admits having had a quarrel but contends that he only grabbed her arm in an attempt to take her upstairs. He says that they have only been married a short time and he wants to save his marriage. The judge says that he would like them to try counseling but the woman is adamant and refuses. Without more, the judge issues an order of protection requiring them to remain apart—the husband at their home and the woman and her child at her parents’ home, where she had been staying since the alleged incident. At this disposition, the husband starts crying and is unable to stop. He asks why she refuses to go to counseling and try to save their marriage. No one answers his query. Nothing more is said and the disputants leave.

When an order of protection has been made, the clerk of court is authorized to issue a certificate to the petitioner or respondent setting forth the terms of the order. Presentation of the certificate to any peace officer authorizes him to bring a person charged with violating the order before the court.\textsuperscript{171} If the court finds, after a hearing, that the respondent has “wilfully failed to obey” the order, it may commit him to jail for a period up to six months. The court is given the discretion to allow any such commitment to be served on specified days or parts of days and may suspend the remainder of a sentence or revoke a sus-

\textsuperscript{170} N.Y.R. FAMILY CT. 8.3 (McKinney 1963).

\textsuperscript{171} N.Y. FAMILY CT. ACT § 168 (McKinney 1963).
pension as it sees fit.\textsuperscript{172} Despite this authority, judges try to avoid sending a disputant to jail.\textsuperscript{173} They prefer to resort to compelling counseling or treatment, perhaps making such treatment a condition of suspending a sentence.

Illustration 34: A young, attractive couple appears before the court. They both work and have two children. The man is charged with violating an order of protection. At first the wife tells the judge she wants her husband put in jail. A long discussion ensues out of which it is learned that the wife drinks heavily, and that this may be a cause of the husband's offensive conduct toward her. The couple had previously been referred to the Protestant counselor. The judge first began to refer them back there but then changed his mind and referred them to the Mental Health Service's alcoholic unit indicating that Mental Health could later return them to the counselor if need be.

Illustration 35: The man appearing before the judge was charged with violating two orders of protection and with disorderly conduct on a new petition. His wife stated that he always committed his offensive conduct while drunk. The man denied having done anything, but admits to having a drinking problem for which he had previously undergone a voluntary commitment. The judge sentences him to six months in jail for violating the orders of protection but stays execution on the condition that the man go to the Mental Health Service's alcoholic unit and any hospital deemed necessary by Mental Health.

Illustration 36: The man appearing before the judge was alleged to have violated an order of protection by slashing his wife so badly that 60 stitches were required to close the wounds. The judge's first reaction was to renew the order of protection and refer the respondent to the Mental Health Service, but the wife protested, saying that the initial order of protection did not do her any good. She further stated that there was a policeman waiting outside the courtroom to take the respondent to criminal court because he had slashed a neighbor in the same incident. The judge then con-

\textsuperscript{172} N.Y. FAMILY CT. ACT § 846 (McKinney Supp. 1969).
\textsuperscript{173} See text accompanying notes 81-83 supra.
ferred with his clerk and finally changed his dispo-
sition to sentence the man to three months in the work-
house.\textsuperscript{174} (Later the judge stated that this was only
the second time he had sent a man to jail for violating
an order of protection.)

Letters to the court from disputants who have appeared in
Family Offenses Term, although a self-selected sample, provide
some small follow up of their cases and a bit of an impression of
their feelings about the court:

Letter 1: I feel that our initial visit to Family Court made us
more aware of our differences and caused us to review and see
them in a new perspective. Therefore, the court has been in-
strumental in helping to settle our problem and we thank you.

Letter 2: I would like to thank the court for its patience. I
was very annoyed that something was not done immediately
but the extended time has given us an opportunity to iron out
our problems without bitterness. Thank you again.

Letter 3: Please express our deepest appreciation ... to your
entire staff for the understanding and help they afforded my
family in the trying months past. We approached the ... court as a last resort—having failed to cope with our problem
ourselves. Every individual with whom we came into contact
... devoted their time and extended genuine sympathy and
understanding to us. Each of these individuals made every
effort to help with the ultimate solution of the problem on a
personal, warm basis. At this point, the problem is not re-
solved; but thanks to your accumulative efforts is on its way
to a possible satisfactory solution.

V. CONCLUSION

Certainly intra-family conflict cuts across all class lines,
but the people who appear in court as the result of intra-
family violence are not representative of society as a whole.
With few exceptions they are poor, uneducated and unsophisti-
cated.\textsuperscript{175} This under-representation may be ascribed to a num-
ber of reasons. Some people faced with an unsatisfactory mar-
rriage simply do not resort to violence; they are able to bear the
unhappiness in silence, get a divorce, or seek outside unofficial
help on their own. Others who suffer violence fear the opprobium
of a court appearance or the loss of a partner's income or pres-
ence more than the continued unhappiness. Still others recog-

\textsuperscript{174} This judge appeared to rely very heavily on his clerk's guidance
even, as here, to the disposition of a particular case. A clerk of course
may remain in the same court for years whereas a judge may be there
for only a month at a time.

\textsuperscript{175} Cf. Parnas, \textit{The Police Response to the Domestic Disturbance},
1967 \textit{Wis. L. Rev.} 91\textsuperscript{4}, 91\textsuperscript{5}.
nize the general futility of judicial intervention as a solution to the underlying problems.

But at some point, for some people, the tensions and frustrations of life erupt into violence directed against the spouse, and fear for bodily safety and lack of knowledge as to where else to turn causes the victim to call the police—the most visible and immediate resource. While police are familiar with such problems, the solutions they offer are only temporary. When the violence is so marked or so chronic that police adjustment is useless, resort is had, at the initiative of the police or the parties themselves, to the courts.

The courts themselves are little better equipped than the police to assert their traditional roles with any hope of lasting success. The trial is designed to determine facts and to apply the law to those facts. In most cases of intra-family violence, the facts are not seriously disputed, though varying explanations and counter-allegations are often advanced by the parties. The law, literally read, is even clearer—the punishment for assault and battery is so many days or so many dollars, even though the court has a general discretionary power of probation or suspension of sentence. Furthermore, the judicial process operates best in an atmosphere of unhurried presentation and considered deliberation, an atmosphere precluded by the sheer number of intra-family violence cases. The traditional judicial process is neither an effective solution nor a deterrent, and in fact can aggravate an inflamed situation by imposition of a fine against already depleted finances, or a jail sentence which removes whatever earning capacity or family stability which exists.

The courts, to some extent, realize the shortcomings of the traditional approach. As the above studies show, specialized procedures for dealing with intra-family disputes exist nearly everywhere. Furthermore, fines or imprisonment are rarely invoked except in the most extreme situations. Instead, the parties are referred, with varying degrees of diligence, to extra-judicial agencies such as marriage counselors, social workers, and psychologists. In those instances where, largely through a shortage of available remedial resources, the court is compelled to make a disposition itself, it resorts to admittedly unenforceable

176. Id. at 956.
177. Id. at 937-42.
178. See Parnas, supra note 142, at 176-81.
sentences, like Chicago's sham peace bond, or to a somewhat more laudable but nonetheless coercive device such as New York's order of protection.

If there is general agreement on the inadequacy of the traditional judicial resolution of such disputes, why is there such a variance in the means employed to treat the underlying causes? To an extent, of course, reasonable minds may differ on the appropriate judicial action—whether, for example, New York's "sift desk" procedure is more advisable because it places every case in the hands of a trained worker, or whether Chicago's peace bond is more effective because it gives the impression of a legally enforceable "sentence." But to consign so complex a problem to such a theory is to grossly ignore the problem. Nor is it sufficient to mournfully agree that something is indeed seriously wrong and something indeed must be done. That is the first step, not the last.

To formulate a workable theory of the causes of intra-family violence—let alone a solution to it—is far beyond the scope of the present research and discussion. It does seem clear, however, that the persons and institutions best equipped to deal with these problems are not those trained primarily in the law, nor even in the prevention and detection of crime, but those trained in the workings of the mind itself and in the conflicts peculiar to marriage. To be sure, it would be undesirable to remove the courts entirely from the area of intra-family disputes, for assaults and other manifestations of violence are still crimes, unique though their causes may be. Furthermore, it is probably impossible to remove the police from the process, since they will in all likelihood continue to be the first extra-family response to intra-family violence. But no lasting solution can be effected without bringing the counselors, social workers, psychologists and psychiatrists into play as fully and as early as possible. Ideally, of course, they should become involved long before outbreaks of violence occur. But when they are not, and the court is forced to deal with these incidents, how successful has its response been?

In a word, not very. The increasing rate of domestic disputes indicates that past judicial response (indeed, response of all kinds) has been unsatisfactory. And yet one should hasten to add that this is by no means the fault of the courts alone. They are ill-suited to the task of permanently resolving such disputes, and they know it. Furthermore, their traditional role offers scant room for improvement. The most successful re-
response they can make is to insure that the disputes resulting in judicial attention are securely placed in the hands of resources capable of solving the problem. At the very least, the continuing presence of a probation officer or other trained worker can be a possible deterrent to future violence. This, however, is essentially a negative device where positive devices are needed. Discussion, understanding, advice and reassurance are far more likely to result not only in deterrence but in amelioration of the underlying causes of violence. If persons trained in this area are to be able to accomplish their goals, the present decentralization trend of social agencies must be encouraged and greater resources provided. Yet the universal and perennial shortage of qualified personnel and sufficient funds stifles any such effort.

The best solution to the problem, then, lies not in looking to the courts to resolve these conflicts, but in providing the agencies most qualified to apply expertise—or at least experience—with adequate manpower and finances to do so. Commitment to such a course requires not the support of the courts or the agencies, for they are all too aware of the present shortcomings. It requires the support of state legislatures to provide the agencies not only a greater role in the judicial process itself, but also the funds to enable them to increase their field personnel and provide them with the training and resources necessary to carry out their tasks. Only when the agencies can provide continuing aid to domestic disputants and more individualized attention to the underlying causes of violence can we expect a reduction in intra-family violence. In short, then, unless society is willing to commit itself to helping those most able to help, we shall all stand indicted for our irresponsibility.

179. See generally Parnas, supra note 142.