Policing sexual assault

Jeanne Gregory and Sue Lees

ROUTLEDGE

Policing sexual assault

Since the 1970s, feminist campaigners have put pressure on governments to take the issue of male violence seriously. By focusing on research in Britain and other countries, *Policing Sexual Assault* traces the ways in which the criminal justice system has responded to feminist demands for improvements in service and access to justice for the victims of domestic and sexual violence. It includes the first survey of police recording practices of male rape and also presents a detailed account of the experiences of women complainants, their views of the police, the medical examination and court procedures. The link is made between the treatment of complainants and internal policies on the recruitment and promotion of women officers and the growing scandal of sexual harassment within the force. Also assessed are the role of the Crown Prosecution Service and factors associated with the dramatic fall in the conviction rate for rape.

Policing Sexual Assault draws on original research and other studies to develop insights into policing violence and presents the case for radical reform.

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Contents

Tables

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1 Introduction

During the 1980s and 1990s there has been a sea change in the recognition of male violence against women and children, not only in Britain, but in many other parts of the world. In the 1970s women in North America, Australia and Britain set up crisis centres and refuges where women could escape from violence by their partners, husbands or fathers. Feminists began a long-running campaign to give women more protection from the police, the courts and the law. By the 1990s, important changes in police practices and a changed climate of opinion had encouraged an increasing number of women to report violence to the police. Policies on sexual harassment were developed by employers in both the public and private sectors and the last decade has seen a developing awareness on this issue and a proliferation of 'good practice' guidelines. This book charts some of these developments in relation to sexual assault on women (and some men), but reveals that we are still a long way from achieving what the Labour Party consultation document (1995) optimistically referred to as the elimination of domestic and sexual violence. Police practice is a crucial barometer of both the advances and limits of progress in this field.

The issue of violence against women is now on the agenda at an international level, both in the United Nations and the Council of Europe. In July 1997 UNICEF included in its annual Progress of Nations report a specific section on violence against women where progress is defined according to the degree of protection women have against discrimination and violence. In 1986 the European Parliament endorsed a wide-ranging report submitted by its Women's Committee on all aspects of violence against women (European Parliament 1986). The report included a number of recommendations concerning police practices: first, that police officers should be trained to deal with victims in a sympathetic, constructive and reassuring manner; second, that the police should inform the victim of the possibilities of obtaining assistance, practical and legal

advice, compensation from the offender and from the state; third, that the victim should be able to obtain information on the outcome of the police investigation (Joutsen 1987).

In 1994 the General Assembly of the Organization of American States adopted an Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Inter-American Development Bank has a project on the cost of violence against women. On a global level, the World Bank includes in its annual assessment of Gross National Product working time lost due to violence against women. The United Nations Declaration on the Elimination of Violence against Women was adopted in 1993 and the Declaration and Platform for Action at the UN Fourth World Conference on Women in Beijing in 1995 included 'violence' as one of twelve 'critical areas of concern' impeding women's advancement. As Rosalind Coward pointed out (*Guardian,* 24 July 1997), the feminist rhetoric being used is staggeringly bold. There is a new category of 'gender crime' to refer to such practices as bride burning,[1] domestic beatings and genital mutilation, which have previously been seen as isolated phenomena rather than acknowledged as the results of patriarchal dominance.

Child abuse has become an issue of public concern and a key media issue (see Skidmore 1995). UNICEF calculates that trafficking in children is the third most lucrative illegal trade in the world, after drugs and weapons, and is a multi-billion dollar business. It is estimated that 5,000 children work in the sex trade in Britain and are the victims of family abuse, career paedophiles, prostitution, sex tourism and pornography. It is also estimated that there are 30,000 paedophiles organized in groups throughout Europe linked through the Internet and on the mailing lists of pornographic magazines. In Belgium, the arrest of a paedophile gang, who had abducted teenage girls and allowed two 8 year olds to starve to death in an underground prison, led to suspicion of police involvement in the atrocities (see Bates 1996).

This book investigates the impact of a recent concerted effort in Britain to change the way in which women (and more recently, men) reporting sexual attacks are dealt with by the front line agents for the criminal justice system, the police. It is one of the first studies of the reporting of sexual assault since the creation of the Crown Prosecution Service (CPS) in England and Wales in 1986. The CPS assumed the main responsibility for the prosecution of criminal cases, a task formerly undertaken by the police. (In Scotland there has always been an independent prosecutor, the Procurator Fiscal.) The change coincides with a steady fall in the conviction rate for rape and attempted rape in England and Wales from 24 per cent of reported cases in 1985 to 10 per cent in 1996 (Home

Office Statistics). The arrest rate for cases of domestic violence remains at 14 per cent with even fewer cases proceeding to prosecution (Labour Party 1995). Unfortunately research into the prosecution process and into court procedures and sentencing practices in cases involving male violence is sparse.

There is, however, a growing body of research on the issue of police responses to domestic violence and sexual assault (see Faragher 1985, Edwards 1989, Bourlet 1990, Mullender 1996, Temkin 1997a). It is clear that the police have a crucial role to play in any attempt to implement a strategy designed to close the gap between the official condemnation of male violence as enshrined in the law and the realities of male violence as condoned in practice. Yet at the same time the police reflect the status quo; predominantly white, male and conservative in outlook; they are themselves part of a macho culture which is profoundly anti-feminist. Any attempts to introduce radical changes in the way in which cases of male violence are handled by the police must therefore confront two major obstacles: the first is the 'enemy within', i.e. resistance from police culture; the second is the 'enemy without', which is the refusal of the other major players in the criminal justice system, from the Crown Prosecution Service to the Court of Appeal, to accept that a fundamentally new approach to the problem of male violence is needed.

Police forces under attack

Police forces in England and Wales have found themselves under severe attack in recent years from a number of different quarters. They stand accused of racism in their dealings with black and minority ethnic communities and of sexism in their dealings with women, particularly those reporting crimes involving male violence. Additionally, they have been subjected to a range of criticisms which, when considered together, appear to be making contradictory demands on them. On the one hand, falling rates of detection and conviction across a range of serious crimes give rise to the belief that crime is spiralling out of police control; on the other hand, there is incontrovertible evidence that the police are prepared to take short cuts in order to secure a conviction, particularly where public outrage demands a quick result. The long-running investigation into the techniques used by the West Midlands Serious Crime Squad to obtain confessions has seriously shaken public confidence in the integrity of the police service. The most spectacular miscarriages of justice, such as the Guildford Four, the Birmingham Six, the Maguire Seven, the Broadwater Farm Three and the Bridgewater

Three sent shock waves reverberating throughout the criminal justice system (Rose 1996a).

In relation to rape and sexual assault, the police stand accused of employing harsh methods of interrogation on women reporting such attacks, on the assumption that they might be making false allegations. In 1982, the Thames Valley Police Force was pleased to allow such an interrogation to be shown on BBC television as part of a documentary series on police work, confident that their professionalism would be applauded. They were completely taken aback by the public outcry that followed, with the *Guardian* describing the interview as a display of 'unmitigated toughness' and 'low-key brutality' (quoted in Scott and Dickens 1989). This single incident provided the impetus to reform the procedures by which violence against women is policed, at a time of rapidly changing attitudes towards the treatment of women. The rediscovery of child sexual abuse in Cleveland and the subsequent furore resulted in a re-examination of children's experiences of the criminal justice system.

However, as Radford and Stanko point out (1996) the changes are likely to have more to do with the influences of North American police practices in managing inner-city riots than with a desire to combat violence against women and children. They argue that in shifting the focus to crime against women, the police were adopting the mantle of protectors of women and children and attempting to 'renegotiate some consensus in the inner city' (ibid. 70, see also Sim *et al.* 1987). Radford and Stanko review attempts by North American feminists to take class action law suits against entire police forces so that failure to take action can cost the police dearly (Ferraro 1989).

In later chapters we present the findings of our own research, designed to contribute to this process of analysis and policy formation. Here we give an account of some of the earlier studies which turned the spotlight on police policies and practices in relation to crimes of male violence.

Improving service delivery

The Metropolitan Police took the criticisms of the investigation techniques, as demonstrated by the Thames Valley Police, very much to heart and put in train a series of measures designed to improve service delivery to women reporting rape and sexual assault. A 1983 Home Office circular (25/83) issued to chief constables was designed to ensure that women reporting sexual attacks would be treated with tact and sympathy

and in 1984 the Women's National Commission (WNC) established a working group on violence against women in order to monitor these developments and to make further recommendations for change. Their report *Violence Against Women* (WNC 1985) showed that police forces across England and Wales were beginning to respond to the new policy guidelines but that much remained to be done, particularly with regard to police training. Another major area of concern was the shortage of women police officers to conduct interviews with complainants and of women doctors to undertake medical examinations, despite the expressed preference of many complainants for their cases to be dealt with by women professionals.

In relation to domestic violence, the report revealed that police officers were frequently reluctant to intervene in domestic disputes or did so in a judgmental way, often siding with the man. The need for training was again emphasized, together with a recommendation that the law be changed to ensure that rape within marriage was regarded as a crime in all circumstances. The report recommended that the Home Secretary issue a further circular, focusing particularly on the question of training. With the publication of the report came a commitment by the Metropolitan Police to make further improvements in relation to sexual assault cases, including training for detective inspectors to give them some understanding of rape trauma syndrome (see Chapter 6) and the establishment of rape examination suites where complainants could be medically examined in comfortable surroundings (Metropolitan Police press release, February 1985, reprinted in WNC 1985). These initiatives were reinforced by Home Office circular 69/86 which called for new police training inputs on rape and sexual assault, the appointment of more women officers and better facilities for medical examinations.

In collecting evidence for their report, the WNC focused exclusively on experiences and policy developments in England and Wales and yet some of the pioneering research on the issue of rape and sexual assault has occurred under the auspices of the Scottish Office. The path-breaking study by Chambers and Millar, *Investigating Sexual Assault,* was published in 1983. Based on interviews with 70 women reporting rape or sexual assault, the study found that the majority of complainants were critical of 'the unsympathetic and tactless manner' with which the police conducted their interviews (ibid. 94). The researchers pointed out that the skills 'appropriate for interrogating offenders are not appropriate for interviewing sexual assault complainers or other witnesses' (ibid. 131). The sceptical approach adopted by the police meant that complainants were often discouraged from telling their full story and would even

elaborate or distort what actually happened in a desperate effort to be believed. This merely reinforced police scepticism and consolidated their view that women make false allegations. In emphasizing the need for police training in interviewing techniques, Chambers and Millar insist that the goals of apprehending the offender and of dealing sympathetically with complainants are not in conflict. On the contrary, a strategy of putting the complainant's well-being first and foremost would actually benefit the progress of the case and increase the likelihood of a successful outcome.

Reporting sexual assault

A number of studies have indicated that the proportion of rapes reported is very low. A student union survey at Cambridge University in 1994 found that one in five of the 1,500 students questioned reported that they had been victims of rape or attempted rape and one in nine that they had been raped; only one in fifty had told the police (BBC 2 *Public Eye* 1992). Another student union survey of 2,000 women at Oxford Brookes University revealed that 90 per cent of women who had never been sexually assaulted thought that they would report it to the police, yet in fact only 6 per cent of those who had been attacked had in fact reported it. When women were asked why they did not report, they said they feared an unsympathetic response from the police and had little faith in the judicial system (Faizey 1994).

Liz Kelly, who undertook a detailed study of women's experiences of sexual violence, pointed out that for women to identify themselves as victims or survivors of sexual violence, they must first define what has happened to them as lying outside the normal, as abusive. In order to consider reporting it to the police, they would need themselves to perceive the behaviour as a crime. The sixty women who participated in her research were volunteers, most of whom came forward as a result of a series of talks on sexual violence she gave to a range of different women's groups. She asked them about their experiences of various forms of sexual violence, including threats of violence, sexual harassment, sexual assault, obscene telephone calls, flashing, domestic violence, rape and incest. The incidence ranged from 100 per cent in the case of threats of violence to 22 per cent in the case of incest. Overall, less than 1 per cent of the events documented during the research were reported to the police and only five men were charged with offences. Low levels of reporting and low levels of police action ranged across the entire spectrum of offences. For example, 76 incidents

of flashing were recalled by 30 of the women; 4 of these incidents were reported and no man was charged with an offence. Twenty-eight of the women had been raped, 6 within marriage, and only 8 of these cases had been reported to the police. Half of these were dropped (including two marital rapes), two women withdrew their complaints after hours of interrogation and two cases went to court; neither woman was informed of the outcome (Kelly 1988, chapter 4).

These findings confirm that even when women did perceive male violence as a crime, they placed little reliance on the police to offer them effective protection. Similarly, in the *Violence Against Women—Women Speak Out* survey conducted in Wandsworth between September 1983 and August 1984, fewer than one-quarter of the incidents of male violence experienced by the 314 women who participated were reported to the police. The reasons for not reporting given most often were that the women believed the police were not interested in 'routine' sexual and racial harassment and that they could not or would not take action; or they expected the police to be unpleasant or unsympathetic (Radford 1987). The women in Kelly's survey had expressed very similar sentiments (Kelly 1988). There is some evidence that black women may be more likely to report domestic violence to the police. This could reflect a higher rate of victimization or could be due to other reasons (see Chapter 4).

Recording sexual assault

The reluctance of many women to report sexual attacks to the police is compounded by the falling away of the majority of the cases that are reported at various stages in the criminal justice process, resulting in very low conviction rates.

It is impossible to know with any degree of certainty how many sexual attacks take place in Britain each year. Estimates vary according to the methodology employed: on the one hand, the British Crime Surveys, involving interviews with people in their own homes, uncover almost no reports of rape or sexual assault; on the other hand, a women's safety questionnaire, distributed to women in London at various public venues during the summer of 1982, found that of the women who responded, two in every five had experienced rape, attempted rape or another form of sexual assault at least once (Hall 1985). It could be argued that the methodology used, in sharp contrast to that used by the British Crime surveys, could lead to an overestimation of the incidence of rape, insofar as women who have been attacked may be more likely to respond

(although many more may feel too traumatized to take part), but the findings in relation to the proportion of the women who subsequently reported the attack to the police are incontrovertible. Excluding the women who had been raped by their husbands (as this was in most cases not considered a crime in 1982), only 8 per cent of the women reporting rape to the researchers had reported it to the police; for sexual assaults, the figure was 18 per cent. When the women who had not reported to the police were asked to give reasons for this, 72 per cent replied that they believed the police would be unhelpful or unsympathetic; when women reporting rape were considered separately, this figure rose to 79 per cent (Hall 1985).

According to Home Office statistics, the number of cases of rape and sexual assault reported to the police in England and Wales has trebled during the last ten years. This may be due to an actual increase in the number of these crimes or to a greater willingness on the part of those who have been attacked to come forward, in the expectation that their complaint will be handled more sympathetically in the wake of the new policies and procedures. It may also be due in part to the new procedures themselves, particularly the tightening of the 'no criming' rules. This refers to the police practice of not recording some of the crimes reported to them, so that they never appear in the official statistics at all. According to earlier studies, levels of 'no criming' were particularly high in relation to reports of rape and sexual assault and astronomically high in cases of domestic violence.

In a study involving six English counties, Richard Wright found that 24 per cent of reports of rape and attempted rape were 'no crimed' (Wright 1984) and in the Scottish Office study, the 'no crime' figure was 22 per cent (Chambers and Millar 1983). The Metropolitan Police review of procedures sought to ensure that from 1985 allegations of rape and sexual assault would be 'no crimed' only when they were shown to be false or malicious. A Home Office study of two London Boroughs (Lambeth and Islington) was able to measure the impact of this policy change by examining the attrition between reporting and recording in 1984 and in 1986 (Smith 1989a). The levels of 'no criming' revealed in this study were extremely high, but there was a marked decline during the two year period, so that the proportion of cases 'no crimed' fell from 61 per cent in 1984 to 38 per cent in 1986. The apparent increase in rape during this period was entirely due to the changes in recording practice, as the number of rapes reported actually fell slightly during the two years. Even so, the researchers found a number of cases 'no crimed' on the basis of the woman withdrawing her complaint, although there was no evidence that

the allegation had been false. In other words, police officers were still not complying fully with the advice given (Smith 1989a).

A nationwide Home Office study conducted in the second quarter of 1985 found that a quarter of the cases were 'no crimed' (Grace *et al.* 1992). However, the sample excluded cases 'no crimed' during the first month after the date of reporting and so underestimated the extent of 'no criming'. The different methodologies employed and the different geographical coverage of these various studies make direct comparison difficult, but it seems clear that by the mid 1980s 'no criming' rates remained high despite the policy changes and that further measures were required, together with a careful monitoring of police recording practices. The 1986 Home Office circular already referred to above (circular 69/86) recommended that complaints of rape and serious sexual assault should not be 'no crimed' unless there was a retraction of the complaint and an admission of fabrication by the complainant. This policy has subsequently been reinforced in a series of force orders. For example, in the Metropolitan Police Force (the Met.) serious offences against adults can only be 'no crimed' if 'there are substantial indications that the allegation is actually false' (Force Order CR 209/90/104(T)12). Our own research project, discussed in detail in subsequent chapters, was able to measure the impact of some of these more recent developments.

Policing domestic violence

As domestic and sexual violence often occur together, it is impossible to provide a full assessment of police practices in relation to sexual assault without also considering the police response to domestic violence. If the rates of 'no criming' suggested that the police were not taking reports of rape and sexual assault seriously, then the extremely high rates of 'no criming' uncovered by Susan Edwards in her study of domestic violence gave even greater cause for concern, as they indicated that violence occurring in the private sphere between members of the same family or household was treated even more casually. Her research, undertaken in two police stations within the Metropolitan Police area (Hounslow and Holloway) and covering a six-month period during 1984 to 1985, found that out of 773 reported cases of domestic violence, a crime report was made in only 93, an incident report in a further 73 and several more were written up in the occurrence book. The use of this last category usually meant that further action was avoided. Of the 93 cases, 83 per cent were subsequently 'no crimed'; two-thirds of the 73 'incidents' were recorded

as common assault and the victim advised to prosecute privately (Edwards 1989, chapter 4).

The author of the study found that the police tended to divert cases away from criminalization by avoiding making arrests, by referring parties to other agencies and by limiting their own involvement to stopping any violence actually in progress when they arrived. Of all the calls from the public in the domestic cases included in the study, 70 per cent were recorded as requiring 'no call for police action' and this formula was applied across a range of cases, including particularly difficult disputes. In 1986, the Met. produced their own report on domestic violence (Metropolitan Police 1986a) which, while not addressing the 'no criming' issue directly, did make a number of recommendations concerning the way that domestic violence was recorded and handled. In 1987 new guidelines were produced, giving a clear definition of domestic violence and this was followed by a force order emphasizing the need to improve training and reporting procedures, arrests and support to victims, stating unequivocally that 'an assault which occurs in the home is as much a criminal act as one which occurs in the street' (Edwards 1989:199–200).

The domestic violence literature generally has documented how domestic cases are treated as 'rubbish' work by the police, who avoid arresting assaultive partners (McConville *et al.* 1991). Tony Faragher (1985) carried out one of the first observational studies. He obtained permission from the Staffordshire Police Force to observe their work and was on the scene of twenty-six domestic disputes. Not all the cases involved actual assault, but ten contained an infringement of the legal code, which could have formed the basis for a charge. Five of these involved assault, two were breaches of injunctions and the remaining three involved damage and/or theft by ex-husbands or ex-boyfriends. Of those cases where threats had been made against the woman's life, only 20 per cent saw an arrest made, and in cases where there was severe bruising the arrest rate was 15 per cent. Faragher concluded that the police were ineffective in enforcing injunctions and in assisting women householders to enforce them.

The police assumed that women would fail to co-operate in legal proceedings and would inevitably withdraw charges. However, this belief was not matched by the frequency with which this occurred in practice. Faragher concluded that 'the only way in which this low level of withdrawal can be accounted for is that the police were extremely selective about who they sponsor to take legal action'. This was confirmed by observation at the scene of 'domestics' where women were often asked if they really wanted to take action and were given time to 'think it over'

in the belief that an 'unemotional' decision made later would be more realistic (Faragher 1985:117).

In effect, the findings revealed that the police did not believe they should be concerned with the 'private domain' which had no public order implications. Reiner too found that domestic disputes, along with traffic control, were seen as frustrating 'because of their apparent uselessness from the standpoint of a specific notion of real police work' (Reiner 1978:178). Faragher found that the focus was on maintaining public order rather than on the needs of the women complainants. He concluded that there was an urgent need for the area of work to be given higher status and for the introduction of training.

Police policy initiatives on domestic violence have only been in place nationally since 1990 in the UK (see Cromack 1995:188) despite the numerous studies drawing attention to the shortcomings of police practice in this area. In 1990 an inter-agency working party was established to investigate domestic violence; in 1992 it produced a report containing recommendations on the co-ordination and extension of existing services. In August 1990 the Home Secretary announced that a higher priority would in future be given to domestic violence and that it would no longer be dismissed as not worthy of police time (Wolmar 1990). National guidelines were issued by the Home Office (circular 60/1990) recommending that all police officers should 'regard as their over-riding priority the protection of the victim and the apprehension of the offender'. The circular urged police forces to keep accurate records, enforce the criminal law and offer sympathetic treatment and support to victims. In the wake of these guidelines, specialized domestic violence units were established in some areas, enabling non-uniformed officers to follow up cases and co-ordinate services.

There is conflicting evidence with regard to how much police record keeping and general response to domestic violence has improved overall. Home Office research (Grace 1995) found that while nearly all police forces had formulated policies on domestic violence, emphasizing the importance of arresting the perpetrator, women's experiences of uniformed police were very mixed and in practice assailants were rarely arrested; for example the arrest rates were 13 per cent in Manchester, 18 per cent in Northumbria and 24 per cent in West Yorkshire. Over the past ten years, various home secretaries, the police, the CPS and the courts have all insisted that violent domestic assaults should be treated as seriously as crimes against strangers in the street. In practice, women subjected to violence are still given little protection and courts persist in treating offenders leniently. The myth that domestic assaults are not as serious as assaults by strangers is contested by the latest British Crime

Survey (1996) which shows that on average domestic assaults have more serious consequences than non-domestic ones. A total of 69 per cent of domestic assaults result in injuries compared with 41 per cent for assaults on strangers; 'trivial' domestic attacks are very rarely reported.

In some areas, there is evidence of improvements in police practice, and Domestic Violence Units (DVUs) staffed by non-uniformed police officers provide some essential support for victims. Research suggests that police practice has improved in some areas but not in others. Hanmer and Saunders (1990) reported greater satisfaction with police treatment after the introduction of DVUs in West Yorkshire and Morley and Mullender (1994) found that women generally preferred dealing with the non-uniformed DVU officers. In her Islington study (1993), Jayne Mooney found that women who had sought help from the police since the implementation of the new policies were more satisfied with the treatment they received than were women who had been to the police prior to the policy changes. They reported that the police officers running the DVUs were supportive and helpful, but some women had difficulties getting in touch with the officers as telephone lines were constantly engaged; when police were called to an incident, response times were too slow and, apart from referring the woman to the DVU, the police still took little action at the scene. As Kelly *et al.* (1998) point out, it is not the role of DVUs to respond to domestic violence calls; in some cases officers do investigative work and help to develop local policies and practices, but mostly they provide various forms of support for complainants and keep records of assaults that have been reported. On the issue of record keeping, Grace (1995) found that many forces had problems compiling accurate records due no doubt to insufficient funding.

Little research has been conducted into the experience of black and ethnic minority women. Amina Mama's study (1989) is an exception. She undertook a study of women who had experienced violence in the home and highlighted three major areas of concern. First, she drew attention to the reluctance of black women to call in the police, even when serious and even life-threatening crimes were being committed. (However, this is contradicted by more recent studies which suggest that some black women are more likely to contact the police than white women as we shall see in Chapter 4.) Second, she identified a reluctance on the part of the police to enforce the law when they were called in. Third, she found examples of the police adding insult to injury by themselves behaving in an abusive manner towards the women. Despite the extreme violence suffered by most of the women interviewed, only a few had called the police on their own account. In many cases the call was made by someone else on their behalf.

The researchers point to the divided loyalties experienced by black women, particularly if they are in relationships with men whom they know to have experienced police harassment in the past. They refer to cases in which being called to the scene of domestic violence was used by the police as an excuse for assaulting a black man and cases in which the whole affair turned into an immigration investigation. A solicitor interviewed during the course of the research revealed that in some of her cases the police arrested the woman, pending inquiries into her immigration status (Mama 1989:177). The researchers conclude that police responses were very mixed, ranging from being helpful and supportive, for example making contact with black women's centres or refuges, to placing the woman in even greater danger by being unsympathetic or even abusive.[2] The researchers emphasized the need for police training to include an understanding of racism and the need for better legal advice and support for black women to enable them to escape from violent situations.

An evaluation of domestic violence units by Cromack (1995), based on research in Hull, found little evidence of improvement in police practice since new policies had been introduced. She looked in particular at the police response to a pro-active arrest policy and concluded that the Home Office circular had as yet had little effect. Officers thought that it was a waste of time to prepare documentation if the victim was uncertain as to whether or not to proceed; arrest of offenders was generally avoided; officers found it hard to comprehend why women stayed in violent relationships and there was little awareness of how to monitor and follow up repeat victimization. Cromack's overall conclusion was that the problem was 'an underlying police culture that tends towards the belief that domestic violence is a private family matter and more appropriately a subject for civil law' (1995: 197). Research undertaken on behalf of the *Dispatches* television programme (1998) found that many domestic violence units were only employing one officer and were run on a shoe string; some police divisions had not established units at all.

In their evaluation report on the Domestic Violence Matters project carried out in two London boroughs, Liz Kelly *et al.* (1998) found that in the six months immediately prior to the setting up of the project in 1993 almost two-thirds of domestic violence incidents were not recorded as crimes and of the total arrests, charges were laid in less than half (47 per cent). This was just over one-sixth of the offences which were crimed. During the period covered by the pilot study, a higher proportion of cases were recorded as crimes but the findings on the rate of arrests were inconclusive.

Domestic violence in the courts

The Crown Prosecution Service discontinues cases more often in domestic than non-domestic cases. The Home Affairs Select Committee 1993 explained this in the following terms:

> The CPS is not immune to the difficulties of balancing one aspect of the public interest, which rightly condemns personal violence in any form, with another strand of public interest which recognizes the benefit of preserving the family unit, wherever possible.

This policy has serious consequences. Cretney and Davis (1996, 1997) carried out an extensive study of the police and CPS handling of domestic violence cases in Avon and Somerset focusing particularly on the way the police, CPS and courts 'manage' the reluctant victim and on the compellability provision whereby a wife can now be compelled to give evidence against her husband (see Police and Criminal Evidence Act 1984, Section 80). They found no improvement in the prosecution process. Defence lawyers who sought to have the charges dropped were likely to paint a picture of restored domestic harmony, or alternatively, they might suggest that the accusation is made by a woman scorned or by a jealous or alcoholic woman. A variety of tactics were employed by defence barristers to divert attention from the violence. Mild language was used when referring to the degree of disharmony between the woman and her assailant and strong language when referring to the character of the complainant. Cretney and Davis point to the shortcomings of the adversarial process, whereby only the bare outline of the incident is presented in court even though it represents the culmination of years of violence. They analyzed why sentences were so low for offences involving such serious levels of violence and concluded that what crucially determined sentence length was not the gravity of the offence, but whether or not the defendant was still seen as part of 'the couple'. Where the relationship had ended, offenders were much more likely to go to prison; where it was said that the two were still a 'couple', the offender would receive a fine or a conditional discharge. Some magistrates defended lenient sentences on the grounds that they did not want to punish the victim as well as the offender. However, such practices acted as an incentive for the defence to present the court with a misleading picture of domestic harmony and resulted in high levels of dissatisfaction among complainants. Many of the women interviewed had hoped that their assailant would receive some kind of treatment to help him control his

violent behaviour. Most assault victims concluded that the court was not a place where their problems could be satisfactorily addressed.

Legislative developments

Police powers and law relating to domestic violence

During the 1980s, police powers were increased, particularly in relation to public order offences. The Police and Criminal Evidence Act (PACE) 1984 provides for the 'stop and search' of persons or vehicles if the officer has 'reasonable grounds' for suspecting that a crime has been committed (section 1). An officer may also enter premises without a warrant for the purposes of 'saving life or limb' (section 17) and can make an arrest where necessary 'to protect a child or other vulnerable person from the relevant person' (section 25). As Susan Edwards (1989) argued, potentially these powers could be used to protect women subjected to violence. Section 80 of PACE empowered the courts to compel a husband or wife to give evidence against the other spouse. If used insensitively, however, it could place women in even greater danger from violent husbands while also incurring the wrath of the court if the women refused to give evidence. However, research by Cretney and Davis (1996) found that the compellability provision was almost never used. Very occasionally the non-married have been compelled to give evidence as epitomized by the case of Michelle Renshaw, committed to prison for refusing to give evidence against the boyfriend charged with attacking her. Edwards also argues that the cumulative effect of PACE, public order, picketing and industrial relations legislation in recent years has been to prioritize crimes occurring in the public as opposed to the private sphere, to focus attention on civil disorder and street crime and away from less visible acts such as male violence against women.

The Family Law Act 1996 was intended to give greater protection to victims of domestic violence. It streamlined the processes for applying for civil injunctions and was aimed at ensuring that police powers of arrest are attached to the majority of such injunctions. In future, if injunctions are breached, abusers will increasingly face the sanctions of the criminal law.[3] The Act also made provision for protection orders to be available from a single court for both married women and cohabitees. It amended the Children Act 1989 by making it possible to exclude an abuser from the home through interim care orders or emergency protection orders. These orders are to be made if the court is reasonably satisfied that the exclusion would prevent the child from suffering significant harm

while enabling the caring parent to remain in the home and provide reasonable care (Radford 1996).

A particular area of concern is the trend for the courts to order contact to be made between violent fathers and their children after divorce or separation. The Children Act 1989, which came into effect in 1991, is based on the presumption that wherever possible children should retain contact with both parents. This reinforces the abuse of children and women through the legal presumption that parents should in almost all cases have contact with their children on divorce and separation, even when violence and abuse have occurred. In the case of violent fathers, this presumption has recently been challenged. A survey by the National Children's Home in 1997 highlighted the negative impact on children of violence perpetrated against their mothers. It concluded that steps towards greater intervention in relation to criminal law sanctions are being undermined by the Children Act because of its failure to acknowledge domestic violence. The supposed focus on the welfare of the child, defined in practice as contact with the absent male partner, operates to undermine the safety of women and children. Hester and Radford (1996) recommend a presumption of no contact in circumstances of domestic violence with the possibility of contact only if this can be arranged safely for both mother and child.

The situation for women faced with contact applications from violent fathers has become worse as they are now threatened with imprisonment if they refuse to comply (see Anderson 1997). In a case in January 1996, a woman from Newcastle was threatened with imprisonment for refusing to allow contact between her ex-husband and two children aged 9 and 7, although he had recently been released from prison following a six year sentence for raping and buggering her after a long history of violence towards her. In October 1996 Dawn Austin was imprisoned for contempt of court for obstructing contact between her ex-partner and two children. He had served a prison sentence for breaking her jaw and the court accepted when making the committal order that he had a history of serious violence (see *A v. N* (1997) 1 *Family Law Review* 533). Dawn Austin is a member of AMICA (Aid for Mothers Involved in Contact Cases), a network of women imprisoned or threatened with imprisonment for refusing contact in similar circumstances. It is significant that in the National Children's Home survey (1997) more than four out of five children were worried about domestic violence. The Rights of Women (ROW) pressure group set up a Best Interest Campaign with the aim of establishing the legal principle against violent and abusive parents having contact with their children on divorce or separation unless

contact can be proven to be safe for any family member who might be affected.

Child abuse and the law

There have been four major child abuse scandals in England and Wales in the 1980s and early 1990s in Leeds, Cleveland, the Orkneys and Wales. The first occurred in Leeds where seventeen sex rings were uncovered, involving twenty-one men who were ultimately prosecuted. More than two thousand children aged between 8 and 16 were involved. According to Campbell (1997), 'it was one of the biggest rings ever discovered in Britain and consumed the working, waking and sometimes sleeping lives of the police team involving five members for two years' (ibid. 105). It led to the creation of three specialist child protection units. In Cleveland, the media image of 121 children being snatched from their homes led to the Butler Schloss enquiry, which concluded that there was no reason to doubt the medical diagnosis (Campbell 1997). In 1992 the National Society for the Prevention of Cruelty to Children published a report on *Child Sexual Abuse Trends in England and Wales* which investigated 10,000 children on their 'at risk' register. In the same year Lord Clyde's report of the inquiry into the Orkneys condemned the removal of children from their homes in dawn raids following suspicion of satanic abuse and called for procedures and guidelines on sexual abuse to be developed.

The most shocking report of a child abuse scandal in Britain occurred in 1997, when a tribunal of inquiry into child abuse in Chester heard 300 adult survivors of alleged sexual abuse bear witness against 148 adults, mainly professional child care staff who had sexually assaulted them as children. The Utting report (1997) presents a picture of runaway children often returned to their abusers; many were not believed and were subjected to bullying and intimidation. The police played a central role and indeed initiated the investigation in Wales.

Growing public awareness of the threat that paedophiles pose to children in view of the very high rates of recidivism has become an issue both in Britain and the United States. Police stations in the US publicly display lists of convicted paedophiles and when an offender is released the police have an obligation to inform neighbours. In Britain the police can now use their discretion as to whether or not neighbours should be informed. The Sexual Offenders Act 1997 creates a national register of people convicted of sexual crimes and makes it compulsory for all