

BREAKING THE VICIOUS CIRCLE: THE LAWYER'S ROLE

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INTRODUCTION

The voice on the telephone may sound pleading and desperate, uncertain and confused, or angry and determined. Regardless of the tone of the request, however, the substance of each one is depressingly similar: "My husband beat me up. Somebody told me I should call up and get a restraining order against him." Variations of this plea for assistance are received routinely in each of the six offices of Vermont Legal Aid, Inc., often on a daily basis. This constant exposure to domestic violence in rural communities convinced Legal Aid staff and trustees that battering complaints must be treated as high priority cases requiring emergency intervention.¹

Many members of the private bar also recognize the plight of the battered woman and agree to provide crisis assistance, even though the victim may be unable to pay the fee. In order to provide effective counsel to the victim of violence, however, the attorney must be familiar with more than the legal options, many of which have recently changed.² The attorney should also understand something about the cultural causes and effects of the battering syndrome; he or she should develop a working relationship with those in the community who may provide counselling and support to battered clients; and, perhaps most importantly, should strive to demonstrate patience and compassion in dealing with battered clients, who often have been systematically brutalized in ways that defy comprehension.

This article will examine some of the roots of family violence in our culture, describe the essential considerations to any attorney planning to represent abuse victims, and review recent changes in the legal remedies designed to prevent spouse abuse, with particular emphasis on the law in Vermont.

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1. Because of the overwhelming volume of requests for representation in domestic relations matters, Vermont Legal Aid can only accept these cases on an emergency basis. Thus, for example, uncontested divorces or those involving only property disputes are not accepted.

2. Legal avenues of relief have recently undergone change. For a discussion of these changes, see *infra*, note 27 and accompanying text.

I. THE SOCIAL PROBLEM OF DOMESTIC VIOLENCE

With the legal reform movements of the late 19th century, the previous tolerance for spousal abuse began to abate, at least insofar as it was explicitly allowed by law or implicitly sanctioned by the absence of prohibitions. Prior to that time, however, a man's right to beat his wife "for correctional purposes" was often taken for granted. The Napoleonic Code condoned wife-beating, stating that "[W]omen, like walnut trees, should be beaten every day."³ Blackstone, in 1763, explained the incorporation into English common law of the husband's authority to chastise his wife: "For, as he is to answer to her misbehaviors, the law thought it reasonable to entrust him with his power of restraining her by domestic chastisement."⁴ Today, physical violence against women in marriage or marriage-like relationships is illegal throughout the United States.⁵ Nonetheless, our response as a society to the still common practice of spousal abuse strongly reflects a cultural heritage passed down from a time when women were commonly viewed as their husband's property.

3. B. WARRIOR, *HOUSEWORKER'S HANDBOOK* 38 (1975).

4. Hilberman, *Overview: The 'Wifebeater's Wife' Reconsidered*, 137 *AM. J. PSYCHIATRY* 1336 (Nov. 1980), quoting *Dobash Wives Case*, appearing at *VICTIMOLOGY: AN INT'L J.* 426-42 (1977-78).

5. See, e.g., VT. STAT. ANN. tit. 13, § 1023 (1974), which states:

- (a) A person is guilty of simple assault if he:
- (1) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
 - (2) negligently causes bodily injury to another with a deadly weapon; or
 - (3) attempts by physical menace to put another in fear of imminent serious bodily injury.

See also, VT. STAT. ANN. tit. 13, § 1024 (1974):

- (a) A person is guilty of aggravated assault if he:
- (1) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
 - (2) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
 - (3) for a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the intended harm; or
 - (4) with intent to prevent a law enforcement officer from performing a lawful duty, he causes physical injury to any person.

See also, Aumer, *Battered Women: An Effective Response 2* (1979) (unpublished report prepared for Dept. of Corrections, St. Paul, Minn.).

Public anxiety over street violence has never seemed higher; only recently, however, have some researchers pointed out that violence of any type is as likely to take place in the home as elsewhere.⁶ Although we continue to consider the family as a sanctuary for our most cherished customs, traditions and hopes, it is difficult to reconcile this belief with estimates that violence may occur in 50 percent of American households.⁷ Too often, idealized conceptions of family life may cloud the vision of those who should be most attentive to the problems of violence in the home: law enforcement officers, mental health professionals, lawyers and judges. These are authority figures who have some power to dictate social attitudes concerning what constitutes acceptable behavior. Unfortunately, their willful refusal to acknowledge the pervasiveness of domestic violence only serves to perpetuate it.⁸

The notion of the inviolate privacy of the home, fundamentally linked to the concept of the sanctity of the family, further impedes us from recognizing the brutality that takes place behind many closed doors in our communities. Perhaps the saddest commentary on the attitude toward use of physical force within family relationships is an early judicial opinion which reflects the ambiguity surrounding this issue. In 1874, while ruling that husbands had no right to physically chastise their wives under any circumstances, the North Carolina Supreme Court offered the following dictum: "If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."⁹

The tendency to treat spousal abuse as a private matter continues to this day. In a test devised to assess the reaction of male bystanders to physical assaults involving both men and women, the following incidents were staged: a man attacking another man, a woman attacking another woman, and a man attacking a woman. In the first two cases, the male onlookers quickly intervened to protect the "victims," but when a man was beating a woman, no

6. Gelles & Strauss, *Family Experience and Public Support of the Death Penalty*, 45 *AM. J. OF ORTHO-PSYCHIATRY* 596-613 (1975).

7. L. WALKER, *THE BATTERED WOMAN* ix (1979), states that fifty percent of all American women will probably be battered at some point in their lives.

8. In some urban areas, the pattern of non-intervention by the police in domestic violence cases is so pronounced that class action suits seeking injunctive relief have been filed. See, e.g., *Bruno v. Codd*, 90 Misc.2d 1047, 396 N.Y.S.2d 974 (Sup. Ct. 1977).

9. *State v. Oliver*, 70 N.C. 60, 61-62 (1874).

one interfered. In explaining their inaction, the onlookers often stated, "Well, I thought it was his wife."¹⁰ Society's antipathy for scrutinizing the violent marriage is not lost on its victims. Battered women frequently perceive that their condition cannot be remedied because they despair of finding any external pressure which might be brought to bear on the abusive relationship, either to change it or to terminate it.

II. THE VICTIM OF DOMESTIC VIOLENCE

Until recent studies challenged prevailing assumptions, perhaps the most pernicious stereotype applied to the victim of domestic violence described her as a masochist who could only maintain a stable relationship if it was violent.¹¹ In part, this misconception undoubtedly arose from the observation that victims of violence, even after one or more attempts to leave their attacker, frequently remain in the abusive relationship. The lawyer giving counsel to an abuse victim must understand something of the complex set of physical and psychological factors which may prevent the client from leaving her abuser. Brusque instructions from professionals to the abused woman that their assistance depends on her ability to get and stay away from the violent relationship can reinforce the feelings of helplessness that ultimately prevent her from acting.

Although battering victims and their assailants come from all age, education, occupation and income groups, some generalizations can be drawn about relationships where battering is common. The men often have lower education levels than their wives. They may be unemployed or have low status jobs. In addition, victims report a high correlation between violence and alcohol use, although many also deny that alcohol was a cause of their beating. One researcher found that the victims she interviewed thought the causes of their beatings were, in order of importance: money problems, jealousy, bad temper, sex, children, household care, pregnancy and the assailant's job frustration.¹²

Both abusers and abuse victims have often experienced violence during childhood, either because they observed it between

10. L. Pogrebin, *Do Women Make Men Violent?* MS. (Nov. 1974).

11. Hilberman, *supra* note 4, at 1340.

12. Carlson, *Battered Women and Their Assailants*, SOCIAL WORK 455-60 (Nov. 1977); Gayford, *Wife Battering: A Preliminary Survey of 100 Cases*, BRIT. MED. J. 194-96 (Jan. 1975).

their parents or because they were victims themselves. Most of the women studied by Hilberman and Munson left home at an early age to escape violent fathers.¹³ Many became married or pregnant while still in their teens, often viewing pregnancy as the only way out of the family. In most cases, the husbands did not exhibit violent behavior until after marriage, when the wife found herself once again confined to a home racked by jealousy and violence.¹⁴

The frequency of domestic violence can range from the rare isolated beating to a regular pattern of daily abuse. Most often a husband will assault his wife with his hands or feet, slapping, punching or kicking her. The severity of the abuse may increase with time, involving weapons, strangulation, forced sex or assaults during pregnancy. Bruises and lacerations are the most common injuries, but fractures, subdural hematomas and detached retinas are also frequently reported. Outbursts of violent behavior can occur any time the male attacker does not get his way or feels the need to release anger. The abuser may justify his anger by citing some inadequacy in the performance of household duties or by fabricating accounts of his wife's seductive or unfaithful activities. Delusional jealous rage may reach such psychotic proportions that the wife's attempts to deny the accusations of infidelity can be extremely dangerous.¹⁵ After bad beatings, battered victims often try to leave their husbands. Of the 100 women interviewed by one researcher, all but 19 had left on more than one occasion; 36 had left more than four times.¹⁶

Dr. Lenore Walker calls this pattern the "battering cycle."¹⁷ She identifies three stages: 1) tension building when the woman can sense that the man is on edge and she tries in vain to avoid behavior that will set him off;¹⁸ 2) the explosion which occurs when the man no longer understands his anger and justifies losing control of it;¹⁹ and 3) an outpouring of love in the aftermath of a beating when the man fears the woman will leave him. The third stage often comes into play even if the woman temporarily leaves, because her husband searches her out to convince her that he will

13. Hilberman, *supra* note 4, at 1339 (citing 60 *Battered Women*, 2 *VICTIMOLOGY: AN INT'L J.* 460-71 (1977-78)).

14. Hilberman, *supra* note 4, at 1343.

15. Scott, *Battered Wives*, 125 *BRIT. J. OF PSYCHIATRY* 433 (1974).

16. Gayford, *supra* note 12, at 194-96.

17. WALKER, *supra* note 7, at 55.

18. *Id.* at 56-59.

19. *Id.* at 59-65.

never lose control again.²⁰ Especially if abuse is new to the relationship, the woman wants to hold on to her image of her husband as lover and friend. She is willing to be convinced that the violent outburst was an aberration and that her husband was "not himself." The husband may be extremely manipulative, urging her to understand how dependent on her he is, or how he will fall apart without her. These tactics are frequently successful. As one victim said:

It must be pointed out that while a husband can beat, slap, or threaten his wife, there are "good days." These days tend to wear away the effect of the beating. They tend to cause the wife to put aside the traumas and look to the good—first, because there is nothing else to do; second, because there is nowhere and no one to turn to; and third, because the defeat is the beating and the hope is that it will not happen again. A loving woman like myself always hopes that it will not happen again . . . until it becomes obvious after a third beating that there is no hope. That is when she turns outward for help to find an answer. When that help is denied, she either resigns herself to the situation she is in or pulls herself together and starts making plans for a future life that includes only herself and her children.²¹

Even when it is clear that the loving stage is temporary, and that the tension will build again to an explosion of violence, many women are unable to break away. Professor Richard Gelles believes that three major factors influence the likelihood that an abused woman will remain in a violent marriage:

1. The less severe and frequent the violence, the more likely the woman will stay.²²
2. The more abuse a woman suffered in childhood, the more likely she will stay.²³
3. The fewer her resources, the more likely she will stay.²⁴

While extremely serious beatings sometimes drive a victim finally to escape, the fear of such beatings may hold her immobile. The threat that he "will break every bone in her body" if she tries

20. *Id.* at 65-70.

21. D. MARTIN, *BATTERED WIVES* 4-5 (1975).

22. R. GELLES, *FAMILY VIOLENCE* 108 (1979).

23. *Id.* at 109.

24. *Id.*

to leave is credible to one who has suffered repeated beatings in the past. Her fear is compounded by the anxiety of having to ask for help from relatives, friends or social agencies; of exposing the shame of her helpless situation; and of wondering whether she will be denied or rejected. In all probability, she is financially dependent on her abuser.²⁵ If she has been out of the job market for some time, her skills may qualify her for such low paying jobs that she will be unable to support her children. The prospect of applying for welfare is another barrier to leaving. Benefits are inadequate, the welfare bureaucracy is intimidating, and her self-esteem could not stand the additional stigmatization.²⁶

Even when resources exist, a battered woman may simply be incapable of taking the necessary steps, on her own, to put a plan of escape into action. Systematic victimization can easily rob a woman of her self-confidence and motivation. She becomes passive. She comes to believe that nothing she does can possibly succeed, so the smallest activities become enormous tasks. Even the mundane process of making appointments for help may be overwhelming. As one victim said, "I had to make appointments but I wasn't even sure I could show up for them. Worst of all, it didn't seem like any of this was going to help."²⁷

III. THE LAWYER AND THE ABUSE VICTIM

If an abused woman has called an attorney for legal advice as to remedies that might help her escape a violent relationship, she has already taken an important step toward breaking out of the cycle of battering. The lawyer must understand that she is at a crucial juncture. Any indication to the client that she is even partially at fault for her predicament may shatter her potential trust, and leave her feeling more guilty and helpless than before. Until she can admit to someone that she has been victimized, without the fear of being criticized, the battered woman remains locked in the violent trap. If she senses understanding and caring from a professional, a victim may begin to develop the confidence to cope with her need to terminate the abusive situation.

Although it is important that the attorney convey a willing-

25. Gelles, *supra* note 6, at 104.

26. *Id.*

27. Aumer, *Battered Women: An Effective Response* 5 (1979) (unpublished report prepared for Dept. of Corrections, St. Paul, Minn.).

ness to be attentive and sympathetic to the client's circumstances, he or she should realize that other more appropriate resources may exist to assist a victim in confronting the need for change. In many communities, special crisis centers have sprung to life in response to the growing dimensions of domestic violence and needs of its victims. These centers are staffed by trained counsellors who specialize in encouraging battered women to believe that non-violent human relations are normal, not just a dream. In addition, such programs may provide shelter to women with no other place to turn, either through their own shelter projects or voluntary networks of "safe" homes.

The importance of providing battered women and their children with safe places to stay cannot be overemphasized. Leaving home is a major decision; deciding to remain away will be harder still. Safe shelter provides time and opportunity for considering the next steps. Most projects can only accommodate a limited number of women for short periods. This is often enough time, however, to lease another apartment, look for a job, apply for public assistance if necessary, or petition for judicial relief. Without the security of safe shelter, and the encouragement and assistance of concerned volunteers to help the woman to establish a separate existence, a lawyer's work in obtaining judicial protection may go for naught. Despite official sanctions denouncing her husband's behavior, fear and dependency can pull the victim back into the cycle of violence.

One Vermont Legal Aid office developed a cooperative working relationship with a women's crisis center which provides county-wide shelter and support services. This effort provides insight as to how legal advice can be effectively coordinated with other community resources.²⁸ In the office staff's experience, many battered women came to Legal Aid because that seemed to be the only place where they might obtain slight leverage against a dominant husband. Often, in response to requests for help, police or social service personnel suggested that abuse victims "go to Legal Aid and get a restraining order." Although victims usually followed through to the extent of asking for a restraining order, frequently plaintiffs who commenced separation proceedings at a time of crisis would notify their attorney sometime later that they had reconciled. The legal response alone did nothing to change the structural

28. Springfield and Brattleboro, Vermont, Women's Crisis Center.

violence in the victim's family. In an attempt to provide better support to clients in crisis and break the cycle of violence, the Legal Aid staff asked the crisis center staff to help in establishing a protocol for cooperative services.

Legal Aid personnel trained the crisis center staff on the substance and procedures of domestic relations law with respect to relief for abuse victims. This training enabled counsellors to give an abused woman a careful description of her legal rights without the need to see a lawyer. This process enables a victim to confide in one person, thereby reducing the need to relate the ordeal repeatedly. Clients of the center frequently chose to ponder their legal options while attending to more immediate concerns, such as locating new housing and financial support. On the other hand, if the woman desired immediate legal advice, the staff at Legal Aid was available to see any crisis center client on a priority basis. Furthermore, women in crisis who came first to the Legal Aid Office were advised to consider the services offered by the crisis center. Both agencies agreed that the staffs would exercise great care in making referrals to avoid giving the client the impression of being caught in an impersonal shuffle. Women who were certain of their desire and readiness to pursue legal action were given speedy representation.

In cases where clients appeared uncertain about permanent separation and divorce, it was agreed that they would be encouraged to postpone making that decision for at least two weeks while they were sheltered and assisted by the crisis center. Given the degree of fear of their husbands, fear of the court system, uncertainty as to how they would support themselves, and emotional ambivalence associated with decisions about divorce, most clients readily accepted this suggested course. If, while being sheltered, clients concluded that they were ready to start divorce proceedings, or that they needed temporary court-ordered protection, Legal Aid extended representation on a priority basis. In these instances, an attorney or paralegal worked with a crisis center staff person to prepare the court papers, particularly the affidavit describing the history of abuse. In most instances the center provided an advocate to accompany the client to any court hearings, thereby lending much needed emotional support during an often shattering experience.

The combined use of legal representation and crisis counseling was very successful. In most instances those who decided, after de-

liberation and counselling, to proceed with legal remedies, remained outside the relationship and carried out the legal procedures to terminate their marriage. Of course, many communities have no shelter or specialized crisis teams.²⁹ However, other agencies, such as community mental health clinics, usually have expertise in counselling abused women. The lawyer to whom a victim has turned for help must become familiar with such resources, as well as with places she can go for emergency financial or housing assistance. In commenting on the role of the professional in breaking the cycle of entrapment and violence, a recent publication emphasized that it is important not to pressure the woman into choosing any particular course of action.³⁰ While it is natural to want an abuse victim to renounce firmly her relationship and establish a new life, the process of becoming self-sufficient requires her to make genuinely independent decisions. The lawyer should be prepared to explain legal options to a client without forcing her to commit herself immediately. While the lawyer must be prepared for frustration if suggestions are not followed, he or she should try to spare the client from sensing this frustration, since in all likelihood it will only serve to make her feel that she has failed again.

It is of great importance that professionals keep an open line of communication with the battered woman by letting her know that she can seek help again without judgment or criticism. Though the woman may not have taken full advantage of the services you offered or the referrals you made the first time, or second or third, you can give her a viable resource to deal with the violence when she needs to finally make use of it.³¹

IV. LEGAL RELIEF FOR THE ABUSED WOMAN

A. *In General*

If a battered woman discards the prospect of court intervention as a possible means of breaking away from her brutal existence, this decision is probably based on her own experience or that of others indicating that the legal route was just another dead

29. For the past year, the Brattleboro Women's Crisis Center has been forced to abandon its shelter project because of lost public funding. This experience is typical of many projects throughout the country struggling to gain acceptance and support in their communities for the valuable service they perform. A local fund drive will apparently revive the Brattleboro shelter in the near future.

30. Aumer, *supra* note 27, at 12-13.

31. *Id.* at 7.

end. Indeed, while the number of sympathetic authorities is increasing, they are sometimes still hard to find. As discussed below, even those wanting to help can be hampered by procedures which ignore the woman's paramount need for speedy protection and security.

Since assault, even by one spouse against the other, is a crime in every state,³² abuse victims often call the police for assistance following a beating. Police who respond to the scene of a domestic quarrel, however, may have no legal authority to remove either party. Unless there is probable cause to believe a felony (such as aggravated assault) has occurred, or an officer has witnessed the commission of a misdemeanor, there is, at least in Vermont, no authority to arrest.³³ Even if an arrest is made, the attacker usually will be released on bail the same day.

Although the victim of abuse may press charges against her husband, in most cases he will be unrestrained during the time between the attack and the arraignment. This is the time when the woman is most fearful that her appeal to authority will further aggravate her husband's rage. Even in cases where both police and prosecutor are supportive, an abuse victim may reject the option to press criminal charges because she perceives that it is too dangerous. She also may be extremely ambivalent about a process that could put her husband in jail. She may want someone to tell her husband to stop beating her, but making that request seems bold and terrifying. Initiating the drastic threat of arrest and jail is more terrifying yet, because this threat may inspire more drastic retaliation.

After ruling out criminal charges, the battered woman often discovers that the pursuit of civil relief can be just as frustrating. She may be told that the only procedure available for requesting a restraining order is a divorce proceeding. Deciding to commence a divorce while recovering from a battering crisis, however, can seem almost as overwhelming as pressing charges. In Vermont, even women prepared to file for divorces in order to obtain immediate restraining orders often discovered that the superior court, which had exclusive jurisdiction over divorces, was out of session in their county. This added to the time and cost of securing relief in a distant forum.

32. See, e.g., VT. STAT. ANN. tit. 13, § 1024 (1974).

33. See, e.g., VT. R. CR. P. 3 (1974).

Finally, restraining orders are perceived widely as being unenforceable. The police in Vermont, relying on an Attorney General's opinion,³⁴ claimed to have no authority to enforce civil orders, absent clear statutory intent. Lawyers and clients alike despaired that civil contempt proceedings, which must be initiated as separate actions, were too cumbersome and time-consuming to afford the immediate assistance necessary to prevent further harassment and abuse by one who has already violated a court order.

The barriers to effective judicial relief for abused women have come under increasing scrutiny in the last five years. All but six states have recently passed new legislation dealing with domestic violence.³⁵ This rapid development of domestic violence law is the product of a broad network of community groups, shelter workers, law enforcement officials, legal services and other lawyers working to make new services and legal options available to battered women. It is a hopeful sign that some deeply entrenched attitudes are in the process of changing. The new laws vary widely in their specific provisions. The types of legislative changes currently under consideration around the country can be highlighted by an examination of the recently enacted Abuse Prevention Act in Vermont.³⁶

B. *The Vermont Approach*

The broad purpose of the new bill, H.401, was to clarify the protection available to victims of domestic violence and improve their access to judicial remedies. No longer is relief available only in connection with divorce proceedings. The Act creates a separate cause of action for relief from abuse which may be filed in either district or superior court. The expansion of jurisdiction is important in Vermont since district courts are in session more frequently than superior courts. The district court also may be separately located from the superior court, giving the plaintiff the choice of a

34. Letter of July 26, 1979, from Asst. Att'y. Gen'l. Michael Gadue, to all police departments in Vermont.

35. RESPONSE, Aug., Sept., 1980 at 1 (Center for Women's Policy Studies, Washington, D.C.).

36. VT. STAT. ANN. tit. 15, §§ 1101-1107 (Cum. Supp. 1981). This bill modeled after legislation passed in Massachusetts, MASS. ANN. LAWS ch. 208, § 34C; ch. 209A (1981), and Pennsylvania, PA. R. CIV. P. §§ 1901-1905 (1981), was drafted by the author at the request of the Vermont Low Income Advocacy Council. Vigorous support was provided through the two sessions during which the bill was under legislative consideration by various community groups around the state, the Coalition on Domestic Violence, and the Governor's Commission on the Status of Women.

more convenient forum in some cases.

Those entitled to seek relief under the Act, as originally drafted, were defined as broadly as possible to include anyone who had been abused by another member of the household. During committee review, the legislature strictly limited the class of plaintiffs to spouses or former spouses who wish to protect themselves or their children from abuse. Unfortunately, this limitation denies a clearly defined remedy at law to a woman who suffers violence at the hands of her non-spouse companion.³⁷

Although it is estimated that as many as thirty percent of domestic abuse incidents involve boyfriends or unmarried cohabitantes,³⁸ one legislator justified the limitation on protection by speculating that a broadly defined protected class could create common law marriage rights where none are presently recognized in Vermont. He was not persuaded that relief would be limited to that clearly provided by statute.³⁹

One who has been physically harmed, who has been threatened with imminent serious physical harm, or whose children have been abused may petition for relief. Remedies under the Act include an order restraining the defendant from committing further abuse, an order granting the plaintiff sole possession of the family residence and an order awarding temporary custody of minor children. These orders can be issued for periods of up to one year and may be renewed. Final disposition of the title to property or custody of the children can only be accomplished through a divorce proceeding.⁴⁰ If a divorce complaint is filed subsequent to the commencement of an abuse prevention proceeding, the latter is consolidated with the divorce case in superior court.

37. VT. STAT. ANN. tit. 15, § 293 (1974) gives the superior courts jurisdiction to make such orders in cases where a spouse has deserted or where the parents of minor children are separated. VT. STAT. ANN. tit. 15, § 291, provides, arguably, that the court at least may order restraint and award temporary custody on the petition of an unmarried parent. In addition, several superior court judges have granted injunctive relief from abuse against a non-spouse, even where no children were involved, based on general principles of equity. See, e.g., *Berard v. Oakes*, No. 594-80 (Benn. Sup. Ct. June 30, 1980).

38. Aumer, *supra* note 27, at 12 (Resources Section). This statistic is the result of mandatory data collection required by recent legislation in Minnesota. MINN. STAT. ANN. §§ 241.61-.66 (West Supp. 1981). Physicians, public health nurses, law enforcement agencies, social workers, and community health workers in that state are now required to collect information on abuse incidents without violating the confidentiality of victims.

39. This statement is based on personal observations made at a hearing on H.401, Senate Judiciary Committee, 1980.

40. VT. STAT. ANN. tit. 15, § 557 (1974).

A recently proposed amendment to the Vermont Rules of Civil Procedure would preserve the availability of emergency relief in district court, even where a divorce is pending in superior court, by directing the district court to treat the petition as a request to modify an outstanding order.⁴¹ In order to discourage forum shopping, however, proposed Vermont Rule of Civil Procedure 80(m)(5) requires that where one judge has already acted on a request for temporary relief, a second judge may only consider a subsequent request with the permission of the first.⁴²

Where there is an imminent danger of further abuse, *ex parte* relief may be granted.⁴³ In addition to restraining abuse, *ex parte* orders may grant the plaintiff sole possession of a residence, if as a result of the abuse she will be forced from the house and has no other shelter.⁴⁴ The court may also grant custody on an *ex parte* basis when there is a finding that serious emotional or physical harm is likely to occur to the children absent an immediate order stabilizing custody.⁴⁵ Such an order would be proper, for instance, where there had been a prior incident of child snatching, or where it is threatened.

The Act provides that the defendant must be notified of his opportunity to be heard and that a hearing must be scheduled for no later than ten days following the grant of emergency relief.⁴⁶ Based on the concern of some judges, there is a proposal to modify somewhat this procedure by rule. Proposed Vermont Rule of Civil Procedure 80(m)(3) and (4)⁴⁷ requires the judge to consider whether oral notice might permit the defendant to attend an expedited hearing in lieu of granting *ex parte* relief to the plaintiff. The reporter's comments to the rule make it clear that, in the normal case, it would be erroneous to withhold *ex parte* relief which is otherwise justified if it is not possible to hold an expedited hearing

41. Memorandum of Aug. 10, 1981, from Michael Krell, Court Administrator, giving public notice of and soliciting public comment on proposed changes in Vermont Rules of Civil Procedure.

42. *Id.*; Vt. R. Civ. P. 80(m)(5).

43. Vt. STAT. ANN. tit. 15, § 1104 (1979).

44. Vt. STAT. ANN. tit. 15, § 1104(a)(2) (1979). A similar section in the Pennsylvania statute has been sustained against a due process challenge. *Boyle v. Boyle*, 5 FAM. L. REP. (B.N.A.) 2916-17 (Sept. 10, 1979).

45. Vt. STAT. ANN. tit. 15, § 1104(a)(33) (1979).

46. *Id.* at § 1104(b).

47. Memorandum, *supra* note 33, at 20.

on the day a petition for relief is requested.⁴⁸ Otherwise, the potential for harm to the plaintiff is increased unreasonably.

Under the new Act, the courts are specifically encouraged to assist women who wish to present their petitions *pro se*. Filing fees are waived, form petitions are maintained by the court administrator's office, and the court clerks help petitioners to file their complaints properly.⁴⁹ The opportunity to navigate through the court procedure herself to obtain judicial protection can prove very rewarding to an abused woman. It may be an important step in recovering her self-esteem. On the other hand, where a woman's confidence has reached a low level, or where she expects resistance to a request for the residence or custody, lawyers or advocates should be hesitant to insist that the plaintiff do it herself.

Improvements in access to the judicial system is but one reform necessary to improve the overall social response to the dilemma of domestic violence.⁵⁰ If battered women are to regain confidence in the legal system, they must perceive that court orders are respected and enforced. Vermont's new Act specifies that those who remain in the residence in violation of an order commit trespass.⁵¹ Similarly, those who refuse to honor temporary custody orders commit the new crime of custodial interference.⁵² The extent to which prosecutors and police assist the woman who demands criminal enforcement, after she has already tried the civil remedy, may eventually determine the effectiveness of the orders issued under the new legislation. Additional enforcement issues were left vague by the Act. Do the police have the authority to compel the transfer of a child being withheld by the father in defiance of a custody order? By the time an information can be prepared charging him with custodial interference, the defendant may have fled

48. *Id.*, and comments to proposed Vt. R. Civ. P. 80(b)(3), (4).

49. VT. STAT. ANN. tit. 15, § 1104(c) (1979).

50. The Vermont Court Administrator's office is preparing a report on the first year of experience under the new Act. Preliminary findings indicate that of 305 requests for relief, eighty-eight percent resulted in temporary orders. Analysis has yet to be completed on the types of relief granted and how they correlated with the presence or absence of counsel. One interesting preliminary indication is that only about forty percent of the plaintiffs appeared at the ten day hearing. This may indicate that there is still a high incidence of reconciliation, or it may mean that *pro se* plaintiffs would rather let their orders lapse than face the possibility of confronting their husbands in a contested hearing. There appears to be a strong correlation between the location of active support projects and the number of cases brought under the Act in those areas.

51. VT. STAT. ANN. tit. 13, § 3705(c) (1974 & Supp. 1981).

52. VT. STAT. ANN. tit. 13, § 2451 (1974 & Supp. 1981).

with the child. Legislation is now pending in the Vermont Senate which explicitly authorizes the police to assist a plaintiff in gaining custody of her children or possession of her home pursuant to a court order.⁵³ The legislation would also authorize the police to make an arrest, notwithstanding the provisions of Rule 3 of the Vermont Rules of Criminal Procedure, any time there is probable cause to believe that a crime had been committed in violation of a civil order.⁵⁴

Although Vermont's legislature has responded favorably to the concerns presented by victims of domestic violence and their supporters, other states have taken additional steps. Last year the legislature appropriated a small sum to assist local groups undertaking counselling and shelter efforts.⁵⁵ But there is a need for annual funding for the support of a network of shelters around the state. Unlike other jurisdictions,⁵⁶ Vermont judges have no explicit power in connection with either criminal or civil proceedings to order an abuser to seek treatment. In the long run, the opportunity for the victim to have safe shelter in the first trying days following her escape, and the requirement that a batterer undergo treatment to confront his pathological behavior, may contribute more toward curbing the levels of violence than the increased availability of restraining orders. Hopefully, as attorneys become familiar with the problems facing battered women they will lend their experience and expertise toward securing the passage of even better domestic violence laws.

CONCLUSION

It should be clear that the lawyer's role in advising a client who has been battered must go beyond setting in motion the legal machinery that will produce a restraining order. Knowing how to start up that machinery is essential, but it is only a first step. The improved legal options open to abuse victims have only taken place because people from many professional fields have insisted that society take a closer look at our negligent response to the family violence in our midst. Becoming a competent legal counsellor to victims of family violence requires joining the social movement to

53. S. 183 (1981 Sess.).

54. *Id.* § 4.

55. H.485 (1981 Sess.).

56. *See, e.g.*, ME. REV. STAT. ANN. tit. 19, § 766 (1964 & Supp. 1980); N.H. REV. STAT. ANN. § 173-B (Cum. Supp. 1979).

stop it.

On the individual level, the attorney must realize that entering a court appearance on behalf of the client may not break the battering cycle. Helping a victim to find safe shelter and someone trustworthy to confide in may make more of a difference than legal intervention. Sometimes the combination of assistance can spring the lock on a trap that kept a victim bound for years. Being part of that combination, when an abused woman finally rejects her violent existence, is the essence of ethical representation.

