

**THE [E]X FACTOR:
ADDRESSING TRAUMA FROM POST-SEPARATION
DOMESTIC VIOLENCE AS JUDICIAL TERRORISM**

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ABSTRACT

When victims of intimate terrorism leave their abusers, the abuse rarely ends. While many victims exit intimate relationships to try to escape the abuse, for most, their bravery in leaving only angers their abusers further. Rather than lose control over their victims, many abusers continue to manipulate and terrorize their former intimate partners for years post separation. Many use the court system, a place where victims seek justice, as a battering tool against them, engaging in what some have termed “judicial terrorism.”

Remarkably, although post-separation abuse has been recognized and researched since the early 1970s, no law review article has, to date, focused entirely on post-separation abuse as an independent manifestation of domestic violence. While many legal scholars have discussed the social science evidence that victims are most at risk of physical violence or homicide when they first leave their abusers, none have described in depth the emotional and psychological abuse through which perpetrators may continue to coercively control their victims over the years and decades to follow.

Indeed, the most recent domestic violence typologies have identified “intimate terrorism” as the most persistent and pernicious form of abuse. Intimate terrorists coercively control their victims, sometimes through physical violence, but always through emotional and psychological abuse. Whereas other types of domestic violence tend to cease post separation—affirming the very reason why many victims choose to leave intimate relationships—intimate terrorism typically does not. Although the intimate terrorist may no longer have physical access to his victim after she leaves, he can continue to coercively control her through stalking, threats, and family court litigation.

Importantly, post-separation intimate terrorism retraumatizes victims, preventing them from healing and building new lives; the abuser counts on

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his ability to continue to victimize and coercively control his victim when he no longer has the close proximity to abuse her physically. To cast the spotlight on intimate terrorism that occurs after the end of an intimate relationship, particularly through the court system, this Article draws on research about the retraumatization experienced by crime victims who have participated in prosecuting their attackers to describe the trauma post-separation abuse victims experience in family court litigation. It then suggests areas for reform, supportive assistance, and further inquiry.

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INTRODUCTION

*“The mother’s condition following her divorce has been analogous to that of a slave chained to false accusations, constant allegations and hatred. A human being deserves better.”*¹

Since at least the early 1980s, social scientists have documented that “[t]he majority of domestic assaults reported to law enforcement agencies occurred after the couples had separated.”² Moreover, “[s]ome women

1. Schuyler v. Ashcraft, 680 A.2d 765, 774 (N.J. Super. Ct. App. Div. 1996).

2. Ruth E. Fleury, Cris M. Sullivan & Deborah I. Bybee, *When Ending the Relationship Does Not End the Violence*, 6 VIOLENCE AGAINST WOMEN 1363, 1365 (2000) (citing evidence from the BUREAU OF JUST. STATS., U.S. DEP’T OF JUST., REPORT TO THE NATION ON CRIME AND JUSTICE: THE DATA (1983), <https://www.bjs.gov/content/pub/pdf/rncj-d.pdf> [<https://perma.cc/8H79-Y84H>]).

experience violence by their ex-partner for the first time during separation. For many other women post-separation violence is a continuation of violence that began during their relationship with their partner.”³

Just like domestic violence in an existing relationship, post-separation abuse may take a variety of forms.⁴ One social scientist has described it as “any type of violence perpetrated by a former married or cohabiting male partner or boyfriend subsequent to the moment of physical separation.”⁵ Most commonly, this type of abuse may include “economic and legal abuse, use of children and other loved ones, escalated intimidation, [and/or] coercion and explosive violence.”⁶

Over the past fifteen years, social scientists have sought to categorize domestic violence, including post-separation violence, into types.⁷ While many women⁸ who experience post-separation abuse may have been physically abused during the relationship, almost all were also victims of coercive control violence, or intimate terrorism. Most victims of intimate terrorism continue to be targets of abuse even after separation; while the physical violence often ends due to lack of proximity, the emotional and psychological control continue unabated.⁹

To begin an in-depth discussion of post-separation abuse and intimate terrorism, this Article uses by way of example the concept of judicial terrorism,¹⁰ or, as others have called it, “litigation abuse,”¹¹ “abusive

3. See Douglas A. Brownridge, *Violence Against Women Post-Separation*, 11 *AGGRESSION & VIOLENT BEHAV.* 514, 526 (2006).

4. See David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors*, 14 *SEATTLE J. SOC. JUST.* 429, 438 (2015).

5. Brownridge, *supra* note 3, at 516–17.

6. Fleury et al., *supra* note 2, at 1365.

7. See generally MICHAEL P. JOHNSON, *TPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE* (Northeastern Univ. Press 2008) [hereinafter JOHNSON I].

8. Although there is some evidence that situational couple violence is perpetrated equally by men and women, intimate terrorism (discussed in Part I) is perpetrated almost entirely by men. This Article therefore uses languages referring to abusers as men and victims as women. For more information on this gender differential, see Part II. See also EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 377–78 (2009); Michael P. Johnson, *Domestic Violence: It's Not About Gender—Or Is It?*, 67 *J. MARRIAGE & FAM.* 1126, 1128 (2005) [hereinafter Johnson II].

9. For a fuller discussion, see *infra* Part I.B and notes 62–75.

10. See generally Donna J. King, *Naming the Judicial Terrorist: An Expose of an Abuser's Successful Use of a Judicial Proceeding for Continued Domestic Violence*, 1 *TENN. J. RACE, GENDER, & SOC. JUST.* 153 (2012).

11. Kara Bellew, *Silent Suffering: Uncovering and Understanding Domestic Violence in Affluent Communities*, 26 *WOMEN'S RTS. L. REP.* 39, 44 (2005).

litigation,”¹² “procedural stalking,”¹³ “court-related harassment,”¹⁴ “legal bullying,”¹⁵ and “retaliatory litigation,”¹⁶ to set into relief the particular processes and impacts of judicial terrorism as a form of post-separation abuse. The judicial system provides a particularly appealing venue for the abuser to continue to pursue his own abusive ends.¹⁷ Just as there has been little discussion of post-separation abuse in the legal literature, there has been no concerted effort among legal scholars to explain how abusers avail themselves of judicial processes to further terrorize their victims and to force ongoing communication and conflict.¹⁸

Indeed, many experts consider judicial terrorism to be a form of stalking, whereby the abuser forces the victim to see him in person and in court.¹⁹ The litigation process may require her to reveal very personal information about herself.²⁰ While Tennessee and Washington have very recently passed laws to limit this “litigious form of domestic assault,”²¹ no other states have yet followed suit, perhaps because post-separation abuse itself goes largely unrecognized.

12. Legal Voice Violence Against Women Workgroup, *Abusive Litigation and Domestic Violence Survivors*, in WASH. STATE ADMIN. OFF. OF THE CTS., DV MANUAL FOR JUDGES, app. H-1 (2015), <https://www.courts.wa.gov/content/manuals/domViol/appendixH.pdf> [<https://perma.cc/V47B-U4FF>] [hereinafter *Abusive Litigation Judicial Manual*].

13. See generally Susan L. Miller & Nicole L. Smolter, “Paper Abuse”: *When All Else Fails, Batterers Use Procedural Stalking*, 17 VIOLENCE AGAINST WOMEN 637 (2011).

14. ANDREA VOLLANS, COURT-RELATED ABUSE AND HARASSMENT: LEAVING AN ABUSER CAN BE HARDER THAN STAYING 16 (YMCA Vancouver 2010).

15. Esther L. Lenkinski, Barbara Orser, & Alana Schwartz, *Legal Bullying: Abusive Litigation within Family Law Proceedings*, 22 CANADIAN FAM. L.Q. 337–65 (2004).

16. See Antoinette Bonsignore, *Domestic Violence Survivors Battle Within the Courts: Confronting Retaliatory Litigation*, TRUTHOUT (June 22, 2012), <https://truthout.org/articles/domestic-violence-survivors-battle-within-the-courts-confronting-retaliatory-litigation/> [<https://perma.cc/B3Q4-BKS8>].

17. See generally Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN’S L.J. 41 (2017) [hereinafter E. Campbell].

18. *Id.* at 53.

19. See, e.g., Miller & Smolter, *supra* note 13, at 638.

20. See, e.g., Ward, *supra* note 4, at 441 (quoting several survivors about embarrassing discovery requests).

21. Sheila Burke, *New State Law Seeks to Stop ‘Stalking By Way of Courts’* ASSOCIATED PRESS NEWS (June 25, 2018), <https://apnews.com/article/0249e6d67b1d419b9787cb6adb297cb7> [<https://perma.cc/T43A-GRJC>] (quoting Tennessee Republican Rep. Mike Carter, an attorney and former judge). For the text of the laws themselves, see TENN. CODE ANN. § 29-41-101, et seq. (2020) (defining “abusive civil action” as “a civil action filed by a plaintiff against a defendant with whom the plaintiff shares a civil action party relationship primarily to harass or maliciously injure the defendant” if unwarranted, unsupported by evidence, or repetitive); WASH. REV. CODE § 26.51.010–26.51.901 (2020) (defining “abusive litigation” as “litigation . . . being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party” when the allegations are unwarranted, unsupported by evidence, or repetitive).

Reports from victims who have already left relationships with intimate terrorists are replete with concerns about continued coercive control and judicial terrorism,²² making the absence of coverage in legal scholarship even more puzzling. As a journalist recently reported, “[a]fter a breakup, the courts are often the only tool left for abusers seeking to maintain a hold over their victims’ lives. The process costs money and time, and can further traumatize victims of intimate-partner violence, even after they have managed to leave the relationship.”²³ Despite widespread awareness of this malicious use of the court system, as one domestic violence expert asserted, “I think it’s the least understood and most overlooked form of abuse that I know of.”²⁴

Post-separation intimate terrorism and judicial terrorism are of particular concern because of the long-term retraumatizing effect they may have on victims of domestic violence. Abuse in an ongoing relationship is traumatic,²⁵ often to the point where a victim chooses to leave her batterer in the hopes of ending the abuse.²⁶ When abuse continues post separation, the victim is revictimized—in leaving, she sought safety, but she has now learned that even a home apart from her abuser offers no refuge.²⁷

And when the abuser takes the victim to court, often repeatedly, each encounter may traumatize her again. She is forced to defend herself against her abuser, appear in the same room with him, and listen to him accuse her of wrongdoing or inadequacy.²⁸ Additionally, because the court system largely does not recognize or understand post-separation intimate and judicial terrorism, the very forum in which the victim seeks safety and justice may deny her both, retraumatizing her in yet another way.²⁹

With both abusers and the courts, the power differential weighs against the victim. At first, she may perceive both as safe havens: a happy

22. See, e.g., Jessica Klein, *How Domestic Abusers Weaponize the Courts*, ATLANTIC (July 18, 2019), <https://www.theatlantic.com/family/archive/2019/07/how-abusers-use-courts-against-their-victims/593086/> [https://perma.cc/765L-3FUN].

23. *Id.*

24. Burke, *supra* note 21 (quoting Amira Samuel, an advocate for survivors of domestic violence).

25. See, e.g., Susan Lagdon, Cherie Armour & Maurice Stringer, *Adult Experience of Mental Health Outcomes as a Result of Intimate Partner Violence Victimization: A Systematic Review*, 5 EUR. J. PSYCHOTRAUMATOLOGY 53, *6 (2014).

26. See, e.g., Fleury et al., *supra* note 2, at 1364.

27. See, e.g., DOUGLAS A. BROWNRIDGE, VIOLENCE AGAINST WOMEN POST-SEPARATION 56 (2009) (“Several studies, which taken together comprise more than three decades of research, have provided evidence that women are at risk for violence post-separation.”).

28. Negar Katirai, *Retraumatized in Court*, 62 ARIZ. L. REV. 81, 83 (2020) (recounting how one survivor “endured being disparaged as an alcoholic, neglectful, and promiscuous mother”).

29. *Id.* at 85 (“In the context of IPV, facing one’s abuser in a courtroom is not only an intimidating and difficult process, but can provide the abuser with an additional opportunity to exert power and control over the victim, often by coopting the features and personages of our justice system, including judges, clerks, and lawyers.”).

relationship, a just and protective legal system. Post separation, however, her perspective may change, perhaps becoming more realistic. A victim may recognize that her abuser is more powerful because he has learned her vulnerabilities,³⁰ because he is physically stronger,³¹ because he is vengeful,³² or—in this patriarchal society—merely because he is male.³³ The court system is powerful by its very nature; it is by design an overseer, an entity that orders and controls.³⁴ When a victim of intimate terrorism is forced to confront and interact with both her abuser and a judicial officer at once, the revictimization may be so overwhelming that she relinquishes any power she actually has. Feminist legal theory and justice therefore demand that intimate terrorism, judicial terrorism, and retraumatization through vexatious litigation be widely recognized and remedied.

This Article comprises several parts. Part I begins by reviewing the most recent research into domestic violence typology. Then, it defines and explores the concept of post-separation abuse and reviews the social science literature on intimate terrorism after a victim leaves her abuser. Part II describes the power differential in coercive control violence and discusses why this power differential is an important issue for feminist inquiry. Part III explains how judicial terrorism is a legal, prevalent, and pernicious form of post-separation abuse that is particularly egregious because it may be state-sanctioned and long-lasting.³⁵ The section then reviews the scant legal scholarship on using the court system as a form of domestic abuse, particularly with respect to forcing a victim to spend money unnecessarily and maintain instability in her parenting status. Part IV describes how victims are often retraumatized when the court system cannot or will not help them end the abuse cycle, particularly when they are forced to confront abusers and others who may assault them. Only by understanding the depth of trauma inflicted on abuse victims through judicial process after separation can we begin to adequately discuss legal remedies. Part V suggests next steps for inquiry into post-separation abuse and its resulting trauma, as well as some potential solutions for reform.

30. See, e.g., Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 748 (2005).

31. See, e.g., Maryanne E. Kampmann, *The Legal Victimization of Battered Women*, 15 WOMEN'S RTS. L. REP. 101, 109 (1993).

32. See, e.g., Desmond Ellis, *Post-Separation Woman Abuse: The Contribution of Lawyers as "Barracudas," "Advocates," and "Counselors,"* 10 INT'L J.L. & PSYCHIATRY 403, 408 (1987).

33. Brownridge, *supra* note 3, at 519.

34. See, e.g., Noam Ebner & Elayne E. Greenberg, *Strengthening Online Dispute Resolution Justice*, 63 WASH. U. J.L. & POL'Y 65, 66 (2020).

35. See, e.g., Heather Douglas, *Legal Systems Abuse and Coercive Control*, 18 CRIMINOLOGY & CRIM. JUST. 84, 84 (2017).

I. DOMESTIC VIOLENCE BEFORE, DURING, AND AFTER SEPARATION

*“Our goal must be to help society see domestic violence for what it is: a threat to the American family, a form of terrorism in the home.”*³⁶

Scholars of domestic violence recognize that “it is no longer scientifically or ethically acceptable to speak of domestic violence without specifying, loudly and clearly, the type of violence to which we refer.”³⁷ In his seminal book, *A Typology of Domestic Violence*,³⁸ Michael Johnson describes four types of domestic or “intimate partner” violence (IPV), now widely accepted and relied upon as the bases for social science research: intimate terrorism (IT), situational couple violence (SCV),³⁹ violent resistance (VR),⁴⁰ and mutual violent control (MVC).⁴¹ As Johnson explains, “Intimate [terrorism, or intimate] partner violence enacted to establish and maintain general control over one’s partner is very different from the other forms of violence in intimate relationships, and this long-unrecognized difference has been the source of much confusion and conflict in the research literature on intimate partner violence.”⁴²

A. *Intimate Terrorism*

Intimate terrorism⁴³ (sometimes called coercive control violence, or CCV), may be the most pernicious form of domestic abuse, as well as the most gender-skewed.⁴⁴ Intimate terrorism is typically characterized not only by physical violence, but also by ongoing psychological and emotional manipulation, or coercive control.⁴⁵ As Johnson describes it, “if a violent

36. *Domestic Violence: Terrorism in the Home: Hearing Before the Subcomm. on Child., Fam., Drugs & Alcoholism*, 101st Cong. 4 (1990) (statement of Sen. Daniel Ray Coats).

37. Johnson II, *supra* note 8, at 1126.

38. JOHNSON I, *supra* note 7, at 14–15.

39. *See id.* at 18 (“Probably the most common type of partner violence . . . is situationally provoked, as the tensions or emotions of a particular encounter lead someone to react with violence.”).

40. *See id.* at 17 (“The critical defining pattern of violent resistance is that the resister is violent but *not* controlling and is faced with a partner who is *both* violent and controlling; i.e., he is an intimate terrorist.”) (emphasis in original).

41. *See id.* at 19 (“[I]n a very small number of cases, both members of the couple are violent and controlling, each behaving in a manner that would identify him or her as an intimate terrorist if it weren’t for the fact that their partner also seems to be engaged in the same sort of violent attempt to control the relationship With mutual violent control, we have the true mutuality of two people fighting for general control over the relationship.”).

42. *Id.* at 22.

43. *See* Michael P. Johnson, *Apples and Oranges in Child Custody Disputes: Intimate Terrorism vs. Situational Couple Violence*, 2 J. CHILD CUSTODY 43, 45 (2005) (defining “intimate terrorism” as “violence enacted in the service of taking general control over one’s partner”).

44. *See* JOHNSON I, *supra* note 7, at 27.

45. *See* Michael P. Johnson, *A Personal Social History of a Typology of Intimate Partner Violence*, 9 J. FAM. THEORY & REV. 150, 162–63 (2017).

individual is known to use a wide variety of tactics to control his or her partner, then it is reasonable to assume that the violence itself is being enacted in the service of that control, and we are dealing with a case of coercive control.”⁴⁶ Typically, the control involves a threat of “punishment,”⁴⁷ such as an abuser’s promise to gain custody of the children if the wife leaves the relationship.⁴⁸

Whereas situational couple violence and violent resistance may largely cease after separation⁴⁹—and, indeed, many women leave relationships in order to attempt to end or limit the risks of physical assault⁵⁰—intimate terrorism is likely to persist, often for months or years after a couple ends the relationship.⁵¹

B. *Post-Separation Abuse*

Discussions of domestic violence and intimate terrorism are robust in the legal literature; virtually all of these conversations, however, center around violence within an ongoing, existing relationship.⁵² To the extent that post-separation abuse is analyzed, the focus is generally on the potential for physical abuse and homicide⁵³ in the immediate period after the victim leaves the abuser⁵⁴ or on the potential for the perpetrator to abuse minor children, not the mother.⁵⁵

The prevalence of post-separation abuse is particularly concerning for two reasons. First, a domestic violence victim typically leaves the perpetrator to flee the abuse.⁵⁶ When the abuse continues even after a

46. See JOHNSON I, *supra* note 7, at 20–21.

47. Dutton & Goodman, *supra* note 30, at 748.

48. See JOHNSON I, *supra* note 7, at 21.

49. Kimberly A. Crossman, Jennifer L. Hardesty & Marcela Raffaelli, “He Could Scare Me Without Laying a Hand on Me”: Mothers’ Experiences of Nonviolent Coercive Control During Marriage and After Separation, 22 VIOLENCE AGAINST WOMEN 454, 455 (2016).

50. See, e.g., Fleury et al., *supra* note 2, at 1364.

51. See, e.g., Jennifer L. Hardesty et al., *Coparenting Relationship Trajectories: Marital Violence Linked to Change and Variability After Separation*, 31 J. FAM. PSYCH. 844, 846 (2017).

52. See, e.g., Mary D. Fan, *Disarming the Dangerous: Preventing Extraordinary and Ordinary Violence*, 90 IND. L.J. 151, 169 (2015); Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 439 (2019).

53. See, e.g., Crossman et al., *supra* note 49, at 469 (noting that “researchers may be missing opportunities to help women by restricting their focus to physical violence”).

54. See, e.g., Ellen Gutowski & Lisa A. Goodman, “Like I’m Invisible”: IPV Survivor-Mothers’ Perceptions of Seeking Child Custody Through the Family Court System, 35 J. FAM. VIOLENCE 441, 441 (2020).

55. See, e.g., Joan S. Meier, *Dangerous Liaisons: A Domestic Violence Typology in Custody Litigation*, 70 RUTGERS U. L. REV. 115, 152–57 (2017).

56. See, e.g., Lyndal Khaw, Autumn M. Bermea, Jennifer L. Hardesty, Daniel Saunders &

breakup, she may feel that there is no safe place for her to turn, particularly today, when technology may render “disappearing” difficult, if not impossible.⁵⁷

Second, because post-separation abuse is underrecognized by the legal and criminal justice systems,⁵⁸ few effective resources are in place for victims.⁵⁹ Studies show that women in ongoing abusive relationships have a variety of avenues to seek protection, particularly when the abuse they suffer is physical;⁶⁰ women can even seek help in the early days after leaving the abusive relationship because their peril is well-understood.⁶¹ But for women who are months and years post separation, the free legal services and police protection may not be of use, especially when those resources are primarily designed to protect women physically rather than emotionally.

Even when perpetrators are no longer able to access the victim physically,⁶² whether because she has moved to a safer location or because a protection order is in place,⁶³ they can continue to harass the victim psychologically,⁶⁴ emotionally,⁶⁵ and financially.⁶⁶ Assailants use a variety of tactics to control women who are mothers post separation, including physical violence or threats thereof,⁶⁷ emotional abuse,⁶⁸ threatening to

Angela Whittaker, “*The System Had Choked Me Too*”: *Abused Mothers’ Perceptions of the Custody Determination Process That Resulted in Negative Custody Outcomes*, J. INTERPERSONAL VIOLENCE 1, 2 (2018).

57. See, e.g., Justine A. Dunlap, *Intimate Terrorism and Technology: There’s an App for That*, 7 U. MASS. L. REV. 10, 18 (2012).

58. See, e.g., Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 71, 78 (1991).

59. See, e.g., Judith Wuest, Marilyn Ford-Gilboe, Marilyn Merritt-Gray & Helene Berman, *Intrusion: The Central Problem for Family Health Promotion Among Children and Single Mothers After Leaving an Abusive Partner*, 13 QUALITATIVE HEALTH RSCH. 597, 607, 613 (2003).

60. See, e.g., Jane K. Stoeber, *Access to Safety and Justice: Service of Process in Domestic Violence Cases*, 94 WASH. L. REV. 333, 351 (2019); Amy E. Bonomi, Victoria L. Holt, Diane P. Martin & Robert S. Thompson, *Severity of Intimate Partner Violence and Occurrence and Frequency of Police Calls*, 21 J. INTERPERSONAL VIOLENCE 1354, 1355 (2006).

61. See, e.g., Jacquelyn C. Campbell, Nancy Glass, Phyllis W. Sharps, Kathryn Laughon & Tina Bloom, *Intimate Partner Homicide: Review and Implications of Research and Policy*, 8 TRAUMA VIOLENCE & ABUSE 246, 254 (2007).

62. See, e.g., Hardesty et al., *supra* note 51, at 846.

63. Patricia Tjaden & Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence*, NAT’L INST. OF JUST. & CDC (2000), at 52.

64. See, e.g., Michelle L. Toews & Autumn M. Bermea, “*I Was Naive in Thinking, ‘I Divorced This Man, He Is Out of My Life’*”: *A Qualitative Exploration of Post-Separation Power and Control Tactics Experienced by Women*, 32 J. INTERPERSONAL VIOLENCE 2166, 2169 (2017).

65. See, e.g., April M. Zeoli, Echo A. Rivera, Cris M. Sullivan & Sheryl Kubiak, *Post-Separation Abuse of Women and their Children: Boundary-Setting and Family Court Utilization Among Victimized Mothers*, 28 J. FAM. VIOLENCE 547, 554 (2013).

66. See, e.g., Lesley Laing, *Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System*, 23 VIOLENCE AGAINST WOMEN 1314, 1315 (2017).

67. Michelle Bemiller, *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts*, 5 J. CHILD CUSTODY 228, 229 (2008).

68. *Id.* at 229.

abduct children,⁶⁹ undermining mothers' parental authority,⁷⁰ and using parenting time arrangements to track and control mothers' schedules.⁷¹ Through these and other approaches, an intimate terrorist is likely⁷² to continue abusing a woman for years post separation,⁷³ especially in cases involving children.⁷⁴ Many abusers, with the goal of causing the greatest psychic injury and "hitting" the woman where it hurts most, threaten to or actually file motions for primary or sole custody of the children.⁷⁵

II. THE POWER DIFFERENTIAL IN POST-SEPARATION INTIMATE TERRORISM

"[I]ntimate terrorism . . . is almost entirely male perpetrated and is strongly related to gender attitudes."⁷⁶ Because most intimate terrorists are men, most victims are women. Therefore, women currently in a relationship with an intimate terrorist are likely experiencing coercive control, and that control—along with the accompanying feelings of fear and powerlessness for victims—does not usually end post separation. Unfortunately, as they negotiate post-separation issues such as divorce, custody, and support, they usually find that the power differential has not shifted.⁷⁷

Although the abusers are less likely to have the opportunity to engage in physical violence post separation, intimate terrorists may "amp up" their attempts at coercive control, whether through stalking,⁷⁸ online harassment,⁷⁹ combative co-parenting,⁸⁰ threats,⁸¹ or economic means.⁸²

69. See, e.g., Christine Harrison, *Implacably Hostile or Appropriately Protective? Women Managing Child Contact in the Context of Domestic Violence*, 14 VIOLENCE AGAINST WOMEN 381, 390–91 (2008).

70. See, e.g., LUNDY BANCROFT, JAY G. SILVERMAN, & DANIEL RITCHIE, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 69–106 (2d ed. 2012).

71. Catriona Shalansky, Janet Erickson & Angela Henderson, *Abused Women and Child Custody: The Ongoing Exposure to Abusive Ex-Partners*, 29 J. ADVANCED NURSING 416, 420 (1999).

72. See, e.g., Jennifer L. Hardesty, *Separation Assault in the Context of Postdivorce Parenting: An Integrative Review of the Literature*, 8 VIOLENCE AGAINST WOMEN 597, 611–12 (2002).

73. See, e.g., Laing, *supra* note 66, at 1314.

74. See, e.g., Toews & Bermea, *supra* note 64, at 2173.

75. See, e.g., Khaw et al., *supra* note 56, at 2.

76. Johnson II, *supra* note 8, at 1128.

77. See, e.g., E. Campbell, *supra* note 17, at 53.

78. See *infra* notes 114–126.

79. See, e.g., Cassandra Essert, *Addressing Imperfect Solutions to Technology-Facilitated Domestic Violence*, 41 WOMEN'S RTS. L. REP. 117, 124 (2019–2020).

80. See, e.g., Vivienne Elizabeth, Nicola Gavey & Julia Tolmie, *The Gendered Dynamics of Power in Disputes Over the Postseparation Care of Children*, 18 VIOLENCE AGAINST WOMEN 459, 460 (2012).

81. See *supra* notes 66–68.

82. See *infra* notes 83–89.

Almost universally, men assert power over women post separation through creating and perpetuating financial inequity.⁸³ Economic or financial abuse is “a deliberate pattern of control in which individuals interfere with their partner’s ability to acquire, use, and maintain economic resources.”⁸⁴ In describing the definition and forms of financial abuse, the National Network to End Domestic Violence highlights that financial abuse “is one of the most powerful methods of keeping a survivor trapped in an abusive relationship and deeply diminishes the victim’s ability to stay safe after leaving an abusive partner.”⁸⁵ As Michael Johnson has identified, “[i]ntimate terrorists do what they can to cut their partner off from the resources required for effective resistance One important resource is money.”⁸⁶ Studies show that 99% of intimate partner violence victims have been subjected to financial abuse.⁸⁷ One scholar notes that financial abuse is an effective means of coercive control even after the victim has left her abuser because it does not require physical proximity.⁸⁸ Even so, few studies have recognized financial abuse as a form of post-separation intimate terrorism.⁸⁹

It is not merely coercive control, however, that leaves women at a financial disadvantage after divorce or separation. Often, the financial inequity preexists the separation; on average, married men earn far more than married women in the workplace.⁹⁰ During the marriage, intimate

83. Judy L. Postmus, Gretchen L. Hoge, Jan Breckenridge, Nicola Sharp-Jeffs & Donna Chung, *Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review*, 21 *TRAUMA, VIOLENCE, & ABUSE* 261, 262 (2018) [hereinafter Postmus et al. I].

84. Deborah M. Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, 2020 *UTAH L. REV.* 1, 10 (quoting Postmus et al. I, *supra* note 83); Nicola Sharp-Jeffs, *A Review of Research and Policy on Financial Abuse within Intimate Partner Relationships*, LONDON METRO. UNIV. CHILD & WOMAN ABUSE STUDIES UNIT 14 (Dec. 2015).

85. U.S. National Domestic Violence Hotline, *About Financial Abuse*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <https://nnedv.org/content/about-financial-abuse/> [https://perma.cc/RF2Q-KMCD] [hereinafter NNEDV Hotline].

86. See JOHNSON I, *supra* note 7, at 16; Sharp-Jeffs, *supra* note 84, at 13; Liz Kelly, Nicola Sharp-Jeffs & Renate Klein, *Finding the Costs of Freedom: How Women and Children Rebuild Their Lives After Domestic Violence*, CHILD & WOMEN ABUSE STUDIES UNIT 50 (2014); MARILYN HOWARD & AMY SKIPP, *UNEQUAL, TRAPPED AND CONTROLLED: WOMEN’S EXPERIENCE OF FINANCIAL ABUSE AND POTENTIAL IMPLICATIONS FOR UNIVERSAL CREDIT* 37 (2015).

87. See, e.g., NNEDV Hotline, *supra* note 85; *Facts About Domestic Violence and Economic Abuse*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE (2015), https://assets.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf [https://perma.cc/V2V7-3JPG] (citing Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 *J. OF INTERPERSONAL VIOLENCE* 411, 413–14 (2012) [hereinafter Postmus et al. II]).

88. See STARK, *supra* note 8, at 337.

89. See, e.g., Postmus et al. I, *supra* note 83, at 18.

90. Guillaume Vandenbroucke, *Married Men Sit Atop the Wage Ladder*, 24 *FED. RESERVE BANK OF ST. LOUIS* (2018), <https://research.stlouisfed.org/publications/economic-synopses/2018/09/14/married-men-sit-atop-the-wage-ladder> [https://perma.cc/9GDB-Y2X7].

terrorists “often deploy a range of tactics and strategies,”⁹¹ including stealing or using her identity,⁹² hiding assets,⁹³ interfering with her employment,⁹⁴ and withholding money from her.⁹⁵ Because she lacks financial resources, a victim may be reluctant or unable to leave.⁹⁶

Even if she does leave, a woman who has taken time off from paid work to raise children often finds that it is difficult to reenter the workforce, or at least to earn a salary sufficient to support herself and her children.⁹⁷ One scholar has identified the following financial risk factors for women experiencing separation or divorce: “(1) higher economic need and restricted earning capacities in the presence of children; (2) insufficient child maintenance; (3) disproportionate loss of income, which is often not fully compensated by spousal maintenance; and (4) human capital deficits resulting from gender specialization in the division of labor during marriage.”⁹⁸

Divorce itself can be financially devastating for women, especially as compared to men. As one scholar describes it, “[t]he assertion that many divorced women and their dependent children suffer financial hardship no longer sparks controversy. Many feminists and others have done much to expose and establish that the standards of living of many women decline precipitously at divorce.”⁹⁹ Another notes, “[d]ivorced women’s stories of loss, pain, and humiliation that attend their downward financial spiral command feminist attention.”¹⁰⁰

There is no doubt that men fare far better financially after divorce than women do.¹⁰¹ A researcher at the London School of Economics found that, after divorce, women with dependent children see their incomes decline by

91. Weissman, *supra* note 84, at 3.

92. *Id.*; Megan E. Adams, *Assuring Financial Stability for Survivors of Domestic Violence: A Judicial Remedy for Coerced Debt in New York’s Family Courts*, 84 BROOK. L. REV. 1387, 1398 (2019).

93. Arianne Renan Barzilay, *Power in the Age of In/Equality: Economic Abuse, Masculinities, and the Long Road to Marriage Equality*, 51 AKRON L. REV. 323, 329 (2017); HOWARD & SKIPP, *supra* note 86, at 374.

94. *See, e.g.*, Barzilay, *supra* note 93, at 329.

95. *Id.*

96. *See, e.g.*, Adrienne E. Adams, Cris M. Sullivan, Deborah Bybee & Megan R. Greeson, *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 568 (2008).

97. Jamie Haar, *Women’s Work: Economic Security in the Domestic Violence Context*, 31 HOFSTRA LAB. & EMP. L.J. 471, 474 (2014).

98. Thomas Leopold, *Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes*, 55 DEMOGRAPHY 769, 771 (2018).

99. Penelope E. Bryan, *Reasking the Woman Question at Divorce*, 75 CHI.-KENT L. REV. 713, 713 (2000); *see also* Postmus et al. I, *supra* note 83, at 2 (noting economic inequity both before and after separation).

100. Bryan, *supra* note 99, at 751.

101. *See, e.g.*, Liana C. Sayer, *Economic Aspects of Divorce and Relationship Dissolution*, in HANDBOOK OF DIVORCE AND RELATIONSHIP DISSOLUTION 390 (Mark A. Fine & John H. Harvey eds., 2006).

approximately 21%, while those of men with dependent children rise by approximately 32%.¹⁰² Women's standards of living also decline, with many women living in poverty for the first time¹⁰³ and losing their homes.¹⁰⁴ These changes are prevalent and permanent¹⁰⁵ for women, whereas men are usually able to recoup their losses.¹⁰⁶

After divorce, "fathers are socially advantaged with respect to the use of tactics of domestic power by, for example, . . . men's generally superior financial resources."¹⁰⁷ As this Article discusses in Part III, men may have the money and power to hire better lawyers and to prolong litigation.¹⁰⁸ Intimate terrorists recognize these advantages, exploiting them to continue to control and terrify their victims.¹⁰⁹

III. JUDICIAL TERRORISM IN POST-SEPARATION ABUSE

*"In the last 7 years there have been hundreds of motions filed . . . My ex has been through every lawyer in our county. When he didn't get the answer he wanted from them he began to represent himself . . . My ex won't stop until he gets his way. The court needs to step in. Otherwise I will have to keep defending myself for the next 10 years. I cannot afford that."*¹¹⁰

After a victim leaves and removes herself physically from an abusive relationship, she must then extricate herself legally. Just as she pauses to sigh in relief that she has managed to put her abusive relationship behind her, she is "hit" with another form of abuse: judicial terrorism,¹¹¹ a means for abusers to continue to control their victims post separation by using the court system.

102. Stephen P. Jenkins, *Marital Splits and Income Changes Over the Longer Term*, INST. SOC. & ECON. RES. 1, 7 (2008).

103. Leopold, *supra* note 98, at 770.

104. *Id.*

105. David de Vaus, *The Economic Consequences of Divorce in Six OECD Countries*, 52 AUSTL. J. SOC. ISSUES 180, 193 (2017).

106. Leopold, *supra* note 98, at 793.

107. Elizabeth et al., *supra* note 80, at 465.

108. *See, e.g.*, Bryan, *supra* note 99, at 714–16.

109. *See, e.g.*, Douglas, *supra* note 35, at 88.

110. Comment in *One Mom's Battle*, FACEBOOK (May 28, 2020) (on file with author). All quotes from this site are used with permission; each author's name is omitted for privacy reasons. In all quotes, language reproduced exactly as in original.

111. One student Note suggests naming as "judicial terrorists" those who use the judicial system as a vehicle for domestic abuse. According to the Note, the mere act of naming can serve several purposes: to help the public understand the coercive techniques of ongoing litigation as abusive, to garner media attention, and to alert the international community to a form of abuse that should be governed by international human rights law. King, *supra* note 10, at 174–76.

In the context of judicial terrorism, actions which would in another setting be classified as emotional abuse,¹¹² financial abuse,¹¹³ stalking,¹¹⁴ coercive control,¹¹⁵ or harassment¹¹⁶ hide behind the curtain of authenticity and legitimacy. As one perceptive judge put it, “[t]his form of domestic violence is by proxy and it uses the very judicial system which is supposed to protect individuals from domestic violence, to continue the perpetrators’ need for control well after the parties’ separation and commencement of the divorce action.”¹¹⁷ In the words of a victim, “[i]t’s a form of abuse They can file as many contempt’s against you as they want. No matter there is no merit It’s drained me of everything. My money and health At least I have the file at courthouse showing over 90 frivolous findings.”¹¹⁸

Abusers are known to escalate divorce proceedings, making demands in an attempt to intimidate their victims. Just like other types of terrorists, judicial terrorists try to strike where it hurts most,¹¹⁹ whether physically, financially,¹²⁰ or emotionally.¹²¹ By virtue of their previous intimate

112. *Abuse*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“Physical or verbal abuse that causes or could cause serious emotional injury.”).

113. Adams et al., *supra* note 96, at 564 (“Economic abuse involves behaviors that control a woman’s ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency.”).

114. Judith M. McFarlane et al., *Stalking and Intimate Partner Femicide*, 3 HOMICIDE STUD. 300, 300-01 (1999) (“Stalking . . . includes repeated (e.g., two or more) occasions of visual or physical proximity, nonconsensual communication, or verbal, written, or implied threats that would cause fear in a reasonable person.”); see also Keirsten L. Walsh, *Safe and Sound at Last? Federalized Anti-Stalking Legislation in the United States and Canada*, 14 DICK. J. INT’L L. 373, 381 (1996) (“The characteristic which distinguishes stalking as a unique crime, is that stalking behavior involves a series of discrete, individual acts, each one building upon the next.”).

115. Kristy Candela, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 FAM. CT. REV. 112, 115 (2016). See also, e.g., *Batterer Manipulation of the Courts to Further Their Abuse*, 18 SYNERGY (Nat’l Council of Juv. & Fam. Ct. Judges), May 13, 2015, at 12.

116. *Harassment*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“Words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation.”).

117. *Jessica T. v. Kieth T.*, 2020 WL 3163793, at *1–2 (N.Y. Sup. Ct. 2020).

118. Comment in *One Mom’s Battle*, FACEBOOK (Oct. 19, 2019) (on file with author).

119. See, e.g., Rick Bragg, *Terror in Oklahoma: The Children; Tender Memories of Day-Care-Center Are All That Remain After The Bomb*, N.Y. TIMES (May 3, 1995), <https://www.nytimes.com/1995/05/03/us/terror-oklahoma-children-tender-memories-day-care-center-are-all-that-remain.html> [<https://perma.cc/4T3M-XKMV>] (describing the deaths of nineteen children in the Oklahoma City bombing as particularly tragic); C.M.A. Mc Cauliff, *Originalism: Privileges v. Fundamental Values*, 47 HOFSTRA L. REV. 1279, 1301 (2019) (describing various shootings in schools); Meryl Kornfield, *What Happened at the Capitol ‘Was Domestic Terrorism,’ Lawmakers and Experts Say*, WASH. POST (Jan. 7, 2021), <https://www.washingtonpost.com/national-security/2021/01/07/domestic-terrorism-capitol-mob> [<https://perma.cc/5ZWU-LRME>]; Jeremy Backstrom, *Why It’s Important to Call the Capitol Attacks ‘Domestic Terrorism,’* PHILA. INQUIRER (Jan. 19, 2021) at A9.

120. See, e.g., Ward, *supra* note 4, at 452.

121. *Id.*; see also Mary Przekop, *One More Battleground: Domestic Violence, Child Custody, and the Batterers’ Relentless Pursuit of their Victims Through the Courts*, 9 SEATTLE J. FOR SOC. JUST. 1053, 1070 (2011).

relationship, abusers know their victims' vulnerabilities,¹²² and in post-separation proceedings, abusers often seek to exploit those vulnerabilities.¹²³ Judicial terrorism marries the emotional and financial distress of litigation¹²⁴ and the fear and anxiety related to appearing in court.¹²⁵ Victims face the difficult economic decision of whether to hire an attorney and defend against often frivolous litigation¹²⁶ or to decline to do so and allow the abuser to gain a litigation advantage, perhaps resulting in the victim's loss of her children, spousal support, marital property, or other relationships and assets.¹²⁷

Perhaps one reason why legal scholars¹²⁸ have not connected judicial terrorism directly to domestic violence is that judicial terrorism occurs mostly, if not entirely, post separation, during a time period when, as discussed in Part I, even experts are less likely to recognize ongoing intimate terrorism. Significantly, judicial terrorism takes place largely within a "safe place":¹²⁹ the courts, where victims are ostensibly protected from their abusers, at least physically. Post separation, abusers can continue to take advantage of their victims, largely without fear of legal repercussion if that harassment takes place in the ideal petri dish¹³⁰ of the courtroom. As one practitioner has explained,

[T]he problem [of judicial terrorism] does not have a commonly understood name or definition [It] describe[s] a range of tactics that survivors and their advocates have reported that abusers often use in connection with court proceedings in order to control, harass, intimidate, coerce, and/or impoverish survivors. Court rules or statutes may appear on their face to authorize some of these tactics. However, these tactics become abusive . . . when they lack factual support or legal merit and when used for purposes of harassment or coercion.¹³¹

122. Dutton & Goodman, *supra* note 30, at 748.

123. *Id.*; See also Campbell et al., *supra* note 61, at 44.

124. WASH. REV. CODE § 26.51.010 (2020) (recognizing that "[t]he legal system unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and financial devastation").

125. See, e.g., Ward, *supra* note 4, at 455; Emma Fitch & Patricia Easteal, *Vexatious Litigation in Family Law and Coercive Control: Ways to Improve Legal Remedies and Better Protect the Victims*, 7 FAM. L. REV. 103, 108 (2017).

126. Ward, *supra* note 4, at 438.

127. See, e.g., Campbell et al., *supra* note 61, at 55.

128. Legal scholars are late to the game. Notably, a few students and at least one legal practitioner have described the problem in some detail. See, e.g., Przekop, *supra* note 121; Ward, *supra* note 4; E. Campbell, *supra* note 17, at 53.

129. Klein, *supra* note 22.

130. Or, as one social scientist has called it, a "perfect storm." Douglas, *supra* note 35, at 84.

131. Ward, *supra* note 4, at 432.

And judicial terrorism is as harmful and insidious as it sounds. As one scholar has described it, “[f]rivolous lawsuits cause appreciable harm to many persons . . . a person against whom the groundless suit is brought is subjected to serious harassment and inconvenience, pecuniary loss through necessary attorney’s fees, deprivation of time from his business or profession, and, in some cases, harm to reputation and even physical damage to person or property.”¹³²

But judicial terrorism claims multiple victims. Analyzing the harms created by judicial terrorism requires us to consider at least two victims, one an intentional target and one a bystander. The intentional target? The woman who has dared to leave her husband after a period of abuse. The bystander? The court system, which must adjudicate the many motions brought by abusers to harass their victims.

It is perhaps understandable and predictable, in light of gender biases¹³³ and power dynamics, that legal systems have failed to name and prevent judicial terrorism against individuals. What is more surprising is that the *family court system itself*, the bystander victim of the individual perpetrator, has not tamped down on judicial terrorism. When abusers use the courts to harass their victims, “[t]he court system itself becomes more clogged, disrupted, and delayed, thus affecting the taxpayers in general, and other litigants who have their suits delayed.”¹³⁴ Indeed, in one study, female victims of judicial terrorism expressed their beliefs that their former partners continued the abuse to merely “drag things out.”¹³⁵ That “dragging out” affects justice systems overall, not solely individual victims. Therefore, we are left to wonder why the court system allows vexatious litigation to continue. Perhaps it is because, in the words of one court, each incident of judicial terrorism is viewed as “unique”¹³⁶ rather than as a part of a pattern of harassment that perpetuates itself throughout the family court system on a regular, ongoing basis.

132. John W. Wade, *On Frivolous Litigation: A Study of Tort Liability and Procedural Sanctions*, 14 HOFSTRA L. REV. 433, 433 (1986).

133. See, e.g., Nikki Gloudeman, ‘Men’s Rights’ In Divorce Court: When Domestic Violence Becomes Financial Abuse, THE ESTABLISHMENT (Feb. 7, 2018).

134. Wade, *supra* note 132, at 433.

135. Toews & Bermea, *supra* note 64, at 2182.

136. Jessica T. v. Kieth T., 2020 WL 3163793, at *1–2 (N.Y. Sup. Ct. 2020) (“This case is unique as it details a type of domestic violence which generally goes unnoticed in our judicial system . . . domestic violence . . . by proxy . . . uses the very judicial system which is supposed to protect individuals from domestic violence, to continue the perpetrators’ need for control well after the parties’ separation and commencement of the divorce action. This case demonstrates the repercussions and consequences that await an individual who engages in this very insidious form of domestic violence committed through vexatious/abusive litigation.”).

But survivors of judicial terrorism know that the tactic is far from unique, uniformly calling judicial terrorism a form of coercive control violence.¹³⁷ Even batterers admit it: according to the National Council of Juvenile and Family Court Judges, “the use of custody proceedings is a strategy commonly identified by batterers themselves as a means to control or harass former partners.”¹³⁸ Judicial terrorism allows the abuser to continue to engage in coercive control of his victim¹³⁹ and harass her in a particularly destructive way. Whereas psychological abuse may occur in a variety of fora, some of them private and personal, and economic abuse may involve any method of depleting a victim’s assets,¹⁴⁰ judicial terrorism allows the abuser to intimidate and abuse his victim through the court system, all the while draining her financial resources.

A. *Financial Abuse as a Component of Judicial Terrorism*

*“[I]n my personal experience . . . , I have been brought from a well-situated, financially savvy primary wage earner, to a broke, single mother, very actively and specifically through my experience in the courtroom. A Men’s Rights lawyer racked up billable hours with an unfounded money grab”*¹⁴¹

Logically, because financial abuse is a gendered component of intimate terrorism, many women describe economic battering¹⁴² as part and parcel of judicial terrorism. Divorce and custody disputes may be ongoing—often with multiple hearings over a period of years—and costly, often exponentially so.¹⁴³ For the victim spouse, this court-based harassment often results in “disastrous financial consequences”¹⁴⁴ and “financial devastation.”¹⁴⁵ As one victim of judicial terrorism asked in a Facebook group for survivors or intimate terrorism,

137. See, e.g., Khaw et al., *supra* note 56, at 4.

138. *Batterer Manipulation of the Courts to Further Their Abuse*, 18 SYNERGY (Nat’l Council of Juv. & Fam. Ct. Judges), May 13, 2015, at 12.

139. E. Campbell, *supra*, note 17, at 53.

140. Adams et al., *supra* note 96, at 567.

141. Gloudeman, *supra* note 133.

142. See Barzilay, *supra* note 93, at 329.

143. See, e.g., Amanda Kippert, *After Abuse, a High-Priced Divorce Is the Next Trauma: Survivors who Leave an Abusive Partner often Find Themselves Nearly Bankrupt by Divorce*, DOMESTICSHELTERS (Feb. 20, 2019), <https://www.domesticshelters.org/articles/financial/after-abuse-a-high-priced-divorce-is-the-next-trauma> [https://perma.cc/7TKS-S97J].

144. Leah J. Pollema, *Beyond the Bounds of Zealous Advocacy: The Prevalence of Abusive Litigation in Family Law and the Need for Tort Remedies*, 75 UMKC L. REV. 1107, 1110 (2007).

145. *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-5.

What resources are out there to help pay for your divorce? I'm drowning. Only 4.5 months in and already 7K in lawyer fees because of the constant emails and phone calls to the lawyers because we can't communicate. My lawyer is calling and asking for money, but I don't have anymore. When we finish the divorce and he either sells or pays me half of the house I should have enough, but what do you do in the meantime. Im barely making ends meet.¹⁴⁶

The judicial terrorist—an intimate terrorist, remember, engaged in post-separation coercive control—intends this financial impact.¹⁴⁷ He knows that by bringing multiple actions to, for example, change the custody and visitation schedule, he can continue to control the victim: first, by bankrupting her; second, by forcing her to discontinue the battle and allow him to “win”;¹⁴⁸ and third, by placing her in fear that she will not be able to support herself and her children.¹⁴⁹ Then, if the victim is indeed destitute, “[a]busers may also try to use the resulting financial devastation against the survivor in custody disputes to suggest the survivor is now incapable of providing a stable and secure home because of a lack of financial resources.”¹⁵⁰

How does financial abuse control the victim and the outcome of the litigation? In several ways. First, it forces her to spend money to retain lawyers for representation, experts for court testimony, psychologists for custody evaluations, and investigators to gather evidence.¹⁵¹ Because men typically leave a relationship more financially secure than women do,¹⁵² they can usually afford better, more experienced professionals to support them, resulting in better outcomes for them. Because women typically have

146. Post in *One Mom's Battle*, FACEBOOK (Sept. 21, 2020) (on file with author). This post received 30 responses, including, “I am literally in bankruptcy after two years.” *Id.* (response). “[M]e too” “[M]e too!” *Id.* “I had to open and max out two high interest credit cards over two years and once the divorce was finalized, I signed over a promissory note to my attorney from my part of the divorce settlement.” *Id.* “This is almost exactly what my story is as well. 3 years I. and almost \$100,000 into it, but I have not been able to hire any experts. I need forensic accountant and many other experts and cant afford it. I am going to lose my son . . . not because I have done anything wrong, but because I can't afford to pay for the experts needed.” *Id.* “I raped my retirement account.” *Id.* “Mine cost \$500k – kiss bye bye to your life savings & the house . . .” *Id.*

147. See, e.g., Ward, *supra* note 4, at 453.

148. Kippert, *supra* note 143.

149. See, e.g., Ward, *supra* note 4, at 449; E. Campbell, *supra* note 17, at 54.

150. *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-4 to H-5.

151. See Linda S. Smith & Eric Frazer, *Child Custody Innovations for Family Lawyers: The Future Is Now*, 51 FAM. L.Q. 193, 195 (2017); Penelope Eileen Bryan, *Women's Freedom to Contract at Divorce: A Mask for Contextual Coercion*, 47 BUFF. L. REV. 1153, 1178 (1999) [hereinafter Bryan II]; Barry Locke, *Staying Up-to-Date on New Developments in Family Law Litigation*, in STRATEGIES FOR FAMILY LAW IN ILLINOIS 1, 9 (Aspatore ed., 2015–2016).

152. See *infra* notes 186–192.

fewer resources post-divorce, their financial well may dry up, leaving them without money to match their husband's stable of warriors.¹⁵³

Second, frequent court appearances may force victims to miss work, leading to financial penalty, job loss, and increased anxiety about job stability. Many victims report that the constant defending against judicial terrorism significantly impacts their careers.¹⁵⁴

Finally, extended litigation may result in women incurring incidental costs which they can ill afford. These expenses may include childcare for times when the mother must be in court,¹⁵⁵ transportation to the courthouse,¹⁵⁶ appropriate attire for court,¹⁵⁷ and even expenses for complying with discovery requests.¹⁵⁸

In the end, judicial terrorism can lead to a victim's spending hundreds of thousands of dollars¹⁵⁹ and perhaps losing anyway. As one scholar describes it, the very legal system that a victim once believed would protect her from that abuser essentially becomes another weapon which can cause emotional and financial devastation.¹⁶⁰

B. *Judicial Terrorism in Child Custody Cases*

Judicial terrorism may occur anywhere along the divorce timeline, but it is particularly rampant and long-lasting in child custody litigation.¹⁶¹ When children are involved, the victim's Achilles heel is all too obvious: while she may be able to stand her ground—or even be willing to give in—on issues of property division and child support,¹⁶² she will likely do almost anything to maintain custody of her kids.¹⁶³

153. See *infra* notes 190–201.

154. See, e.g., *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-4 to H-5.

155. *Id.*; Barbara Hart, *Battered Women and the Criminal Justice System*, 36 AM. BEHAV. SCIENTIST 624, 628 (1993).

156. Hart, *supra* note 155, at 627–28.

157. According to stylist Brenda Swauger, “[w]omen clients and attorneys should consider wearing a pant suit, dress or skirt and shirt.” See Brenda Swauger, *9 Tips on How to Dress for the Courtroom*, ABA J. (Jan. 16, 2020, 6:30 AM), <https://www.abajournal.com/voice/article/how-to-dress-for-the-courtroom> [<https://perma.cc/KUE8-3YMY>].

158. See, e.g., MASS. CONTINUING LEGAL EDUC., *DOING YOUR DIGGING: DISCOVERY IN DIVORCE ACTIONS* § 7.1.4 (2020).

159. See, e.g., E. Campbell, *supra* note 17, at 54; Stephanie Dallam, *Are “Good Enough” Parents Losing Custody to Abusive Ex-Partners?*, LEADERSHIP COUNCIL ON CHILD ABUSE & INTERPERSONAL VIOLENCE (May 27, 2006), <http://www.leadershipcouncil.org/1/pas/dv.html> [<https://perma.cc/9SNN-F3V2>].

160. See Bonsignore, *supra* note 16.

161. For unmarried parents, of course, custody litigation may begin whenever the parents cease living together, if they ever did.

162. E. Campbell, *supra* note 17, at 64.

163. *Id.*; see also VOLLANS, *supra* note 14, at 8 (noting that “for some women, the fear of him having custody is so great that she will fight until the end to protect her child”).

Judicial terrorists typically extend and amplify the child custody battle, which they view as all the better to continue to harass their victims.¹⁶⁴ To drive up costs, they may file multiple motions to modify child custody orders even absent a material change in circumstances;¹⁶⁵ they may also appeal existing orders.¹⁶⁶ The repeated filing of motions is “typically experienced as an attack on [the victim’s] mothering, something that is a central and self-defining project for many women”¹⁶⁷ or “the worst [thing] that could happen to them.”¹⁶⁸

In multiple studies, researchers have found that even when husbands merely threaten to take their former wives back to court,¹⁶⁹ the mere possibility of losing some or all custody of their children is in part stressful because the fear of that outcome may persist for well over a decade.¹⁷⁰ And when the fear realizes itself and mothers lose custody, fathers “succeed[] in inflicting a profound injury on the mother.”¹⁷¹ One interviewer described it this way: “[The father]’s ongoing intimidation of [the mother] not only poses a threat to her physical and psychological integrity, but through his intentions to return to the Family Court for increased care time it extends to a threat to [her] motherhood. The possibility that [the father] will seek a change to the parenting order currently in place hangs over [the mother], causing her to feel constantly on edge.”¹⁷²

Indeed, the abuse can seem endless and impossible to escape; custody disputes may begin as soon as a couple separates and may continue throughout the child’s minority.¹⁷³ Even when a divorce is final, therefore, custody litigation may pervade the next eighteen years.¹⁷²

Abusers may have another goal in prolonging child custody litigation and frequently moving for modification: getting the victim into the same

164. Vivienne Elizabeth, *From Domestic Violence to Coercive Control: Towards the Recognition of Oppressive Intimacy in the Family Court*, 30 N.Z. SOCIO. 26, 32-33 (2015) [hereinafter Elizabeth II].

165. See, e.g., *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-2.

166. See, e.g., *In re Marriage of Kim*, 208 Cal. App. 3d 364, 373 (1989) (“Clearly, the consolidated appeals in the present case are totally devoid of merit and were brought merely to continue an ongoing harassment of his ex-wife over custody of their child. . . . His actions are a sham, frivolous in nature, an abuse of the court system and deserving of an appropriate sanction.”); *Davey v. Dolan*, 2008 WL 4187968 at *2 (2d Cir. 2008) (ordering plaintiff to show cause why he should not be sanctioned for filing a frivolous appeal).

167. Elizabeth II, *supra* note 164, at 32–33.

168. See, e.g., *id.* at 33.

169. Toews & Bermea, *supra* note 64, at 2176.

170. Pollema, *supra* note 144, at 1117–18.

171. Elizabeth II, *supra* note 164, at 33.

172. *Id.* at 36.

173. See, e.g., Ward, *supra* note 4, at 447–48.

172. See *Jessica T. v. Kieth T.*, 2020 WL 3163793 (N.Y. Sup. Ct. 2020).

room¹⁷³ and “continu[ing] to exert power and control in the courtroom,”¹⁷⁴ where the abuser may have “prolonged contact.”¹⁷⁵ At least one researcher has documented that merely being forced to walk into the courthouse may render a mother physically ill, as well as psychologically intimidated.¹⁷⁶ The “shared physical space” of the courtroom and waiting area trigger the all-too-familiar fear the victim may have experienced as the result of pre-separation abuse, even when the abuser just “sit[s] there.”¹⁷⁷

In the Office of Violence Against Women (a division of the U.S. Department of Justice), the Family Court Enhancement Project sought to establish guiding principles for child custody litigation in families where domestic abuse has occurred.¹⁷⁸ The Office emphasized, “Courts and providers of child custody and parenting time dispute resolution services should utilize processes that account for domestic violence and are safe, fair and accessible.”¹⁷⁹ Because financial concerns are paramount, and women are more likely than men to work inside the home, women are particularly affected by ongoing litigation. As one observer commented,

Sadly, most domestic violence survivors, primarily women, oftentimes do not have either the necessary financial or informational resources to obtain legal assistance when battling abusive ex-partners who are hell bent on trapping them under an endless mountain of legal paperwork and court appearances. These women often end up being victimized a second time, suffering extensive consequences from this abuse, such as losing a job or being unable to obtain proper childcare because they are repeatedly required to appear in court. The economic and emotional repercussions provide yet another avenue for the victim to be victimized again.¹⁸⁰

173. *Id.* at n.6 (“Litigation is the only tool left for the abuser to use to keep the victim face to face with him or her. This tool further traumatizes the victims of intimate/partner domestic violence even after the victim has managed to leave the relationship.”); *see also* *Mugrage v. Mugrage*, 763 A.2d 347 (N.J. Super. Ct. Ch. Div. 2000) (finding wife to be a victim of domestic violence and granting protection order but permitting husband to be present at wife’s deposition).

174. Gutowski & Goodman, *supra* note 54, at 443.

175. *Id.*

176. Heather Douglas, *Domestic and Family Violence, Mental Health and Well-being, and Legal Engagement*, 25 *PSYCHIATRY, PSYCHOL. & L.* 341, 346 (2018) [hereinafter Douglas II].

177. Gutowski & Goodman, *supra* note 54, at 446.

178. *See generally* NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, GUIDING PRINCIPLES FOR EFFECTIVELY ADDRESSING CHILD CUSTODY AND PARENTING TIME IN CASES INVOLVING DOMESTIC VIOLENCE (2017) https://ta2ta.org/media/com_library/resources/235-ncjfcj-fcep-guiding-principles-final.pdf [<https://perma.cc/7KYG-ZDVR>].

179. *See id.* at 8.

180. *See* Bonsignore, *supra* note 16.

C. *The Overall Impact of Judicial Terrorism*

Judicial terrorism is pernicious in part because it shapeshifts; while it allows the abuser to continue to harass and stalk his victim, it bears the imprimatur of legitimacy because it takes place through the court system. Just like abusers who, as intimate partners, are “supposed” to be nurturing and caring, the court system—which should be a source of justice and liberty from abuse—becomes a forum for ongoing violence.¹⁸¹ The abuser may fool others, including court insiders, into seeing him as charming and victimized.¹⁸² The true victim then sees the court system as a sham as well, posing as a deliverer of relief but really serving as a torture chamber. Indeed, as one survivor described it, “[w]omen and their children who have endured horrific abuses, including sexual molestation and rape, can be forced to interact repeatedly with their assailants in the courtroom upon escaping the relationships.”¹⁸³

Finally, when courts do not take steps to limit or eliminate judicial terrorism, the court system becomes a playing field for not only the abusers, but also their attorneys. As one insightful law student described it, “attorneys are not only a part of this ongoing problem, but they are sometimes the cause. Instead of solving the disputes, attorneys themselves may become invested in the controversy, adding unnecessary conflict to the proceedings.”¹⁸⁴

All of this is not to say that courts always fail to recognize, name, and sanction judicial terrorism. Even the United States Supreme Court has noted, “The goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of repetitious and frivolous requests.”¹⁸⁵ Family courts in several states have enjoined abusers from filing additional claims,¹⁸⁶ placed a moratorium on the bringing of additional motions,¹⁸⁷ awarded more marital assets to the

181. *Id.*

182. *See, e.g.*, E. Campbell, *supra* note 17, at 43–44.

183. Elizabeth Breco, For Domestic Violence Survivors, Courts Can Be Another Abuse, TALKPOVERTY (March 13, 2018), <https://talkpoverty.org/2018/03/13/domestic-violence-survivors-courts-can-another-abuse/> [<https://perma.cc/PXH5-ACKD>]. *See also* Klein, *supra* note 22 (quoting Retired Judge Peter Macdonald: “[an abuser] just wanted to be in the room with [his victim].”).

184. Pollema, *supra* note 144, at 1108–09.

185. *In re Sindram*, 498 U.S. 177, 179–80 (1991) (ordering that petitioner pay future filing fees because he had abused the Court’s in forma pauperis guidelines).

186. *In re Prefiling Order Declaring Vexatious Litigant*, 435 P.3d 1091, 1100 (Idaho 2019) (affirming administrative judge’s injunction prohibiting vexatious litigant from filing further *pro se* actions). At least one federal court has taken the same action. *See Davey v. Dolan*, 2008 WL 4187968 (2d Cir. 2008) (enjoining *pro se* litigant from filing further litigation without obtaining leave of court).

187. *In re Marriage of Brown*, 2008 WL 4838839, at *5 (Wash. Ct. App. 2008) (holding that court

victim spouse to compensate for judicial terrorism,¹⁸⁸ and sanctioned litigants for bringing frivolous claims.¹⁸⁹ Nevertheless, these instances seem to be few and far between, especially when compared to prevalence of judicial terrorism as reported in the social science literature.

IV. RETRAUMATIZATION THROUGH JUDICIAL TERRORISM

*“In our own nonprofit private practice work, we often see custody evaluators or legal professionals minimize or ignore abuse allegations because they view it as ‘just another high conflict divorce.’”*¹⁹⁰

The lasting physiological and emotional harms caused by judicial terrorism are inevitable for women when an abuser forces them to interact by using the court system as a tool. Beyond Part III’s focus on the family court as a victim of judicial terrorism, it is also important to further consider the court as a perpetrator of trauma for victims, even if the court’s role is unintentional.

Retraumatization, also known as secondary victimization¹⁹¹ or second assault,¹⁹² refers to the added traumatization a victim experiences during her interactions with professionals and processes in the justice system.¹⁹³ The terms arise most frequently concerning sexual assault, but they may be used to describe all forms of intimate partner violence, including emotional and economic abuse.¹⁹⁴ While scholars have recognized that “in addition to the indignities associated with the violence itself, intimate partner violence survivors very often risk being retraumatized when trying to access the justice system,”¹⁹⁵ few have used the concept of retraumatization to characterize the harm intimate terrorists inflict on their victims through judicial terrorism in family court.

may limit the motions filed by husband/father who engaged in a “continuing pattern of intransigence” by bringing multiple parenting claims).

188. *Jessica T. v. Kieth T.*, 2020 WL 3163793, at *1–2 (N.Y. Sup. Ct. 2020).

189. *See, e.g.*, *In re Marriage of Kim*, 208 Cal. App. 3d 364, 374 (Cal. Ct. App. 1989). *But see* Ward, *supra* note 4, at 459 (noting that courts may be reluctant to impose sanctions, instead relying on verbal admonishments).

190. Morgan Shaw, *Commentary Regarding Parenting Coordination in Cases of High Conflict Disputes*, 14 J. CHILD CUSTODY 73, 74 (2017).

191. Echo A. Rivera, Cris M. Sullivan & April M. Zeoli, *Secondary Victimization of Abused Mothers by Family Court Mediators*, 7 FEMINIST CRIMINOLOGY 234, 237 (2012).

192. Carly Parnitzke Smith & Jennifer J. Freyd, *Institutional Betrayal*, 69 AM. PSYCHOL. ASS’N 575, 576 (2014) (citing Rebecca Campbell, *Rape Survivors’ Experiences with the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?*, 12 VIOLENCE AGAINST WOMEN 30 (2006)).

193. Katirai, *supra* note 28, at 85.

194. *Id.* at 89; *see generally* *Post Separation Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROGRAMS (May 2, 2016), <https://www.theduluthmodel.org/wheels/> [<https://perma.cc/JU4R-W8XT>].

195. Katirai, *supra* note 28, at 81; *see also* Fitch & Eastal, *supra* note 125, at 112.

When individuals in the justice system act to revictimize survivors of domestic assault, they do not necessarily intend to retraumatize the victims; individual actors, though well-intentioned, can nonetheless inadvertently retraumatize survivors “through negative statements, behaviors, and attitudes.”¹⁹⁶ In contrast, when intimate terrorists use the justice system to intimidate and harass their victims, their actions are fully intentional,¹⁹⁷ leading survivors to process those negative behaviors as a further violation that repeats and connects to the original abuse.¹⁹⁸ Because intimate partnerships are so personal and domestic violence is so psychologically damaging, “[v]iolations of the interpersonal aspect of legal proceedings, such as whether one is treated with respect versus whether one is subject to victim-blaming, insensitive remarks, and statements that minimize the harm caused by the abuse, are likely to have negative effects on a survivor.”¹⁹⁹

Surprisingly, although it has received much attention in the context of criminal court,²⁰⁰ retraumatization in the family law and civil context is not discussed in any depth in the legal literature. Still, social scientists recognize the issue, and their empirical studies demonstrate that it takes place.²⁰¹ For example, researchers at Michigan State University examined how abused mothers going through custody mediation experienced the process.²⁰² They found that 63% of women reported experiencing retraumatization, while 84% reported at least a partially negative mediation experience.²⁰³ The researchers argued that one of the most critical factors that contributed to the negative experience was retraumatization.²⁰⁴ Women reported feeling blamed, doubted, and ignored.²⁰⁵ They reported these feelings even in cases where the mediator *believed* that the abuse had occurred.²⁰⁶ Ultimately, the study found that 37% of the women reported experiencing retraumatization by both the abuser *and* the mediator during the mediation, and none of the

196. Katirai, *supra* note 28, at 88–89 (citing Kayleigh Roberts, *The Psychology of Victim-Blaming*, ATLANTIC (Oct. 5, 2016), <https://www.theatlantic.com/science/archive/2016/10/the-psychology-of-victim-blaming/502661/> [<https://perma.cc/6W2Q-AT72>]).

197. *See, e.g.*, Ward, *supra* note 4, at 455; Fitch & Easteal, *supra* note 125, at 106.

198. Rivera et al., *supra* note 191, at 237.

199. Katirai, *supra* note 28, at 90.

200. Epstein & Goodman, *supra* note 52, at 404, 439 (noting that “[civil] cases are quite different than those in the criminal courts, [and] . . . [d]espite enormous improvements in the responsiveness of police and prosecutors to domestic violence over the past several decades, the criminal justice system continues to discount important aspects of women’s experiences and to trivialize some of the harmful consequences that policies focused primarily on offender accountability often impose on survivors.”).

201. *See e.g.*, Gutowski & Goodman, *supra* note 54.

202. *See* Rivera et al., *supra* note 191, at 237.

203. *See id.* at 244–45.

204. *See id.* at 245–46.

205. *See id.* at 240.

206. *See id.*

women within that 37% reported feeling secure, respected, able to speak openly, or empowered.²⁰⁷

Another study gathered information from legal and nonlegal advocates regarding how many of the respondents' clients had experienced retraumatization through the legal system.²⁰⁸ Of the respondents, 81% indicated that many, most, or all of their clients identified the actions of the abuser or the abuser's associates as a source of retraumatization, and 60% indicated that many, most, or all of their clients experienced retraumatization as a result of the behavior, statements, or actions of court personnel.²⁰⁹ Further, 83% of respondents stated that many, most, or all of their clients reported retraumatization due to court procedures and outcomes.²¹⁰

A qualitative descriptive study examined the perspective of nineteen mothers who survived intimate partner violence and sought custody of at least one child through the family court system.²¹¹ The study explored the mothers' perceptions of court processes and their understandings of the impact of court processes and outcomes on their well-being with the goal of gaining insights into how to facilitate improvements in the legal process to make it more sensitive to survivors' experiences with abuse.²¹² Results revealed a family court system that "has the potential to cause grave, lasting harms to survivor-mothers who are separating from abusive partners."²¹³ The mothers' experiences with the court system were invalidating and distressing.²¹⁴ By compounding the adverse effects of the domestic abuse on their well-being, the court system was retraumatizing to these women.²¹⁵ Specifically, some of the women described "harsh treatment from professionals, which included being accused of lying, blamed, or disadvantaged *because of* their disclosures."²¹⁶

Taken together, studies show that the experience in the family court system was retraumatizing for survivors of domestic abuse, and that additional traumatizing experience created additional barriers to recovery.²¹⁷ The experience of retraumatization stemmed from both the

207. *See id.* at 245.

208. Katirai, *supra* note 28, at 92–93.

209. *Id.* at 93.

210. *Id.*

211. Gutowski & Goodman, *supra* note 54, at 441.

212. *Id.*

213. *Id.*

214. *Id.* at 447.

215. *See id.* at 452.

216. *Id.*

217. *See generally* JENNY BIRCHALL & SHAZIA CHOUDHRY, "WHAT ABOUT MY RIGHT NOT TO BE ABUSED?" DOMESTIC ABUSE, HUMAN RIGHTS AND THE FAMILY COURTS (Women's Aid 2018),

actions of the abuser himself and those of court officials. These studies serve to support the premise that judicial terrorism is traumatic as a source of post-separation abuse, in part because it extends and exacerbates the effects of previous domestic violence and poses a retraumatization risk by forcing women who care deeply about their children and want to maintain custody to face their abuser in a court system that implicitly presumes the absence of any trauma,²¹⁸ time and time again.

A. *Negative Impacts of Retraumatization*

The prevalence of retraumatization risk in the family court system—whether caused by the abuser or the system itself—has concrete harmful impacts. “Beyond the distress in the courtroom, [women’s] court experiences [leave] them with long-term and life-altering physiological consequences to contend with outside the courtroom.”²¹⁹ Namely, survivors can experience damaging stress and long-lasting mental health issues,²²⁰ they may also develop a sense of powerlessness, futility, personal worthlessness, and self-doubt.²²¹

The effects of stress can include insomnia, lack of concentration, excessive tiredness, and hair loss.²²² Survivors may also experience more permanent mental health issues which arise directly from their interactions with court processes,²²³ such as Post Traumatic Stress Disorder (PTSD), anxiety, and depression.²²⁴ Importantly, the retraumatization *adds* suffering to what survivors were already coping with as a result of the abuse itself.²²⁵ Using the court system to further traumatize their victims is therefore an effective means for abusers to continue to control their victims’ lives, emotions, and even their physical health.

Survivors also experience a range of internalized emotional harms when their abusers take them back to court repeatedly and, through the court system, “their experiences are repeatedly discredited and invalidated.”²²⁶ Women can acquire a sense of powerlessness and pointlessness, “akin to

<https://www.womensaid.org.uk/wp-content/uploads/2018/05/Domestic-abuse-human-rights-and-the-family-courts-report.pdf> [https://perma.cc/62X9-NSLM].

218. See Gutowski & Goodman, *supra* note 54, at 452.

219. *Id.* at 450.

220. *Id.*

221. Epstein & Goodman, *supra* note 52, at 449.

222. Gutowski & Goodman, *supra* note 54, at 450 (noting that two participants in the study were hospitalized as a result of the stress they endured).

223. *Id.*; see also Epstein & Goodman, *supra* note 52, at 449.

224. Gutowski & Goodman, *supra* note 54, at 450.

225. See *id.* (noting that one participant wanted to emphasize that the long-term consequences are “added suffering in addition to the prior abuse”) (emphasis in original).

226. Epstein & Goodman, *supra* note 52, at 449.

how numerous survivors eventually come to feel in their abusive relationships.²²⁷ After experiencing negative feelings associated with secondary victimization, survivors are often left believing there is nothing they can do to stop the endless litigation, or to make their situation be understood or be “seen.”²²⁸ Survivors might also develop a sense of personal worthlessness, especially when they cannot stop their abuser from harassing them.²²⁹ When they are blamed and ignored in the court system, even when they are not the ones bringing the actions, this too replicates abuse dynamics; like their abusers, the court lacks empathy for these women as human beings.²³⁰ The retraumatization inflicts an all-too-familiar pain. Moreover, survivors develop a sense of self-doubt through being retraumatized. Understandably so, when met with credibility discounting from a powerful court system, women begin to doubt their own experiences.²³¹

B. Institutional Betrayal

Retraumatization endured by women who are victims of abuse can be further understood through the lens of “institutional betrayal.”²³² Institutional betrayal recognizes the impact and involvement of institutions in traumatic events.²³³ As discussed in Part III, studies have repeatedly demonstrated that intimate partner violence survivors very often risk retraumatization in the legal system.²³⁴ Many of those studies specifically found that retraumatization occurred not only from women’s interactions with the perpetrator of abuse,²³⁵ but also from interactions with judges,²³⁶

227. *Id.*

228. *Id.*; see, e.g., Melissa Platt, Jocelyn Barton & Jennifer J. Freyd, *A Betrayal Trauma Perspective on Domestic Violence*, in VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS: VICTIMIZATION AND THE COMMUNITY RESPONSE 185, 201–02 (Evan Stark & Eve S. Buzawa eds., 2009).

229. Epstein & Goodman, *supra* note 52, at 449.

230. *See id.*

231. The discrediting that takes place in the court system mimics a distinct harm in abusive relationships: gaslighting. *See id.* (citing *What is Gaslighting?*, NAT’L DOMESTIC VIOLENCE HOTLINE (May 29, 2014), <http://www.thehotline.org/2014/05/29/what-is-gaslighting/> [<https://perma.cc/J7P2=QTRE>]).

232. Smith & Freyd, *supra* note 192, at 576.

233. *Id.* at 575.

234. *See, e.g.*, Rivera et al., *supra* note 191; Epstein & Goodman, *supra* note 52; Katirai, *supra* note 28.

235. *See* Laurel B. Watson & Julie R. Ancis, *Power and Control in the Legal System: From Marriage/Relationship to Divorce and Custody*, 19 VIOLENCE AGAINST WOMEN 166, 166–186 (2013).

236. *See* Gutowski & Goodman, *supra* note 54, at 453.

mediators,²³⁷ and other court professionals.²³⁸ More generally, many women faced secondary victimization through outcomes of litigation and the court procedures.²³⁹ This reality highlights a broader problem facing women who are interacting with the legal system. Not only are they forced to endure the trauma of facing their abuser time after time, but the very institution meant to provide them justice actually worsens their post-traumatic outcomes and facilitates the secondary trauma.²⁴⁰ The concept of institutional betrayal provides a framework for understanding the way our legal system, and specifically family courts, increases the risk of retraumatization by becoming a part of that process.

Intimate relationships are usually considered to be arenas for trust and safe interdependency.²⁴¹ When a woman is abused by her intimate partner, what should be a safe space is instead a venue for fear and intimidation. Similarly, institutions, including the court system, should foster a sense of trust and safety; when they retraumatize victims of intimate terrorism, victims may feel betrayed and experience post-traumatic harms.²⁴² Family court is uniquely situated because women who are experiencing abuse may trust the system to help them, or they may simply have an unavoidable dependency given the need to file and defend against court actions.²⁴³ Taken together, essentially all interpersonal violence survivors who interact with the court system have the requisite relationship with the family courts to be victims of the legal system's betrayal. This dynamic sets women who trust in or are dependent on the family court up for harms associated with institutional betrayal, compounding the effects of the primary abuse. For example, the exacerbating effects of institutional betrayal include anxiety, persistent interpersonal problems, personality disorders, and sexual dysfunction.²⁴⁴

237. See, e.g., Rivera et al., *supra* note 191, at 243.

238. Gutowski & Goodman, *supra* note 54, at 446 (“Survivors feel that court professionals do not identify the abuse dynamic[.] Some . . . fe[el] that court personnel d[o] not identify the other parents’ attempts to exercise coercion and control in the process as abusive.”) (emphasis omitted).

239. Katirai, *supra* note 28, at 93.

240. Smith & Freyd, *supra* note 192, at 575.

241. See Melanie Randall, *Domestic Violence and the Construction of “Ideal Victims”: Assaulted Women’s “Image Problems” in Law*, 23 ST. LOUIS U. PUB. L. REV. 107, 114 (2004) (“[M]en’s acts of sexual violence against women in intimate relationships take place in contexts which are, to the contrary, supposed to be characterized by affective emotional ties, partnership, allegiance, trust, loyalty, and safety.”).

242. Smith & Freyd, *supra* note 192, at 575–76.

243. *Id.* at 578 (“When victims reach out for help, they place a great deal of trust in the legal . . . system[.] . . .” (quoting Campbell, *supra* note 194, at 703)). Additionally, “the necessity of the institution . . . may create unavoidable dependency.” *Id.*

244. *Id.*

Ultimately, where judicial terrorism centers around child custody, the constant litigation forces women who care deeply about their children and want to maintain custody to repeatedly face their abuser in court, priming them to experience the harms associated with retraumatization—both by their primary abuser and by the court system—and institutional betrayal. The monetary burdens, lack of recognition of the risk of retraumatization, lack of resources for women facing that risk due to repeated encounters with abusive partners, and presence of factors signifying a system set up to inflict institutional betrayal all contribute to an inadequate investment by family courts to help women who are still experiencing abuse through the courts obtain meaningful relief from their abusers.²⁴⁵ In other words, the problem of retraumatization in the family courts is genuine and harmful, but the problem, and the court's systemic involvement, is not adequately acknowledged, let alone addressed.

V. RECOMMENDATIONS FOR REFORM AND AREAS FOR FURTHER INQUIRY

Identifying and describing post-separation intimate terrorism is relatively straightforward, and social scientists have done significant work to prove its traumatic effects on victims. Without a doubt, the more difficult task is proposing systemic approaches to preventing and remedying the abuse and its effects, in part because many of the tactics intimate terrorists employ—including judicial terrorism—are not illegal, and in part because the gendered power differential is deeply entrenched.

In the past, several social scientists and law students have suggested approaches to reducing judicial terrorism. These have included imposing attorney sanctions;²⁴⁶ applying tort remedies;²⁴⁷ placing moratoria on filing new actions;²⁴⁸ awarding of attorneys' fees to the victim;²⁴⁹ ensuring that one judge handles a matter from start to finish;²⁵⁰ limiting expensive, lengthy, and intrusive discovery;²⁵¹ bringing anti-SLAPP claims;²⁵²

245. See generally Edna Erez & Joanne Belknap, *In Their Own Words: Battered Women's Assessment of the Criminal Proceeding System's Responses*, 13 VIOLENCE & VICTIMS, 251 (1988).

246. See, e.g., Pollema, *supra* note 144, at 1118–20; Ward, *supra* note 4, at 459; Przekop, *supra* note 121, at 1089 (but noting that this remedy is ineffective for the many cases in which the victim is *pro se*).

247. See, e.g., Pollema, *supra* note 144, at 1120–24; Przekop, *supra* note 121, at 1091–92.

248. *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-12; Ward, *supra* note 4, at 460–62.

249. *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-15 to H-18; Przekop, *supra* note 121, at 1093.

250. *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-18; Ward, *supra* note 4, at 458.

251. *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-22 to H-23; Przekop, *supra* note 121, at 1093; Ward, *supra* note 4, at 462–63.

252. *Abusive Litigation* Judicial Manual, *supra* note 12, app. at H-24 to H-25.

educating judges and family court officials about judicial terrorism,²⁵³ allowing parents to take family leave to appear in court,²⁵⁴ and passing legislation like that already in place in Tennessee and Washington.²⁵⁵

While all of these suggestions have merit, some may be difficult to implement, require extensive time and financial resources, and involve buy-in from multiple actors. This Part discusses two novel improvements to the family litigation process and subsequently suggests areas for future inquiry.

A. *New Solution #1: Change the Setting for Most Court Appearances*

Because many victims of post-separation abuse report that court interactions can be intimidating and traumatic, family courts should consider continuing the pandemic-era model of conducting most hearings by Zoom²⁵⁶ or other remote videoconferencing applications. Holding hearings remotely will accomplish several goals.

First, holding hearings remotely will prevent victims from having to face their abusers in court and experience the secondary trauma of physical proximity.²⁵⁷ Because batterers admit that physical, in-person intimidation is one goal of repeated hearing requests, remote hearings can simultaneously protect victims from entering into frightening situations and defeat abusers' judicial terrorism strategies. Abusers might even choose to file fewer motions if they know they will not be able to intimidate the victim through in-person contact.

Second, rather than waiting for hours in a waiting room while a family court runs through a morning or afternoon docket, often with the abuser nearby, victims can "dial in" from home or work.²⁵⁸ Because many victims

253. Przekop, *supra* note 121, at 1094.

254. *Id.* at 1096.

255. See Burke, *supra* note 21; see also, e.g., WASH. REV. CODE § 26.51.010 (2020).

256. See, e.g., *Contact Information for Remote Hearing: Submission*, FAM. CT. STATE OF DEL., <https://courts.delaware.gov/family/remotehearing.aspx> [<https://perma.cc/H5EG-ZC33>]; *Family Law Remote Appearance Protocol*, SUPER. CT. OF SAN MATEO CITY, https://www.sanmateocourt.org/general_info/familylaw_remote_appearance.php [<https://perma.cc/53ED-LMDY>].

257. See, e.g., Marcella Corona, 'Not Something I Would Have Predicted': Some Upsides Seen in Remote Hearings for Reno Court, RENO GAZETTE J. (May 26, 2020 6:00 AM), <https://www.rgj.com/story/news/2020/05/26/coronavirus-nevada-family-court-hearings-held-remotely-zoom/5240651002/> [<https://perma.cc/ZD9A-U8QA>] ("In cases involving the issuance of temporary protection orders, people who have alleged they're the victims of abuse have been more open to participating in the hearings. . . . [T]he victims can advocate for themselves without having to sit across the table from their alleged abuser.").

258. See, e.g., Shalini Nangia & Julia A. Perkins, *The Pros and Cons of Zoom Court Hearings*, 11 NAT'L L. REV. (May 20, 2020), <https://www.natlawreview.com/article/pros-and-cons-zoom-court-hearings> [<https://perma.cc/JQ34-5PQD>]; Jason Brown, *Keys to Success in Minnesota Custody and*

report that merely entering the courthouse is intimidating and traumatic,²⁵⁹ allowing them to “appear” in court from secure and familiar locations will reduce trauma. Keeping victims and abusers apart by using Zoom waiting rooms will lessen the discomfort and fear that may arise from physical proximity in brick-and-mortar waiting rooms.²⁶⁰

Third, holding remote hearings will lessen the financial burden of multiple court appearances for victims and reduce the potential for financial abuse.²⁶¹ During the pandemic, most family courts scheduled time slots for hearings, alleviating the need for victims to take several hours off of work, find and pay for transportation and childcare, and pay an attorney for what could be hours of downtime waiting for their case to be called. Victims could “appear” in court from their workplaces (often during a paid break), from their homes, or even with children nearby. Because attorneys could schedule the time they needed to be with victims in court, they could arrange several court appearances in one morning or afternoon, negating the need to bill for several hours.²⁶²

Finally, holding remote hearings may allow a judge to see inside the parents’ homes, a useful gauge when one parent is accusing the other of providing a less than ideal environment for children.²⁶³ On the other hand, the ability to see inside the home may reveal occasional abuses for the court to address.

For example, following the now-famous Zoom hearing of March 2, 2021,²⁶⁴ in which a prosecutor correctly suspected that an abuser was present in the victim’s home during a hearing about a protection from abuse order,²⁶⁵ it will be important to establish safeguards for victims to ensure that abusers cannot intimidate or harm them in the absence of court security. While advocates generally agree that Zoom hearings may feel safer for

Divorce Zoom Court Hearings, BROWN LAW OFFS. (JULY 17, 2020), <https://www.brownlawoffices.com/blog/mn-custody-divorce-zoom-hearings/> [<https://perma.cc/2BPR-ZVEL>].

259. *See supra* Part IV (describing retraumatization through judicial terrorism).

260. Michigan Legal Help, *What to Expect at a Virtual Hearing*, MICH. ST. BAR FOUND., <https://michiganlegalthelp.org/self-help-tools/going-court/what-expect-virtual-hearing> [<https://perma.cc/DGJ3-DY2U>] (“The judge will bring you into the hearing from the ‘waiting room.’ . . . You will not be able to communicate with other hearing participants while you are in the waiting room.”).

261. *See supra* notes 106–113.

262. *See, e.g.*, Nangia & Perkins, *supra* note 260.

263. *See, e.g., id.*

264. The case involved an abuser named Coby Harris and a victim named Mary Lindsey. Dan Cherry, *Michigan Zoom Hearing Adjourned When Attorney Spots Alleged Assaulter, Victim in Same Home*, USA TODAY (Mar. 10, 2021 12:28 PM), <https://www.usatoday.com/story/news/nation/2021/03/10/michigan-zoom-court-hearing-adjourned-defendant-victim-same-home/6936887002/> [<https://perma.cc/V78X-TZUX>] (providing a video of the proceeding).

265. *Id.*

victims of intimate terrorism than in-person hearings²⁶⁶—after all, as discussed, the mere presence of an abuser in the same courtroom can be intimidating, and victims are far less likely to be intimidated or harmed by their abusers when they are in separate spaces—they acknowledge some possible risks inherent to Zoom hearings as well.

One approach to preventing in-home intimidation, whether or not a Protection from Abuse order²⁶⁷ is in place, is to require victims and abusers to join Zoom hearings from different locations and also use a low-tech or high-tech method to guarantee that they are indeed separated. One low-tech solution—the one employed by the judge in the viral Michigan Zoom hearing—might be to ask each party to affirm that he is not on the same property as the other, then go outside and show the house number or other physical geographical marker.²⁶⁸ A higher-tech approach might be to require the parties to download a GPS location app to the devices they are using for the Zoom hearing; the app could then verify that the device was in the same location as the person using it and that the perpetrator and the victim were dialing in from different places.²⁶⁹

Another concern for victims is the fact that many Zoom hearings are livestreamed and subsequently posted on YouTube or other video-sharing apps.²⁷⁰ While court proceedings are typically open to the public,²⁷¹ in-

266. See, e.g., *Court Advocates Adapt to New Challenges During Pandemic: Survivors See Positive Aspects of Zoom Hearings*, NURTURING EMPOWERMENT WORTH SAFETY (Jan. 11, 2021), <https://www.napanews.org/news/index/221> [<https://perma.cc/86UM-NPF7>] (quoting Alejandra Mendieta-Bedolla, NEWS Crisis Intervention Services Program Manager: “The often-heartbreaking mediation and custody hearings are now easier for many clients, who are fearful of confronting their abuser in the same room during a court hearing. Now with Zoom hearings, they feel safe in their home or shelter while going through the complex court process.”); Nangia & Perkins, *supra* note 260.

267. A “Protection from Abuse” order (PFA), is often called a “restraining order.” See, e.g., *How to Get a Restraining Order*, PA. COAL. AGAINST DOMESTIC VIOLENCE, <https://www.pcadv.org/about-abuse/intervention/how-to-get-a-restraining-order/> [<https://perma.cc/3QHV-DRQ6>].

268. See Cherry, *supra* note 264.

269. This solution would, for example, prevent a perpetrator from leaving a cell phone with a GPS locator in another place, then going to the victim’s house with a separate device to dial into the Zoom hearing.

270. See, e.g., Hannah Knowles, *A Zoom Hearing for Her Domestic Violence Case Went Viral. Now People Are Blaming Her, She Says*, WASH. POST (Mar. 12, 2021 6:00 AM), <https://www.washingtonpost.com/dc-md-va/2021/03/12/mary-lindsey-coby-harris-zoom-hearing/> [<https://perma.cc/37HC-NDFE>].

271. And even when they are open to the public, the number of people in court to watch does not come close to the number who can watch on the internet. See, e.g., *id.* (quoting Casey Gwinn, president of Alliance for Hope International (“If this was a real court hearing in a real courtroom, there would be two people in the courtroom. There wouldn’t be 800,000 views for this particular survivor on this particular day . . .”)); see also Colleen Sparks, *Virtual Domestic Violence Court Hearings: Dangerous for Victims of Abuse in California?*, TALKOV LAW (Mar. 23, 2021), <https://www.lexology.com/library/detail.aspx?g=90f98327-4f7e-48cc-ac25-b292792db9ff> [<https://perma.cc/5FVU-8JJA>] (“[P]re-pandemic access to the public generally meant that the 10 or 20

person appearances are rarely memorialized on the internet. Best practices might dictate that courts refrain from uploading broadcast Zoom hearings to their websites or other internet sites. Advocates for victims of domestic violence agree that live-streaming videos of “sensitive” proceedings is not constitutionally required.²⁷²

B. New Solution #2: Borrow from the Criminal Court System in Adopting a Victim Advocate Model in Family Court

When a person experiences domestic violence, having access to information and emotional support as she navigates the legal system is imperative.²⁷³ A victim advocate is a professional who is trained to support victims of crime and can help a victim from being re-harmed by the legal system. Many prosecutor’s offices employ victim advocates²⁷⁴ to help victims understand their rights and connect them to available services.²⁷⁵ Victim advocates provide victims with “support and guidance while explaining the many avenues within the legal system.”²⁷⁶

Advocates’ responsibilities vary depending on their job description and office policy. Generally, a victim advocate’s role may include

providing information on victimization; providing information on victims’ legal rights and protections; safety planning, including help applying for protective orders; [giving] referrals for [] counseling services; explaining court processes and providing ongoing status updates; accompaniment to court proceedings; [] intervening with creditors, landlords and employers on the victim’s behalf; assistance in drafting victim impact statements; assistance with applying for inmate status notifications; arranging for victims to provide input to prosecutors regarding sentencing recommendations, case dismissals and when confidential records are heard in court; assistance with

people in the audience of the courtroom, likely people waiting for their own case to be called, would bear witness to the proceedings. The reality of live-streaming virtual proceedings means that videos of these hearings are routinely posted by the court, and can amass thousands, perhaps even millions of views.”).

272. See, e.g., Knowles, *supra* note 270 (“The balance of rights under the law absolutely does not require this . . .”) (quoting Meg Garvin, executive director of the National Crime Victim Law Institute).

273. *Victim Advocacy: Guide to Supporting Survivors of Domestic Violence*, MARYVILLE U., <https://online.maryville.edu/blog/victim-advocacy-guide-domestic-violence/> [<https://perma.cc/YUB5-FSK>].

274. ANITA B. BOLES & JOHN C. PATTERSON, *IMPROVING COMMUNITY RESPONSE TO CRIME VICTIMS: AN EIGHT-STEP MODEL FOR DEVELOPING PROTOCOL 10* (1997).

275. *Victim Services*, VICTIM/WITNESS ASSISTANCE PROGRAM, <http://www.victimwitness.org/victim-services.html> [<https://perma.cc/A5NG-UX2X>].

276. *Id.*

arrangements for transportation to court and child care; [and] providing referrals for other services for victims.²⁷⁷

The services offered by advocates are typically available through a prosecutor office's victim services or domestic violence section.²⁷⁸ The advocates' services are free and usually provided automatically when a case falls within the realm of criminal domestic or sexual violence.²⁷⁹

Advocates' services are offered to facilitate "the enforcement of fundamental rights of crime victims and promote the belief that all victims [] deserve to be treated with dignity, compassion, and respect throughout the judicial process."²⁸⁰ These services not only sound good in theory but are effective in practice.²⁸¹

In the 1980s, the Cris Sullivan Community Advocacy Project completed a study that randomly assigned women who were exiting domestic violence shelters to one of two groups.²⁸² The first received information and referrals, and the second received continued contact with an advocate over a period of weeks.²⁸³ Post intervention, the women who had worked with the victim advocates reported that "they were getting the resources they needed, were experiencing less violence, were less depressed and scored higher on social

277. KATHLEEN REAGAN & MASSACHUSETTS DISTRICT ATTORNEY'S ASSOCIATION, THE MASSACHUSETTS VICTIM-WITNESS ADVOCATE REFERENCE MANUAL 2-5 (Jennifer Franco ed., 2d ed. 2010).

278. See, e.g., *Victim Witness and Domestic Violence Services: Victim Witness Services*, WILL COUNTY ST. ATT'Y OFF. (2021), <https://willcountysao.com/victim-witness-services> [<https://perma.cc/5D3H-TC7K>]; U.S. Attorney's Office District of New Jersey, *Victims and Witnesses: Understanding Your Rights and the Federal Court System*, U.S. DEP'T. OF JUST., <https://www.justice.gov/usao-nj/victim-witness/handbook> [<https://perma.cc/U5YF-SN3V>].

279. For example, The District Attorney's Office of Philadelphia's Victim Services page states: "If you or a child in your care are a victim of domestic violence, sexual assault, or child abuse committed by an adult, your case will be assigned to the Family Violence Sexual Assault Unit (FVSA). This unit staffs experienced . . . victim advocates." Off. of the Dist. Att'y, *Victim's Services: Victims of Domestic, Sexual and Child Abuse*, CITY OF PHILA., <https://www.phila.gov/districtattorney/victims/Pages/DomesticViolence.aspx> [<https://perma.cc/JXQ5-LHS8>].

280. *Victim/Witness Assistance Unit*, CNTY OF BERKS PA., <https://www.co.berks.pa.us/dept/da/pages/victimwitness.aspx> [<https://perma.cc/88L5-7CQU>].

281. See generally, *Advocacy*, BATTERED WOMEN'S JUST. PROJECT, <https://www.bwjp.org/our-work/topics/advocacy.html> [<https://perma.cc/4X2S-JHSJ>] [hereinafter *BWJP Advocacy*].

282. See *id.*

283. See *id.* The continued contact approach is often described as an Advocate Initiated Response. See Rose Thelen, *Using the Advocate Initiated Response: Contacting Victims After Their Partner's Arrest*, (Feb. 2013) BATTERED WOMEN'S JUST. PROJECT, <https://www.bwjp.org/resource-center/resource-results/using-the-advocate-initiated-response-contacting-victims-after-their-partner-s-arrest.html> [<https://perma.cc/ENW6-5EHE>].

support and quality of life.”²⁸⁴ Since the 1980s, some communities have made “proactive contact” with victims, only withdrawing if “the victim declines their services.”²⁸⁵ A more recent study done by the National Institute of Justice (NIJ) “confirmed that an Advocate Initiated Response is more effective than merely informing victims of programs they can contact on their own.”²⁸⁶ The results of that study confirmed that “early victim-focused contact promotes engagement with the criminal justice system.”²⁸⁷ Specifically, it found that coordinated, victim-focused outreach “increas[es] the likelihood that women will go to court” to assert their rights. Moreover, and most importantly, the women who participated in the study reported “[they] perceived that they had benefited from the intervention.”²⁸⁸ Women who are victims of domestic violence benefit materially and emotionally from direct, continued contact and services from victim advocates.

Studies verify the efficacy of victim advocates and the services they provide, and it is undoubtedly positive that so many legal offices employ advocates to aid women in the criminal legal process. However, the services advocates offer could also greatly benefit women who are victims of domestic violence in family courts as well. Applying and adapting the programs that have been implemented for victims in the criminal context to the family law context could better equip family courts to identify domestic violence, understand its relevance to custody and parenting, and assist in negotiating arrangements that better protect victims and children.²⁸⁹ Victim advocates can screen for domestic violence; assess the nature and context in each case; focus on the effects that intimate partner violence is having on the litigation; and respond to the violence in their recommendations, decisions, and interventions.²⁹⁰

284. BWJP *Advocacy*, *supra* note 281 (discussing the Cris Sullivan Community Advocacy Project’s study); see generally Cris M. Sullivan & Deborah I. Bybee, *Reducing Violence Using Community-Based Advocacy for Women with Abusive Partners*, 67 J. CONSULTING & CLINICAL PSYCH. 43, 43–53 (1999).

285. BWJP *Advocacy*, *supra* note 281 (discussing the Cris Sullivan Community Advocacy Project’s Advocate Initiated Response).

286. *Id.*

287. *Id.* (citing Margaret Abrams, Dora-Lee Larson & Anne P. DePrince, *Denver’s Triage Project Demonstrates Value of Advocate-Initiated Response*, (March 2013) BATTERED WOMEN’S JUST. PROJECT, <https://www.bwjp.org/resource-center/resource-results/denver-s-triage-project-demonstrates-value-of-advocate-initiated-response.html> [<https://perma.cc/HD6P-G87Q>]); see also, e.g., Anne P. DePrince et al., *The Effectiveness of Coordinated Outreach in Intimate Partner Violence Cases: A Randomized, Longitudinal Design*, NAT’L INST. OF JUST. RSCH. AND EVAL. ON VIOLENCE AGAINST WOMEN (2011), <https://www.ojp.gov/pdffiles1/nij/grants/238480.pdf> [<https://perma.cc/4HBH-FS8P>].

288. BWJP *Advocacy*, *supra* note 281 (citing Margaret Abrams et al., *supra* note 287).

289. See SAFeR, BATTERED WOMEN’S JUST. PROJECT, <https://www.bwjp.org/our-work/projects/national-child-custody-project.html> [<https://perma.cc/DD29-JA52>].

290. See Gabrielle Davis, Loretta Frederick & Nancy Ver Steegh, *Practice Guides for Family*

C. Areas for Further Inquiry

In further discussions of these issues, scholars should consider the role of attorneys who encounter intimate terrorists in family law disputes. A starting point for these discussions should be whether state legislatures and family courts should appoint counsel for indigent parents in disputed child custody cases, especially where victim advocates identify that judicial terrorism and financial abuse are concerns. In 2006, the American Bar Association resolved that civil *Gideon* rights²⁹¹ were appropriate in child custody cases, in part because “basic human needs are at stake” in these proceedings.²⁹² Studies have demonstrated that that outcomes in child custody cases correlate significantly to each party’s representation status,²⁹³ appointing counsel for a victim of judicial terrorism would therefore “level the playing field.”²⁹⁴

If both parties are represented by counsel, ethical issues will arise for the attorneys on each side. For attorneys representing the abuser, the question will be whether perpetuating the abuse through family court actions is in line with the ethical duties of candor and zealous representation, and whether agreeing to engage in judicial terrorism is antithetical to an attorney’s “special responsibility for the quality of justice”²⁹⁵ and her duty to “seek[] a result advantageous to the client but consistent with

Court Decision-Making in Domestic Abuse-Related Child Custody Matters, BATTERED WOMEN’S JUST. PROJECT (2015), <https://www.bwjp.org/assets/documents/pdfs/practice-guides-for-family-court-decision-making-ind.pdf> [<https://perma.cc/6VT4-2E5J>].

291. See, e.g., *King v. King*, 174 P.3d 659, 679 (Wash. 2007) (Madsen, J., dissenting) (explaining that legal representation is important in family law cases because *pro se* litigants “who frequently fail to present critical facts, cite relevant authority, or make proper objections (and understandably fail to do so) can affect the decision-making process”); Robert J. Derocher, *Access to Justice: Is Civil Gideon A Piece of the Puzzle?* 32 ABA BAR LEADER (2008), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2007_08/3206/gideon/ [<https://perma.cc/8DR4-EFCT>] (describing “civil Gideon” as “the civil right to counsel”).

292. ABA Task Force on Access to Civ. Just., Rep. to House of Delegates 112A (Aug. 7, 2006), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_resolution_06a112a.pdf [<https://perma.cc/5S9A-E34F>].

293. See, e.g., ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* 108–09, 300 (1992) (describing a study in which parents represented by counsel were significantly more likely to win disputes over joint, physical, or sole custody of minor children); THE WOMEN’S LAW CENTER OF MARYLAND, *FAMILIES IN TRANSITION: A FOLLOW-UP STUDY EXPLORING FAMILY LAW ISSUES IN MARYLAND* (2006), <http://www.wlcmd.org/wp-content/uploads/2013/06/Families-in-Transition.pdf> [<https://perma.cc/9UGC-S84T>]” [hereinafter *FAMILIES IN TRANSITION*] (“When one party in a contested custody case is represented by an attorney and the other is not, chances are good that the outcome will be sole custody to the party with an attorney. . . . The data show that attorney representation seems to have an effect on the type of custody outcome granted, especially for contested cases.”).

294. *FAMILIES IN TRANSITION*, *supra* note 293.

295. MODEL RULES OF PRO. CONDUCT Preamble and Scope, § 1 (AM. BAR ASS’N 2020).

requirements of honest dealings with others.”²⁹⁶ According to the Model Rules of Professional Conduct, “A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others.”²⁹⁷ Can she uphold that duty when she engages in judicial terrorism? Can she “further the public’s understanding of and confidence in the rule of law and the justice system”?²⁹⁸

Conversely, how should an attorney representing the victim of judicial terrorism behave? If, as often occurs, litigation exhausts a victim’s resources and representation through a civil *Gideon* scheme is not available, should the attorney continue the representation without pay, especially knowing that intimate terrorists may draw out the conflict for many years? If she withdraws, is she dooming the victim? And what is her responsibility in either event?

These and several other questions await our solutions. There is no question that our ultimate goal should be to solve the problem of intimate terrorism. Until we can achieve that objective, however, legal scholars must begin a robust discussion of the issue, and the system must find interim ways to support the victims.

CONCLUSION

While post-separation intimate terrorism has been studied by social scientists for at least two decades, legal scholars have been slow to consider the issue and offer insights. This Article carves out new space for an expanded discussion of intimate terrorism, while breaking new ground in applying the typology to the post-separation context, invoking judicial terrorism as an example, identifying the retraumatization that victims of intimate terrorism experience through family court battles, and suggesting two solutions. First, in order to prevent the abuser from physically intimidating his victim by bringing her into the same room with him, Zoom hearings should continue post-pandemic for all but the most complicated of matters. Second, family courts should borrow from the criminal justice system and implement a victim advocate program to protect abused women from judicial terrorism. While these proposals are only a beginning, they offer practical and achievable help for victims of intimate terrorism and coercive control who seek continued custody of their children.

296. *Id.* at § 2.

297. *Id.* at § 5.

298. *Id.* at § 6.