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
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.”

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.” Moreover, “[s]ome women

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. Just like domestic violence in an existing relationship, post-separation abuse may take a variety of forms. 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.” 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.”

Over the past fifteen years, social scientists have sought to categorize domestic violence, including post-separation violence, into types. While many women 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. 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,

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

14. ANDREA VOLLLANS, COURT-RELATED ABUSE AND HARASSMENT: LEAVING AN ABUSER CAN BE HARDER THAN STAYING 16 (YMCA Vancouver 2010).
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/0249e6d67b1d419b9787c6bad297eb7 [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, 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.” 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.”

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, often to the point where a victim chooses to leave her batterer in the hopes of ending the abuse. 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.

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. 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.

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

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


\(^{33}\) Brownridge, *supra* note 3, at 519.


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.”

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.” In his seminal book, A Typology of Domestic Violence, 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), violent resistance (VR), and mutual violent control (MVC). 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.”

A. Intimate Terrorism

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

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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.
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. Typically, the control involves a threat of “punishment,” such as an abuser’s promise to gain custody of the children if the wife leaves the relationship.

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

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. To the extent that post-separation abuse is analyzed, the focus is generally on the potential for physical abuse and homicide in the immediate period after the victim leaves the abuser or on the potential for the perpetrator to abuse minor children, not the mother.

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. When the abuse continues even after a
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.  

Second, because post-separation abuse is underrecognized by the legal and criminal justice systems, few effective resources are in place for victims. Studies show that women in ongoing abusive relationships have a variety of avenues to seek protection, particularly when the abuse they suffer is physical; women can even seek help in the early days after leaving the abusive relationship because their peril is well-understood. 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, whether because she has moved to a safer location or because a protection order is in place, they can continue to harass the victim psychologically and financially. Assailants use a variety of tactics to control women who are mothers post separation, including physical violence or threats thereof, emotional abuse, threatening to


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


68. Id. at 229.
abduct children, undermining mothers’ parental authority, and using parenting time arrangements to track and control mothers’ schedules. Through these and other approaches, an intimate terrorist is likely to continue abusing a woman for years post separation, especially in cases involving children. 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.

II. THE POWER DIFFERENTIAL IN POST-SEPARATION INTIMATE TERRORISM

“[I]ntimate terrorism . . . is almost entirely male perpetrated and is strongly related to gender attitudes.” 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.

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, online harassment, combative co-parenting, threats, or economic means.

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.
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. 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.” 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.” 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.” Studies show that 99% of intimate partner violence victims have been subjected to financial abuse. 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. Even so, few studies have recognized financial abuse as a form of post-separation intimate terrorism.

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. During the marriage, intimate terrorists do what they can to cut their partner off from the resources required for effective resistance . . . . One important resource is money.” Studies show that 99% of intimate partner violence victims have been subjected to financial abuse. Even so, few studies have recognized financial abuse as a form of post-separation intimate terrorism.

88. See STARK, supra note 8, at 337.
89. See, e.g., Postmus et al. I, supra note 83, at 18.
terrorists “often deploy a range of tactics and strategies,” including stealing or using her identity, hiding assets, interfering with her employment, and withholding money from her. Because she lacks financial resources, a victim may be reluctant or unable to leave.

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. 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.”

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.” Another notes, “[d]ivorced women’s stories of loss, pain, and humiliation that attend their downward financial spiral command feminist attention.”

There is no doubt that men fare far better financially after divorce than women do. A researcher at the London School of Economics found that, after divorce, women with dependent children see their incomes decline by 91.

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91. Weissman, supra note 84, at 3.
94. See, e.g., Barzilay, supra note 93, at 329.
95. Id.
98. Thomas Leopold, Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes, 55 DEMOGRAPHY 769, 771 (2018).
100. Bryan, supra note 99, at 751.
approximately 21%, while those of men with dependent children rise by approximately 32%. Women’s standards of living also decline, with many women living in poverty for the first time and losing their homes. These changes are prevalent and permanent for women, whereas men are usually able to recoup their losses.

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.” As this Article discusses in Part III, men may have the money and power to hire better lawyers and to prolong litigation. Intimate terrorists recognize these advantages, exploiting them to continue to control and terrify their victims.

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.”

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, 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.
106. Leopold, supra note 98, at 793.
107. Elizabeth et al., supra note 80, at 465.
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, financial abuse, stalking, coercive control, or harassment 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.” 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.”

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, whether physically, financially, or emotionally. 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.”).
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.”).
118. Comment in *One Mom’s Battle; Facebook* (Oct. 19, 2019) (on file with author).
120. See, e.g., Ward, supra note 4, at 452.
relationship, abusers know their victims’ vulnerabilities, and in post-separation proceedings, abusers often seek to exploit those vulnerabilities. Judicial terrorism marries the emotional and financial distress of litigation and the fear and anxiety related to appearing in court. Victims face the difficult economic decision of whether to hire an attorney and defend against often frivolous litigation 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.

Perhaps one reason why legal scholars 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” 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 dish of the courtroom. As one practitioner has explained,

[T]he problem [of judicial terrorism] does not have a commonly understood name or definition . . . [It] describes 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.

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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 Eastal, 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, deprival of time from his business or profession, and, in some cases, harm to reputation and even physical damage to person or property.”

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 biases 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.” Indeed, in one study, female victims of judicial terrorism expressed their beliefs that their former partners continued the abuse to merely “drag things out.” 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” rather than as a part of a pattern of harassment that perpetuates itself throughout the family court system on a regular, ongoing basis.

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.\textsuperscript{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.”\textsuperscript{138} Judicial terrorism allows the abuser to continue to engage in coercive control of his victim\textsuperscript{139} 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,\textsuperscript{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 . . . .”\textsuperscript{141}

Logically, because financial abuse is a gendered component of intimate terrorism, many women describe economic battering\textsuperscript{142} 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.\textsuperscript{143} For the victim spouse, this court-based harassment often results in “disastrous financial consequences”\textsuperscript{144} and “financial devastation.”\textsuperscript{145} As one victim of judicial terrorism asked in a Facebook group for survivors of intimate terrorism,

\begin{itemize}
  \item \textsuperscript{137} See, e.g., Khaw et al., supra note 56, at 4.
  \item \textsuperscript{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.
  \item \textsuperscript{139} E. Campbell, supra, note 17, at 53.
  \item \textsuperscript{140} Adams et al., supra note 96, at 567.
  \item \textsuperscript{141} Gloudeman, supra note 133.
  \item \textsuperscript{142} See Barzilay, supra note 93, at 329.
  \item \textsuperscript{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].
  \item \textsuperscript{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).
  \item \textsuperscript{145} Abusive Litigation Judicial Manual, supra note 12, app. at H-5.
\end{itemize}
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 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...
fewer resources post-divorce, their financial well may dry up, leaving them without money to match their husband’s stable of warriors.\textsuperscript{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.\textsuperscript{154}

Finally, extended litigation may result in women incurring incidental costs which they cannot afford. These expenses may include childcare for times when the mother must be in court,\textsuperscript{155} transportation to the courthouse,\textsuperscript{156} appropriate attire for court,\textsuperscript{157} and even expenses for complying with discovery requests.\textsuperscript{158}

In the end, judicial terrorism can lead to a victim’s spending hundreds of thousands of dollars\textsuperscript{159} 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.\textsuperscript{160}

\textbf{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.\textsuperscript{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,\textsuperscript{162} she will likely do almost anything to maintain custody of her kids.\textsuperscript{163}

\begin{itemize}
  \item \textsuperscript{153}. See infra notes 190–201.
  \item \textsuperscript{154}. See, e.g., Abusive Litigation Judicial Manual, supra note 12, app. at H-4 to H-5.
  \item \textsuperscript{155}. Id.; Barbara Hart, Battered Women and the Criminal Justice System, 36 AM. BEHAV. SCIENTIST 624, 628 (1993).
  \item \textsuperscript{156}. Hart, supra note 155, at 627–28.
  \item \textsuperscript{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].
  \item \textsuperscript{158}. See, e.g., MASS. CONTINUING LEGAL EDUC., DOING YOUR DIGGING: DISCOVERY IN DIVORCE ACTIONS § 7.1.4 (2020).
  \item \textsuperscript{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].
  \item \textsuperscript{160}. See Bonsignore, supra note 16.
  \item \textsuperscript{161}. For unmarried parents, of course, custody litigation may begin whenever the parents cease living together, if they ever did.
  \item \textsuperscript{162}. E. Campbell, supra note 17, at 64.
  \item \textsuperscript{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”).
\end{itemize}
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...

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.
room and “continuing to exert power and control in the courtroom,” where the abuser may have “prolonged contact.” 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. 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.”

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. 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.” 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.

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.


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


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.
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).
victim spouse to compensate for judicial terrorism, and sanctioned litigants for bringing frivolous claims. 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.’”

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 victimization or second assault, refers to the added traumatization a victim experiences during her interactions with professionals and processes in the justice system. 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. 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,” few have used the concept of retraumatization to characterize the harm intimate terrorists inflict on their victims through judicial terrorism in family court.

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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).
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 & Easteal, 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.”

In contrast, when intimate terrorists use the justice system to intimidate and harass their victims, their actions are fully intentional, leading survivors to process those negative behaviors as a further violation that repeats and connects to the original abuse.

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.”

Surprisingly, although it has received much attention in the context of criminal court, 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. For example, researchers at Michigan State University examined how abused mothers going through custody mediation experienced the process. They found that 63% of women reported experiencing retraumatization, while 84% reported at least a partially negative mediation experience. The researchers argued that one of the most critical factors that contributed to the negative experience was retraumatization. Women reported feeling blamed, doubted, and ignored. They reported these feelings even in cases where the mediator believed that the abuse had occurred. 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

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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 “[c]ivil 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.
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.
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 processes223 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


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]).
233. Id. at 575.
234. See, e.g., Rivera et al., supra note 191; Epstein & Goodman, supra note 52; Katirai, supra note 28.
236. See Gutowski & Goodman, supra note 54, at 453.
mediators,\textsuperscript{237} and other court professionals.\textsuperscript{238} More generally, many women faced secondary victimization through outcomes of litigation and the court procedures.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{244}

\textsuperscript{237} See, e.g., Rivera et al., supra note 191, at 243.

\textsuperscript{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).

\textsuperscript{239} Katirai, supra note 28, at 93.

\textsuperscript{240} Smith & Freyd, supra note 192, at 575.

\textsuperscript{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.”).

\textsuperscript{242} Smith & Freyd, supra note 192, at 575–76.

\textsuperscript{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.

\textsuperscript{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.\textsuperscript{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;\textsuperscript{246} applying tort remedies;\textsuperscript{247} placing moratoria on filing new actions;\textsuperscript{248} awarding of attorneys’ fees to the victim;\textsuperscript{249} ensuring that one judge handles a matter from start to finish;\textsuperscript{250} limiting expensive, lengthy, and intrusive discovery;\textsuperscript{251} bringing anti-SLAPP claims;\textsuperscript{252}
educating judges and family court officials about judicial terrorism;\textsuperscript{253} allowing parents to take family leave to appear in court;\textsuperscript{254} and passing legislation like that already in place in Tennessee and Washington.\textsuperscript{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.

\textbf{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 Zoom\textsuperscript{256} 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.\textsuperscript{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.\textsuperscript{258} Because many victims

\begin{footnotes}
\footnotetext[253]{Przekop, supra note 121, at 1094.}
\footnotetext[254]{Id. at 1096.}
\footnotetext[255]{See Burke, supra note 21; see also, e.g., WASH. REV. CODE § 26.51.010 (2020).}
\footnotetext[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.”).}
\end{footnotes}
report that merely entering the courthouse is intimidating and traumatic, 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.

Third, holding remote hearings will lessen the financial burden of multiple court appearances for victims and reduce the potential for financial abuse. 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.

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. 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, 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, 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


259. See supra Part IV (describing retraumatization through judicial terrorism).
261. See supra notes 106–113.
262. See, e.g., Nangia & Perkins, supra note 260.
263. See, e.g., id.
265. Id.
victims of intimate terrorism than in-person hearings—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 order 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. 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.

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

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

The services offered by advocates are typically available through a prosecutor office’s victim services or domestic violence section. The advocates’ services are free and usually provided automatically when a case falls within the realm of criminal domestic or sexual violence. 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.” These services not only sound good in theory but are effective in practice.  

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. The first received information and referrals, and the second received continued contact with an advocate over a period of weeks. 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
support and quality of life.”\textsuperscript{284} Since the 1980s, some communities have made “proactive contact” with victims, only withdrawing if “the victim declines their services.”\textsuperscript{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.”\textsuperscript{286} The results of that study confirmed that “early victim-focused contact promotes engagement with the criminal justice system.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{290}

\begin{itemize}
\item \textsuperscript{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).
\item \textsuperscript{285} BWJP Advocacy, supra note 281 (discussing the Cris Sullivan Community Advocacy Project’s Advocate Initiated Response).
\item \textsuperscript{286} Id.
\item \textsuperscript{288} BWJP Advocacy, supra note 281 (citing Margaret Abrams et al., supra note 287).
\item \textsuperscript{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].
\item \textsuperscript{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 rights were appropriate in child custody cases, in part because “basic human needs are at stake” in these proceedings. Studies have demonstrated that that outcomes in child custody cases correlate significantly to each party’s representation status; appointing counsel for a victim of judicial terrorism would therefore “level the playing field.”

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” and her duty to “seek[] a result advantageous to the client but consistent with..."
requirements of honest dealings with others.”

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.”

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”?

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.