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FAMILY


HOW DOMESTIC ABUSERS WEAPONIZE THE COURTS

After a breakup, litigation is often a way for harassers to force their victims to keep seeing them.

By Jessica Klein

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When the phone rang one evening in June 2016, “D” could guess who was calling even before her mother answered. He’d called the house before—D knew it was him—but he’d always remained silent after her mother picked up. This time, the caller breathed heavily before finally identifying himself as D’s ex-boyfriend. “Stop calling here; she doesn’t want to talk to you,” her mother said, and hung up.

D started to panic. She’d never given her ex the number to her home, where she lived with her mother, and she had no idea how he’d found it. They’d broken up two months earlier, and he’d been stalking and harassing her ever since. Over the past two years, this harassment has been taking place in a courtroom.

Since July 2017, D has been visiting Manhattan family court, engaged in a battle that her ex-boyfriend keeps dragging out by continuing to contest the protective order she’s filed against him. (D is being identified by her first initial only, to protect her safety and privacy.) It has kept her awake at night, this never-ending parade through courtrooms and her local police precinct, the trips back and forth at least once every three months.

Many abusers misuse the court system to maintain power and control over their former or current partners, a method sometimes called “vexatious” or “abusive” litigation, also known as “paper” or “separation” abuse, or “stalking by way of the courts.” Perpetrators file frivolous lawsuits—sometimes even from prison—to keep their victims coming back to court to face them. After 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. Only one U.S. state, Tennessee, has a law specifically aimed at stopping a former romantic partner from filing vexatious litigation against an ex.

According to a [2017 report](#) from Georgia’s Domestic Violence Fatality Review

Project, which tracks domestic-violence-related deaths in the state, “Although there is little data on the frequency of harassing court filings, sometimes referred to as vexatious litigation, use of the court to harass victims of intimate partner violence and stalking appears to be commonplace.” For D, it certainly was.

D met her ex-boyfriend through an online-dating service in the summer of 2015. She remembers him as attentive and a good listener. “You’re in a new relationship and everything is wonderful,” D says. But then she “started noticing he was a bit *too* available.”

D says her ex didn’t have much of a social or professional life, and would criticize her for spending time on hers. When she tried to break up with him in December 2015, she says he threatened to hurt himself, so she backed down. Finally, in April 2016, she broke off their relationship. That’s when the calls started.

They came pouring in from her ex’s number, phone numbers of her ex’s family members, and anonymous numbers. He emailed her up to 20 times a week, promising over and over that he would get a job. “He doesn’t know how to take the word *no*,” D says. Even though she responded only once (to an email purporting to be from her ex’s brother), cc’ing her ex and telling him to leave her alone, the calls and emails continued for months. In July 2016, they abruptly stopped. The silence lasted a year.

In July 2017, D received threatening emails from her ex containing information about her personal life, seemingly intended to show that he’d been tracking her. An aggressive text message from an anonymous number, claiming to be from her ex’s brother (D believes that it was from her ex), finally caused her to file a police report.

That month she also sought to get a protective order against her ex. The first judge she saw turned her down. D hadn’t taken copies of any of her ex’s emails with her to court to prove her case—she hadn’t known that she would need them. “You’re not supposed to need that,” says D’s lawyer, Rebecca Moy, who works at Sanctuary for Families, a

nonprofit organization that provides legal aid and other services to domestic-violence survivors and their families. To file a protective order in New York City family court, petitioners must have detailed, written descriptions of the incidents causing them to file, not physical proof.

D and her ex dated for about nine months. He has been harassing her for three years, half of that through the courts.

D was ultimately able to file a criminal complaint with the New York Police Department stating that her ex had sent her threatening emails, phone calls, and texts. She received her first temporary order of protection during her first court appearance in mid-July. Her ex verbally contested the order at the hearing, denying that he had stalked or harassed her. Since then, he has taken her back to court seven times, sometimes crying hysterically in the middle of hearings, causing delays.

Every time D appears with her ex in court, they have a set amount of time to get through D's case. Each delay means an additional court appearance, and months pass before D and her abuser can return to continue the trial. Sometimes, as the two of them wait in the courthouse for their hearing to start, D says her ex repeatedly bangs his head against the wall and stares at her. "I think at this point he knows that the only way he's going to see her or be able to talk to her is through the court system," Moy says.

D and her ex dated for about nine months. He has been harassing her for three years, more than half of that through the courts.

Unlike D, many people who face abusive litigation were once married to their abusers or shared homes and children with them, as disputes about marriage, shared property, and children provide clear pathways to legal proceedings.

Litigation involving child support and custody is one of the most common ways domestic-violence perpetrators prolong contact with their victims, according to a 2011 report by Mary Przekop in the *Seattle Journal of Social Justice*. Abusive fathers, Przekop writes, are “more than twice as likely” to petition for sole custody of their children as non-abusive fathers.

The report documents multiple cases of abusive fathers seeking custody, including a story from the early 1990s in which an abusive ex-husband was found to be sexually molesting his daughter during visitations. This revelation caused the court to cancel his visitation rights in 1995, only for him to continue to pursue visitation through the legal system for years. “There’s a whole pattern of the next court date, and the motions I go through building up to it,” the abuser’s ex-wife says in the report, “and then actually being there and seeing him, and him stalking me in the halls ... and having to do that week after week, year after year. It just never gets any better.”

“Perpetrators of domestic violence become very adept at using the legal system as one more tactic of control against the victim,” Przekop writes.

Moy has worked with clients whose former partners have exploited family court to seek custody of their victims’ children, including an abuser who, according to court documents, claimed paternity from prison despite the fact that he is not the child’s biological father. Moy’s client is the child’s mother, with whom the abuser lived on and off during their years of dating. He’s currently incarcerated for attempting to murder Moy’s client.

Kara Bellew, a partner at Rower LLC who has practiced matrimonial and family law since 2005, calls litigation abuse “very, very common.” She often cautions clients with abusive partners, “Once you open the floodgates of the court, it leaves you incredibly

vulnerable to being harassed.”

Not only is the abuser finding a new avenue for harassment, but he’s also telling his victim that the court isn’t a safe place for her.

However, research on this topic remains scarce. T. K. Logan, a behavioral scientist and professor at the University of Kentucky who has studied stalking for nearly 20 years, says that vexatious litigation can be hard to document, because the lines blur between a “standard” custody battle and one employed specifically by an abuser to threaten someone. Logan has studied women whose abusers used any means possible to follow and frighten them after they broke up. “The courtroom just becomes one more tool,” she says. This type of stalking, however, sends an additional message—not only is the abuser finding a new avenue for harassment, but he’s also telling his victim that the court isn’t a safe place for her.

In addition to the stress incurred from this experience, abusive litigation can drain victims’ finances, cause them to miss work, pull them away from their families, and force them to navigate the complex legal system, often on their own. D didn’t begin working with Moy until her fourth court appearance, after they met at a Sanctuary for Families event at the Manhattan Family Justice Center,

where people seeking legal services can determine if they qualify for pro bono representation. Before that, D had to go to court alone. In New York, those who appear in family court are entitled to free legal aid if their income “falls below a certain level,” and D didn’t qualify. (Sanctuary for Families has more inclusive standards.)

Courts tend to be overburdened with cases—“especially family court,” Moy says. The judge in D’s case often has to cut short proceedings because her docket is overwhelmed with other cases. “I think we got 45 minutes or half an hour worth of trial last time we were at court,” Moy told me in September. “I would say we have at least an hour more of D’s testimony [that we didn’t have time to share].”

Family court tends to attract newer judges. The job offers less prestige and a higher case volume. “Therefore, you have judges with little or no experience trying to afford due process to people, without the understanding of the way courts can be used to further abuse victims,” says Carroll Kelly, the administrative judge of the Miami-Dade courts’ domestic-violence division.

Of course, it’s not always easy for judges to tell whether litigation is abusive or legitimate. This can be particularly true in contentious child-custody battles, where even good-faith attempts to gain custody can entail lots of legal persistence and drag on for years. In such complex and emotional cases, judges may have trouble determining where to draw the line between parents’ desperation to be with their kids and true abusive behavior.

In her 20 years overseeing domestic-violence cases, Kelly says she has found creative solutions to circumvent clear cases of abusive litigation, such as letting survivors participate in hearings with their abusers by telephone.

Retired Kentucky Judge Peter Macdonald says he once told a jailed abuser, who

repeatedly filed motions so that he could see his victim in court, that he could attend his next hearing by video. It was an empty threat, Macdonald says, but “it was enough for [the abuser] to stop petitioning. He wasn’t interested in a change of circumstances—he just wanted to be in the room with [his victim].”

Historically, judges have had the power to fight back against vexatious litigation. Federal courts have allowed judges to “discipline” parties who file “frivolous or improper claims” for the purpose of “deter[ring] the abusive conduct,” according to the 2011 *Seattle Journal* paper. Courts can also bar someone who continues to file frivolous suits from making new claims against the same person, according to a 1986 study on “frivolous litigation” written by John W. Wade, though it doesn’t address intimate-partner abuse specifically. Both last year’s Georgia Domestic Violence Fatality Review report and another 2011 article on court stalking suggest that laws should specifically target domestic-violence-related stalking with clear, direct language in order to be effective.

Tennessee recently took that advice. In May 2018, the state’s governor signed a law aimed at combatting “stalking by way of the courts.” The law, which took effect that July, lets judges hold hearings to determine whether a defendant’s ex-partner or family member is filing frivolous lawsuits intended specifically to harass, stalk, or otherwise cause harm. It also gives Tennessee judges the power to prevent these abusers from filing lawsuits for up to seven years following their first court-stalking offense.

Tennessee state Representative Mike Carter, a Republican, sponsored the law, citing his experience as an attorney and former judge. During his legal career, Carter says, he witnessed multiple examples of cases as “a litigious form of domestic assault,” according to an Associated Press story announcing the new law.

In one particularly harrowing case, Carter watched a former Memphis-based lawyer, Fred Auston Wortman III, go to prison for trying to murder his then-wife three separate times. Although he’s now incarcerated, Wortman continues to file lawsuits

against his ex-wife, primarily related to their shared children. According to the AP, as of July 2018, Wortman's ex-wife, a teacher, owed more than \$100,000 in legal fees.

Tennessee is the only state with such a targeted law. In order to protect people from abusive litigation, other states still have to apply laws originally intended for other purposes, such as legislation designed to let small-time protesters stand up to wealthy companies using frivolous lawsuits to drain their financial resources. These statutes, known as anti-SLAPP (strategic lawsuit against public participation) laws, have come to the aid of abusive-litigation victims multiple times since the early 2000s.

“She lived in fear that the very courts designed to protect her would force her to spend time with her abuser.”

The Public Participation Project is an organization that advocates for passing federal anti-SLAPP legislation, and publicizes its ability to help protect domestic-violence survivors. Currently, the group is lobbying in favor of a bill making its way through the state legislature in Ohio: S.B. 206. Bridget Mahoney, the chair of the Ohio Domestic Violence Network, testified in June 2018 in support of the bill, explaining how she and her daughter had suffered at the hands of her ex-husband and the courts.

“She lived in fear that the very courts designed to protect her would force her to spend time with her abuser,” Mahoney said of her then-teenage daughter. “At times, she didn’t want to live.”

Tort claims, which are used to fight harmful actions that don’t qualify as crimes—such

as purposefully causing emotional distress—are another possible way for survivors to combat abusers’ frivolous lawsuits. Survivors can claim that they’ve suffered damages from these lawsuits, for which abusers can be found legally liable. But tort claims are rarely used in this way, several lawyers, including Joel Kurtzberg, a partner at the legal firm Cahill Gordon & Reindel, told me. “Often, victims don’t know what their options are, or don’t have the wherewithal to bring the action without somebody representing them who knows [the law],” he said.

When I met D back in September, her next court date was set for November. “I thought this would be a quick process,” she said with clenched fists. The outcome D was hoping for was to be granted a protective order that lasts for two years—the longest one she can get under state law without “aggravating circumstances.” D hopes to leave New York one day, the city where she grew up, for a different life, one where she can live comfortably with a well-paying job outside of the city grind. This was her dream long before she met her ex, but now that she’s embroiled in this legal process with him, she may not be able to move, or move on.

“Even if I left New York, I think he would figure out the laws of the state I move to and find a way to stalk me.”

Moy said she fears for D and other clients whose abusers use the court system to harass them. Her biggest fear, she said, is that “even after the legal part is over, they’ll never move on and begin that process of being able to recuperate.”

After the protective order expires, D would potentially have to go back to court in New York to renew it—possibly starting the process over again—or risk her abuser

following her with impunity. “Even if I left New York, I think he would ... figure out the laws of the state [I move to] and find a way to stalk [me],” D said.

In what seemed like an exhausting rehearsal for her next court date, D checked off an imaginary list, looking at me as if I were the judge hearing her case: “Here’s my evidence; here’s all the emails and crazy voicemails he left. What else do I need to give to end this so I don’t have to see his face anymore in court?”

When I last checked in with Moy, at the start of April, D’s trial had finally ended the week prior. She was granted a three-year order of protection—more than the two years she had originally hoped for. The judge had added an extra year because of D’s ex’s troublesome conduct during court hearings.

But D’s ex hasn’t given up. He’s already filed to appeal the order.

This article was reported in collaboration with [The Fuller Project](#), a non-profit news organization that investigates issues affecting women.

ABOUT THE AUTHOR

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