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# From Experiencing Abuse to Seeking Protection: Examining the Shame of Intimate Partner Violence

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*Shame permeates the experience of intimate partner violence (IPV). People who perpetrate IPV commonly use tactics designed to cause shame in their partners, including denigrating their dignity, undermining their autonomy, or harming their reputation. Many IPV survivors report an abiding sense of shame as a result of their victimization—from a lost sense of self, to self-blame, to fear of (or actual) social judgment. When seeking help for abuse, many survivors are directed to, or otherwise encounter, persons or institutions that reinforce rather than mitigate their shame. Survivors with marginalized social identities often must contend not only with the shame of IPV victimization, but also with the shame that follows being stigmatized or otherwise assigned inaccurate or incomplete “identities.”*

*Understanding how these layers of shame can shape a survivor’s experience matters. Shame can be a destructive harm that devastates a person’s sense of self-worth. It can lead to long-term psychological injury and can be both a source and outcome of trauma. A desire to reduce shame’s damaging impact can cause survivors to utilize coping behaviors that may be self-protective, but profoundly misunderstood by the people and institutions to whom they turn for help. Included among those institutions is the civil legal system. Protection orders are the most common legal intervention for IPV and can be critical tools for responding to it. Yet, to obtain a protection order, survivors must enter a process that often deprives them of their privacy and ability to control their self-image—experiences anchored in shame. Without understanding shame’s behavioral and psychological effects, survivors risk having their claims of victimization discredited, harming their ability to obtain safety and relief.*

*This Article explores these individual, social, and institutional dimensions of shame. It examines how those who work or interact with survivors can better understand the shame that results from traumatic experiences, and the trauma that results from shame-intensive ones.*

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\* Co-Director, Domestic Violence Clinic, and Professor from Practice, Georgetown University Law Center. I am deeply grateful to the following for their thoughtful feedback on this piece: Lauren Birzon Harriman, Andy Budzinski, Renee Burbank, Bonnie Carlson, Deborah Epstein, Tianna Gibbs, Tammy Kuennen, Ashley Lattal, Naomi Mann, and Emily Suski. I am also deeply indebted to my research assistants, Stefanie Mundhenk, Susannah Dibble, and Georgetown’s Library staff, in particular Suzanne Miller, Jeremy McCabe, and Emily Grasset, for their outstanding research and support for this piece. Any errors herein are my own.

*This Article further explores strategies to reduce the shame that can pervade civil litigation. These strategies include prioritizing survivor dignity and narrative control—critical antidotes to the injury of shame.*

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## INTRODUCTION

This Article examines the relationship between shame, survivors, and intimate partner violence (IPV). For some readers, this topic may feel unfamiliar—an examination of an intensely personal experience that happens to another. Yet, while the conditions that cause it may vary widely among us, shame is ubiquitous to the human experience. It is an emotional outcome with which nearly every person has intimate familiarity. As a result, to understand the harms explored in this Article, most of us need only engage in self-reflection about our own prior shameful experiences. For this reason, I ask my reader to take a moment and consider an experience for which you have felt ashamed: What was the experience? Why does it stand out as shameful? How did you feel when it was happening, and how do you feel in recalling it now? How did you behave in response to your shame? If you shared that experience with others, what did they do to make you feel better? Worse? Hold on to your answers. My hope is that your insight will be a useful grounding point as you navigate the harms examined in this piece.

IPV is an experience anchored in shame.<sup>1</sup> People who inflict abuse commonly use behaviors designed to denigrate or humiliate their partners. Survivors often feel acutely ashamed of their victimization. The response of others who learn of that victimization, or the *anticipation* of how others may respond if they learn of it, can amplify the shame a survivor experiences.<sup>2</sup>

To understand why shame can be so central to IPV demands one must first understand what is meant by the term “shame.” Shame describes two discrete, but acutely iterative, experiences: an emotional state—identified in this Article as internalized shame—and an external response that stigmatizes or seeks to cause internalized shame—identified herein as social shame.<sup>3</sup>

Internalized shame is a painful emotion. It arises when a person identifies they have behaved in ways that violate social norms of accepted behavior or had experiences that run afoul of their adopted value system, and anticipates (or experiences) social judgment or exclusion for either.<sup>4</sup> Internalized shame also can arise from the adoption of narratives of social inferiority or inadequacy that are

1. In this Article, I use the term intimate partner violence to describe a range of abusive behaviors anchored in denigration, humiliation, and shame. Those behaviors “can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.” OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEP’T OF JUST., ABOUT THE OFFICE OF VIOLENCE AGAINST WOMEN 2 (2016), <https://www.justice.gov/ovw/docs/about-ovw-factsheet.pdf> [<https://perma.cc/WQ4L-UHTJ>]; see also Tamara Kuennen, *Not All Violence in Relationships is “Domestic Violence,”* 86 BROOK. L. REV. 43, 43–44 (2020) (examining the social construct of domestic violence and the typologies of violence that distinguish coercively controlling experiences from other abusive experiences). While IPV is experienced across genders, and shame can permeate the experience of survivors with any gender identity, this Article primarily examines shame correlated with women survivors. Further, while recognizing the limitation of using one word to define any diverse group of people or experiences, I use *survivor* when describing a person who has lived through the experience of IPV and *victim* when discussing a person against whom harm is directed. These distinctions, and their application, are imperfect. Finally, I use the term “Civil Protection Order” or “CPO” to describe orders issued in civil courts in response to allegations of IPV. These are also referred to as final protective orders, peace orders, and restraining orders, among others.

2. See discussion *infra* Part I; see also ROBERT WALKER WITH GRACE BENTEBYA-KYOMUHENDO, ELAINE CHASE, SOHAIL CHOUDHRY, ERIKA GUBRIUM, IVAR LØDEMEL, JO YONGMIE (NICOLA), LEEMAMOL MATHEW, AMON MWINE, SONY PELLISSERY & YAN MING, *THE SHAME OF POVERTY* 2 (2014). Not all social shaming leads to the internalized shame or to one *feeling* ashamed. For some, social shaming may lead to an emotionally neutral outcome or another emotional experience altogether. See A. Rachel Camp, *Pursuing Accountability for Perpetrators: The Peril (and Utility?) of Shame*, 98 B.U. L. REV. 1677, 1691–92 (2018); Ban Hong (Phylce) Lim, Christine E. Valdez & Michelle M. Lilly, *Making Meaning Out of Interpersonal Victimization: The Narratives of IPV Survivors*, 21 VIOLENCE AGAINST WOMEN 1065, 1070–73 (2015).

3. See, e.g., *Shame*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2008), <https://www.merriam-webster.com/dictionary/shame> [<https://web.archive.org/web/20201111192138/https://www.merriam-webster.com/dictionary/shame>] (last visited Nov. 11, 2022) (noting that shame is both noun, “painful emotion caused by consciousness of guilt, shortcoming, or impropriety,” and verb, “to cause to feel shame” or “to bring shame to”).

4. See Richard H. Smith, J. Matthew Webster, W. Gerrod Parrott & Heidi L. Eyre, *The Role of Public Exposure in Moral and Nonmoral Shame and Guilt*, 83 J. PERSONALITY & SOC. PSYCH. 138, 139–40 (2002); see also discussion *infra* Part II.

attached to certain identities an individual holds.<sup>5</sup> Shame is, in short, the distress of understanding that there is a disconnection between one's understood self and one's presenting self. For example, a survivor who was assaulted by her partner on the street in front of her home and in front of her young daughter expressed to my clinic students profound emotional distress. The source of that distress was not the abuse itself, but rather her sense of being an inadequate mother for "allowing" herself to be abused in front of her daughter and imagining what her neighbors might think if they had seen.<sup>6</sup> This client's distress was likely rooted in shame—both as a reaction to her perceived fault for the abuse and as an anticipatory concern that others would learn about that abuse, and judge her for it.

Social shame is an external, value-driven response—an action designed to bring social awareness to an identified harmful act, commonly with the intent to *cause* internalized shame in an identified wrongdoer. The motivation for social shaming can include holding another accountable through correcting, punishing, or rehabilitating perceived (social) rule "violators."<sup>7</sup> The motivation for social shaming can also include more subtle and insidious behaviors; those designed to exert dominance and control by humiliating, exposing, or ostracizing another with the intent to undermine their sense of self or social belonging.<sup>8</sup>

Regardless of the source—a reaction to our own experience or to the behavior of another—internalized shame can lead to devastating harms. It can assail a person's dignity, damage their self-esteem, and disrupt their ability or desire to connect socially with others. While experiencing shame can have the pro-social benefit of guiding us from behaviors that may be contrary to the social order or helping us realign our behaviors with our value system,<sup>9</sup> it simultaneously can lead us to believe we are morally deficient or possess a fundamental character flaw.<sup>10</sup>

People who feel ashamed can experience wide-ranging, long-term psychological effects, from anxiety and depression to post-traumatic stress disorder (PTSD).<sup>11</sup> Those effects can trigger predictable behaviors designed to ward off shame's discomfort, reduce the risk of further shame exposure, and avoid

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5. See discussion *infra* Part II.

6. This experience was reported to my students representing a client in Georgetown's Domestic Violence Clinic in Spring 2020.

7. See Camp, *supra* note 2.

8. See discussion *infra* Part III; see also *Shaming*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2008), <https://www.merriam-webster.com/dictionary/shaming> [<https://web.archive.org/web/20220323144137/https://www.merriam-webster.com/dictionary/shaming>] (last visited Nov. 27, 2022).

9. See Camp, *supra* note 2, 1683–86.

10. See *infra* Part I; Camp, *supra* note 2, at 1683–84. See generally SELF-CONSCIOUS EMOTIONS: THE PSYCHOLOGY OF SHAME, GUILT, EMBARRASSMENT, AND PRIDE (June Price Tangney & Kurt Fischer eds., 1995); BRENÉ BROWN, RISING STRONG (2015).

11. See discussion *infra* Part I; see also MELISSA V. HARRIS-PERRY, SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA 104–05 (2011) (naming the "corrosive effects of shame," including depression, social anxiety, personality disorders, and suicide).

reinforcing the social narratives driven by shame’s messaging.<sup>12</sup> Minimizing details, avoiding discussions of shameful topics, social withdrawal, and outright denial are common behaviors utilized by people who feel ashamed. Yet, to an uninformed audience, those behaviors may be misunderstood, resulting not only in a lost opportunity for empathic understanding, but also to the discrediting or invalidating of another’s experience. In other words, the effects of internalized shame can trigger social shaming, which can, in turn, further a person’s internalized shame. Shame can beget shame.

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Survivors of IPV are uniquely at risk for this destructive shame cycle.<sup>13</sup> This cycle is distinctly possible when survivors use interventions that are designed to offer help, relief, or protection. This Article examines the most common of those interventions: civil protection orders (CPOs).

CPOs are survivor-initiated proceedings, available in every state, that provide a range of civil legal remedies. CPOs can be important tools for rebalancing power in intimate relationships, holding abusive partners accountable, and, ultimately, reducing or stopping violence.<sup>14</sup> As compared to the criminal legal system, which

12. See Jillian R. Scheer & V. Paul Poteat, *Trauma-Informed Care and Health Among LGBTQ Intimate Partner Violence Survivors*, 36 J. INTERPERSONAL VIOLENCE 6670, 6685 (2021) (“Many LGBT IPV survivors experience chronic internalized stigma resulting from exposure to lifelong and current experiences of discrimination.” (citing Michael E. Newcomb & Brian Mustanski, *Internalized Homophobia and Internalizing Mental Health Problems: A Meta-Analytic Review*, 30 CLINICAL PSYCH. REV. 1019 (2010))); Melissa Platt & Jennifer Freyd, *Trauma and Negative Underlying Assumptions in Feelings of Shame: An Exploratory Study*, 4 PSYCH. TRAUMA: THEORY PRAC. & POL’Y 370, 370 (2012) (describing how “early life stress leads to the development of core beliefs of the self as unlovable or incompetent, which in turn predisposes the individual to experience thinking errors in the context of day-to-day stressors”).

13. See discussion *infra* Part II; see also Tanya Saraiya & Teresa Lopez-Castro, *Ashamed and Afraid: A Scoping Review of the Role of Shame in Post-Traumatic Stress Disorder (PTSD)*, 5 J. CLINICAL MED., no. 11, Nov. 1, 2016, at 1, 14 (observing that people with prior shame-intensive experiences are likely to experience and process shame faster in *other* contexts than individuals who have not had such experiences); Susan F. Grossman & Marta Lundy, *Characteristics of Women Who Do and Do Not Receive Onsite Shelter Services from Domestic Violence Programs*, 17 VIOLENCE AGAINST WOMEN 1024, 1029–30 (2011); Hyunkag Cho, Ilan Kwon, Daria Shamrova & Jisuk Seon, *Factors for Formal Help-Seeking Among Female Survivors of Intimate Partner Violence*, 36 J. FAM. VIOLENCE 143, 148 (2021).

14. See generally Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107 (2009); Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75 (2008); Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487 (2008). Utilizing a formal, legal process may be particularly “empowering for victims of ‘social injustice and dignitary harms.’” Matthew A. Shapiro, *Indignities of Civil Litigation*, 100 B.U. L. REV. 501, 516 n.44 (quoting Leslie Bender, *Tort Law’s Role as a Tool for Social Justice Struggle*, 37 WASHBURN L.J. 249, 259 (1998)); T.K. LOGAN & ROBERT WALKER, CARSEY INST., CIVIL PROTECTIVE ORDERS EFFECTIVE IN STOPPING OR REDUCING PARTNER VIOLENCE: CHALLENGES REMAIN IN RURAL AREAS WITH ACCESS AND ENFORCEMENT 1 (2011), [https://scholars.unh.edu/cgi/viewcontent.cgi?article=1130&context=carsey#:~:text=The%20results%20show%20clearly%20that,twelve%2Dmonth%20follow%2Dup\[https://perma.cc/JR5A-6SF8\]](https://scholars.unh.edu/cgi/viewcontent.cgi?article=1130&context=carsey#:~:text=The%20results%20show%20clearly%20that,twelve%2Dmonth%20follow%2Dup[https://perma.cc/JR5A-6SF8]).

can result in mandatory responses that deprive survivors of control over their legal experience,<sup>15</sup> the CPO process is generally credited with allowing survivors the ability to tailor relief to suit their individual needs.<sup>16</sup>

Despite their central role in the societal response to IPV, the processes demanded for obtaining a CPO can expose survivors to distinct harms.<sup>17</sup> To be sure, negative consequences from pursuing civil legal interventions are not unique to survivor-litigants. Many litigants find that civil litigation can trigger complex and uncomfortable emotional experiences, including a sense of vulnerability, stress, embarrassment, and shame.<sup>18</sup> For some, civil litigation “stands to be positively dreadful—effectively inflicting a second serious injury” on top of the injury for which they are seeking legal recourse.<sup>19</sup> However, litigants are expected to accept these emotional harms as a necessary cost of obtaining a favorable order.<sup>20</sup>

For some survivors, the costs may be worth the emotional burden. Survivor-litigants commonly obtain orders that enhance their safety and provide long-term relief. Yet, even when the outcome is favorable, the *process* can be deeply

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15. See, e.g., LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE* (2018); AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN’S LIBERATION IN MASS INCARCERATION* (2020).

16. Feminist and anti-IPV scholars have critiqued the civil protection order process for a variety of reasons. See, e.g., Johnson, *supra* note 14, at 1114 (CPOs laws limited to physical violence should be reframed to “attack the oppression of women”); Alesha Durfee, “Usually It’s Something in the Writing”: *Reconsidering the Narrative Requirement for Protection Order Petitions*, 5 U. MIA. RACE & SOC. JUST. L. REV. 469, 472 (2015) (discussing that the CPO narrative requirement is an approach that “relies on a series of assumptions about domestic violence victims that are not true of all petitioners who have experienced domestic violence or in all protection order filings”); Leigh Goodmark, *Law is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 19–28 (2004) (examining limits of legal interventions for DV, including that CPOs are often not taken into account in custody disputes, the focus on physical violence, the effectiveness of CPOs which preclude actions that are already illegal (such as assault), and the use of CPOs as a weapon by abusers); Margaret E. Johnson, *Changing Course in the Anti-Domestic Violence Legal Movement: From Safety to Security*, 60 VILL. L. REV. 145, 146 (2015) (“[D]omestic violence law and practice overemphasize women’s short-term safety in ways that deprive women of dignity and agency, and, counterintuitively, make women less safe.” (footnotes omitted)); Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much Is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 5 (2007) (“If a narrower conceptualization of coercion could be translated into the legal paradigm—one that recognizes the existence of choice, even if not entirely free choice—it would shift the court’s focus from the outcome of a victim’s decision to drop her CPO to the process by which she arrived at her decision.”); Jane K. Stoever, *Access to Safety and Justice: Service of Process in Domestic Violence Cases*, 94 WASH. L. REV. 333, 340 (2019) (arguing that the requirement of service of process for CPOs is “both an issue of access to justice and access to safety”).

17. See Heather Douglas, *Domestic and Family Violence, Mental Health and Well-Being, and Legal Engagement*, 25 PSYCHIATRY PSYCH. & L. 341, 350 (2018); Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. TRAUMATIC STRESS 159, 159–60 (2003); see also discussion *infra* Part III.

18. Shapiro, *supra* note 14, at 533.

19. *Id.* (quoting Nora Freeman Engstrom, *ISO the Missing Plaintiff*, JOTWELL (Apr. 12, 2017), <https://torts.jotwell.com/iso-the-missing-plaintiff/> [<https://perma.cc/VG3W-QGZF>]).

20. See *id.* at 566.



shame-intensive, inflicting harm that extends beyond the courtroom and that, ironically, may parallel the emotional injury caused by their victimization.<sup>21</sup> As a result, some survivors may feel less (emotionally) safe after obtaining a CPO than they did before seeking one; others may find that the experience is clinically traumatic. Still others may understand the emotional risks in advance and avoid the legal process—and its potential for relief and protection—altogether.<sup>22</sup>

Many scholars and practitioners have explored the behavioral and emotional experiences that flow from IPV—in particular, trauma—and how the legal system can perpetuate harm. Yet, shame has been underexplored within the IPV legal and trauma-informed scholarship. While shame can be a standalone emotional experience—one not otherwise identified as traumatic—shame and trauma are deeply iterative. Moreover, many people who have experienced interpersonal traumas, including survivors of IPV, report shame as the dominant emotional outcome from their traumatic experience.<sup>23</sup> This Article seeks to fill the gap in the IPV scholarship by illuminating the centrality of shame to survivors' experiences, both in the civil courtroom and beyond.

Part I explores the correlation between shame and IPV. It begins by providing a definitional framework of shame and by examining its causes and effects. Part I then explores the connection between shame, IPV perpetration, and victimization. Part II examines the relationship between social location, identity, and shame. It considers how race, gender, and class, distinctly and through an intersectional lens, can expose survivors to the shame of stigmatization and resulting “unwanted identities”—attributions that inaccurately reflect who a person is based on an observable or assumed trait.<sup>24</sup>

Part III explores the connection between shame and the civil protection order process. It examines both why the procedures required to obtain a CPO and the environments within which CPOs are litigated can create conditions that reduce litigant shame, and why those procedures and environments can cause or exacerbate it. Part IV advances suggestions for centralizing shame as a dimension of a survivor's experience. Building on existing trauma-informed models, Part IV recommends shame mitigating strategies for lawyers, judges, and other system actors by centralizing survivor dignity, privacy, and narrative control.<sup>25</sup>

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21. See discussion *infra* Part III.

22. See *id.*

23. See discussion *infra* Part I.

24. See Tamara J. Ferguson, Heidi L. Eyre & Michael Ashbaker, *Unwanted Identities: A Key-Variable in Shame-Anger Links and Gender Differences in Shame*, 42 *SEX ROLES* 133, 136–37 (2000); see also discussion *infra* Part III.

25. See, e.g., Heather Ellis Cucolo & Michael L. Perlin, *Promoting Dignity and Preventing Shame and Humiliation by Improving the Quality and Education of Attorneys in Sexually Violent Predator (SVP) Civil Commitment Cases*, 28 *U. FLA. J.L. & PUB. POLY* 291, 313 (2017) (identifying that shame can result “when dignity is not present”).

## I. SHAME AND INTIMATE PARTNER VIOLENCE

Shame is central to the experience of IPV.<sup>26</sup> It is both a motivator for abusive behavior and an outcome of that abuse. To understand why, this Section begins by defining shame and examining its causes and effects. It explores the myriad ways shame can manifest, both emotionally and behaviorally, and the social conditions that can stimulate it. This Section concludes by applying this definitional framework to the context of IPV.

*A. Shame's Causes and Effects**1. Psychological Outcomes of Shame*

Shame, like all emotions, is the label we give to the behavioral and physiological outcomes that follow a particular experience. Yet, shame can be a difficult emotion to accurately identify by a person experiencing it or by a person observing it in another. This difficulty arises, in part, because shame falls within a category of emotions identified as “complex.”<sup>27</sup> Unlike “simple” emotions, such as anger, fear, and joy—emotions that tend to be easily identifiable based on their behavioral and physiological effects—complex emotions are a combination of two or more simple ones.<sup>28</sup> As a result, complex emotional experiences tend to be harder to identify based on behavioral observation or physiological response, alone.<sup>29</sup> Shame is no exception.<sup>30</sup> Without sophisticated emotional acuity, shame is commonly misidentified as agitation, anger, apathy, or sadness, among others.<sup>31</sup>

26. See Saraiya & Lopez-Castro, *supra* note 13, at 2 (reporting that relational trauma leads to “the loss of wholeness, integrity, and humiliation;” and that one who experiences relational trauma is “more likely to generate intense feelings of shame rather than fear”); Evelin Gerda Lindner, *Humiliation—Trauma that Has Been Overlooked: An Analysis Based on Fieldwork in Germany, Rwanda/Burundi, and Somalia*, 7 *TRAUMATOLOGY* 43, 43 (2001) (identifying humiliation as “the core agent of trauma”); John P. Wilson, Boris Droždek & Silvana Turkovic, *Posttraumatic Shame and Guilt*, 7 *TRAUMA VIOLENCE & ABUSE* 122, 133 (2006) (describing the prevalence of shame following a personal trauma). See generally Heidi La Bash & Anthony Papa, *Shame and PTSD Symptoms*, 6 *PSYCH. TRAUMA* 159, 159–60 (2014).

27. *Complex Emotion*, AM. PSYCH. ASS'N, <https://dictionary.apa.org/complex-emotion> [<https://web.archive.org/web/20211020105414/https://dictionary.apa.org/complex-emotion>] (last visited Nov. 21, 2022).

28. *Id.* In addition to shame, complex emotions include hate, love, disgust, embarrassment, guilt, jealousy, and pride.

29. Shame has been identified as originating from the confluence of sadness, anger, and fear. WALKER ET AL., *supra* note 2, at 35.

30. See Brené Brown, *Shame Resilience Theory: A Grounded Theory Study on Women and Shame*, 87 *FAMS. SOC'Y* 43, 45–46 (2006) (noting that shame can lead to confusion, anger, feeling trapped, powerless, and isolated).

31. See Paul Gilbert, *The Evolution of Shame as a Marker for Relationship Security: A Biopsychosocial Approach*, in *THE SELF-CONSCIOUS EMOTIONS: THEORY AND RESEARCH* 283, 284 (Jessica L. Tracy, Richard W. Robbins & June Price Tangney eds., 2007) (noting that shame “has complex physiological effects, and is associated with specific personal and cultural meanings and narrative discourses” (citation omitted)).

While a person certainly may feel any of those emotions simultaneously, misidentifying shame, or missing it altogether, can lead to a real loss in understanding about one's own, or another's, experience.<sup>32</sup> Further, it can lead to the assignment of incomplete or inaccurate attributes, traits, or characteristics.

Among complex emotions, shame falls into a further subcategory identified as *self-conscious* emotions.<sup>33</sup> Though all emotions are shaped by culture—that is, our social communities tell us what kinds of experiences should trigger what kinds of responses—basic emotions tend to be triggered by similar stimuli across cultures.<sup>34</sup> Self-conscious emotions, however, are shaped almost entirely by cultural/social norms, expectations, and our own (culturally shaped) value system.<sup>35</sup> They result when we understand we have complied with (pride, e.g.) or deviated from (shame, guilt, remorse, e.g.) those norms, values, or expectations.<sup>36</sup> As shame researchers Jessica Tracy and Richard Robins explain, self-conscious emotions

guide individual behavior by compelling us to do things that are socially valued and to avoid doing things that lead to social approbation. We strive to achieve, to be a “good person,” or to treat others well because doing so makes us proud of *ourselves*, and failing to do so makes us feel . . . ashamed of *ourselves*. Society tells us what kind of person we should be; we internalize these beliefs in the form of actual and ideal self-representations; and self-conscious emotions motivate behavioral action toward the goals embodied in these self-representations.<sup>37</sup>

32. Brown, *supra* note 30, at 46.

33. Jessica L. Tracy & Richard W. Robins, *The Self in Self-Conscious Emotions: A Cognitive Appraisal Approach*, in THE SELF-CONSCIOUS EMOTIONS, *supra* note 31, at 3, 3–4; *See also Self-Conscious Emotion*, AM. PSYCH. ASS'N, <https://dictionary.apa.org/self-conscious-emotion> [<https://web.archive.org/web/20210306111235/https://dictionary.apa.org/self-conscious-emotion>] (last visited Nov. 27, 2022).

34. There is not universal agreement on how many, and which, emotions are basic. *See, e.g.*, Paul Ekman & Daniel Cordaro, *What Is Meant by Calling Emotions Basic*, 3 EMOTION REV. 364, 364–66 (2011). Among emotion theorists, however, there is broad consensus that there are distinct emotional responses linked to a person's perception of how she is viewed by others—those defined herein as self-conscious. *See generally* THE SELF-CONSCIOUS EMOTIONS, *supra* note 31. Self-conscious emotions include embarrassment, guilt, pride, and shame because each is anchored in the perceptions of others and the evaluation of oneself in the eyes of another. *See* Jessica L. Tracy & Richard W. Robins, *Self-Conscious Emotions: Where Self and Emotion Meet*, in THE SELF 187, 191 (Constantine Sedikides & Steven J. Spencer eds., 2007).

35. Platt & Freyd, *supra* note 12, at 371; *see also* HARRIS-PERRY, *supra* note 11, at 104 (“We do not feel shame in isolation, only when we transgress a social boundary or break a community expectation.”); Smith et al., *supra* note 4, at 138 (arguing that “the linking of public exposure with shame is unmistakable”); Gilbert, *supra* note 31, at 295.

36. *See* Susan A. Bandes, *Feeling and Thinking like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law*, 89 FORDHAM L. REV. 2427, 2432 (2021) (exploring the roles of communities and institutions in shaping “what we ought to feel and how and when we ought to express those feelings” (citing ARLIE RUSSELL HOCHSCHILD, *THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELINGS* (1983))).

37. Tracy & Robins, *supra* note 34, at 194 (citation omitted).

Shame's self-conscious nature means, in part, that it functions as a social warning system of sorts:<sup>38</sup> an emotional alert designed to prevent us from engaging in behaviors that have negative social implications or that may harm our reputation, social inclusion, or "right" to belong.<sup>39</sup> Shame can result not only when another learns of the shame-triggering event, but by the *possibility* that another could.<sup>40</sup> That is, shame can result when we anticipate being negatively appraised by others for our perceived shameful behavior; an imagined audience can be sufficient. Further, for some shame-triggering events, we can serve as our own "audience" by harshly judging ourselves or otherwise engaging in negative self-appraisal. In other words, we can feel shame based on private events when we anticipate social judgment of others or when we view ourselves as blame-worthy, flawed, or morally deficient.<sup>41</sup>

When an experience for which a person feels ashamed *is* publicly exposed, the negative psychological consequences can be deepened. As psychiatrist James Gilligan explains, shame is "intensified by exposure to others" because it increases the risk that our behaviors will cause an audience to see us as "weak, failed, foolish, incompetent, ridiculous, rejected, inferior, contemptible—in short,

38. Because shame responses promote social order, evolutionary psychologists have identified shame as an emotion necessary for human survival. Social order increases the likelihood of group success which, relatedly, increases an individual's likelihood of finding a mate, producing offspring, and, ultimately, surviving. Behaviors contrary to the maintenance of established social order could result in group rejection and, therefore, exclusion from the benefits of shared food, shelter, and potential mates, which could mean the difference between life and death. See Jeff Elison, Carlo Garofalo & Patrizia Velotti, *Shame and Aggression: Theoretical Considerations*, 19 *AGGRESSION & VIOLENT BEHAV.* 447, 448 (2014); Smith et al., *supra* note 4, at 138; Tracy & Robins, *supra* note 34.

39. See Gilbert, *supra* note 31, at 284; Smith et al., *supra* note 4, at 146 ("Public exposure of any sort of behavior, and the evaluative implications of public scrutiny, may be an especially powerful ingredient of the socially constructed self."); HARRIS-PERRY, *supra* note 11, at 107 ("Because shame is connected to collective rules and shared expectations, it is a basic tool by which societies create moral order."). Emotion theorists have identified shame as a "moral" emotion because it is so strongly correlated with a person's sense that they have violated social, moral standards of behavior. See, e.g., June Price Tangney & Jessica L. Tracy, *Self-Conscious Emotions*, in *HANDBOOK OF SELF AND IDENTITY* 447, 447–49 (Mark R. Leary & June Price Tangney eds., 2d ed. 2012).

40. WALKER ET AL., *supra* note 2, at 154. The possibility of public exposure and resulting judgment so profoundly shapes how humans behave that, according to one emotion theorist, "our every social act is influenced by even the slight chance of public shame." Tracy & Robins, *supra* note 33, at 3; see also Smith et al., *supra* note 4, at 145 (noting that shame can increase if a "[private] transgression violates a personal standard" when "circumstances cause a person to think of someone who would disapprove of" that private transgression).

41. As considered by one set of researchers,

It is theoretically interesting to ponder the question as to whether or not shame would exist if there were no cultures to shape human development. If there were no contextualized cultural norms regarding moral behavior, would shame exist? If social comparison processes were absent because of anomic or politically dissolved societies or nation states, would shame and guilt exist? If there were no mutually beneficial patterns of hedonic regulation or restrictions on antisocial behaviors aversive to the common good of society, would shame exist?

Wilson, Drozdek & Turkovic, *supra* note 26, at 129.

shameful.”<sup>42</sup> When those anticipated reactions are realized, the result of judgment, ostracism, or other forms of social exclusion can serve to cause or reinforce our sense of inadequacy.

Yet, shame is one of many self-conscious emotions. What is it, then, that causes shame to have such negative effects as compared to its self-conscious emotional counterparts—emotions like guilt, remorse, or embarrassment? In part, shame’s negative consequences result from how the underlying emotion-triggering experience is oriented. By way of example, although guilt is a self-conscious emotion that also can be deeply uncomfortable, we experience guilt when we locate the cause of the emotion-triggering experience externally, as context or behavior specific.<sup>43</sup> A person experiences guilt when they have a momentary lapse of judgment or engage in a poor behavior choice.<sup>44</sup> While that person may feel deeply distressed by their guilt-triggering behavior, because the orientation of fault is externally and situationally directed, guilt is often experienced as morally neutral and, therefore, lends to an easier recovery.

Shame works in the opposite way. We feel shame when we orient responsibility for the shame-triggering experience internally: not from a sense of having *done* something wrong, but from a sense of *being* something wrong.<sup>45</sup> As we reflect on our own experiences of shame, it is not hard to see how this plays out: “I engaged in X behavior because I am [not good enough/flawed/other negative attribute].” For this reason, shame tends to trigger a sense of moral deficiency, which can lead to a “paralyzing global assessment of oneself as a person,” making a redemptive path forward difficult to visualize.<sup>46</sup>

For many of the foregoing reasons, shame is correlated with traumatization. As identified in the Introduction, while shame can be a standalone emotional experience, shame is also a catalyst for, and an outcome of, trauma.<sup>47</sup> This is true, in large part, because trauma is the body’s physiological and emotional response to a “sense of threat.”<sup>48</sup> Though trauma-triggering threats are commonly understood to be physical or psychological in nature, traumatic experiences can also be rooted

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42. JAMES GILLIGAN, PREVENTING VIOLENCE 51 (2001).

43. Smith et al., *supra* note 4, at 139–40 (noting the difference between shame and guilt and that shame arises when the focus of a transgressor is on the “bad, defective self” rather than on the transgression, or behavior, itself).

44. La Bash & Papa, *supra* note 26, at 164.

45. See Tracy & Robins, *supra* note 33; Smith et al., *supra* note 4, at 157; Platt & Freyd, *supra* note 12, at 371; La Bash & Papa, *supra* note 26, at 159.

46. Bernard Golden, *Overcoming the Paralysis of Toxic Shame*, PSYCH. TODAY (Apr. 22, 2017), <https://www.psychologytoday.com/us/blog/overcoming-destructive-anger/201704/overcoming-the-paralysis-toxic-shame> [<https://perma.cc/QD6L-UB4T>].

47. See Lindner, *supra* note 26.

48. La Bash & Papa, *supra* note 26, at 159.

in threats of *social* injury.<sup>49</sup> For some, judgment, ostracism, or social exclusion can be as traumatic as emotional or physical harm.<sup>50</sup> These experiences can be so traumatic, in fact, that they lead to the onset or exacerbation of PTSD.<sup>51</sup> Indeed, psychologists have identified that for some trauma survivors, attending to their shame is critical for their treatment and for the reduction of PTSD or related symptoms.<sup>52</sup> For these reasons, and for the reasons examined in Part I.B, it is unsurprising that many survivors of IPV—a group for whom shame, among other harms, can be pervasive—meet the diagnostic criteria for PTSD<sup>53</sup> and experience a range of related psychological injury.<sup>54</sup>

49. See Wilson, Droždek & Turkovic, *supra* note 26, at 127 (noting that shame leads to a “loss of self-continuity in upholding culturally defined values, norms, and respected patterns of behavior” and a “feeling of having slipped downwardly from doing the right thing according to cultural norms”).

50. See *id.* (identifying shame as being able to “stimulate the incubation of PTSD”); see also Terry F. Taylor, *The Influence of Shame on Posttrauma Disorders: Have We Failed to See the Obvious?*, 6 EUR. J. PSYCHOTRAUMATOLOGY 28847, 28848 (2015) (citing a study of patients experiencing trauma and noting that memories associated with their trauma were “more often related to a severe negative view of the self than to fear, helplessness or horror”).

51. Saraiya & Lopez-Castro, *supra* note 13. To meet the diagnostic criteria for PTSD, an adult’s normal daily functioning must be interrupted for a month with each of the following: intrusive, avoidant, reactive, and mood or cognition symptoms. *Post-Traumatic Stress Disorder*, NAT’L INST. MENTAL HEALTH (May 2022), <https://www.nlm.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml> [<https://web.archive.org/web/20190430182759/https://www.nlm.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml>]; *What Is Posttraumatic Stress Disorder?*, AM. PSYCHIATRIC ASS’N (Aug. 2020), <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> [<https://web.archive.org/web/20200801025818/https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>]; *Post-traumatic Stress Disorder (PTSD)*, MAYO CLINIC (July 6, 2018), <https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/syc-20355967> [<https://perma.cc/3GXH-UQGB>].

52. See *e.g.*, Saraiya & Lopez-Castro, *supra* note 13 (“[A]meliorating shame may be as critical as addressing fear to the recovery of a significant population of PTSD sufferers.”).

53. See, *e.g.*, Loring Jones, Margaret Hughes & Ulrike Unterstaller, *Post-Traumatic Stress Disorder (PTSD) in Victims of Domestic Violence: A Review of the Research*, 2 TRAUMA VIOLENCE & ABUSE 99, 110 (2001); Angela E. Waldrop & Patricia A. Resick, *Coping Among Adult Female Victims of Domestic Violence*, 19 J. FAM. VIOLENCE 291, 299 (2004).

54. As observed by one set of researchers, “[j]ust as a person may be angry at oneself for carelessly smashing one’s own thumb, one may experience self-directed anger when social injury (e.g., shame, embarrassment) is one’s own fault” or is perceived by that person to be their fault. Elison, Garofalo & Velotti, *supra* note 38, at 450; see also Jeff Elison & Julie A. Partridge, *Relationships Between Shame-Coping, Fear of Failure, and Perfectionism in College Athletes*, 35 J. SPORT BEHAV. 19, 21 (2012). As further observed by one survivor:

Shame is not easily shaken off. In fact, it can affect the core perception of ourselves and our identity. People who have experienced traumatic events may rewrite their self-perception to include feelings of disgust and humiliation, as well as negative comparison of themselves with other people. Acute, chronic shame can erode self-esteem in ongoing and destructive ways.

Seraphina Malizia, *How Abusers Rely on Shame to Keep Victims Down*, ESTABLISHMENT (June 23, 2016), <https://theestablishment.co/how-abusers-rely-on-shame-to-keep-victims-down-87f2d8b9f57d/> [<https://perma.cc/M3T7-VR6L>].

## 2. Behavioral Manifestations of Shame

People who feel ashamed may adopt a variety of self-protective behaviors.<sup>55</sup> Among the most common are behaviors that allow the ability “to remain invisible and hide themselves from exposure.”<sup>56</sup> For some, those behaviors may include socially withdrawing or withholding information about their shame-triggering experience.<sup>57</sup> For others, those behaviors may display through defensiveness, shifting blame, or using verbal or physical aggression in an effort to restore, even if only temporarily, their sense of control, self-image, and power.<sup>58</sup> For still others, shame-responsive, self-protective behaviors may include strategies designed to numb shame’s psychological effects, including self-harm, substance abuse, or high-risk sexual behavior.<sup>59</sup> Without a shame-informed lens, any of these behaviors could be misunderstood—attributed to individual deficiencies, apathy, or to a flawed moral character. When shame is considered, those behaviors can become opportunities for a more nuanced, generous, and accurate understanding of another.

Given the connections drawn above, it may appear that preventing internalized shame is as simple as avoiding socially or morally transgressive behaviors. Yet shame-avoidance is not that simple. Shame can result from our own

55. See, e.g., Karen G. Weiss, *Too Ashamed to Report: Deconstructing the Shame of Sexual Victimization*, 5 FEMINIST CRIMINOLOGY 286, 288 (2010). According to emotion theorists, shame-responsive strategies fall within two broad categories: self-directed and externally directed. See Tracy & Robins, *supra* note 33; LearningStewards, *The Compass of Shame*, YOUTUBE, at 0:48 (Apr. 7, 2012), <https://www.youtube.com/watch?v=LZ1fSW7zevE> [<https://perma.cc/CFG9-5YWC>] (streaming clip of Donald Nathanson from MANAGING SHAME—PREVENTING VIOLENCE (Tomkins Inst. 2008)); Jeff Elison, Randy Lennon & Steven Pulos, *Investigating the Compass of Shame: The Development of the Compass of Shame Scale*, 34 SOC. BEHAV. & PERSONALITY 221, 223 (2006); Tracy & Robins, *supra* note 34, at 195 (exploring internally and externally directed behaviors attributable to shame).

56. Weiss, *supra* note 55, at 287.

57. See Prachi H. Bhuptani & Terri L. Messman-Moore, *Blame and Shame in Sexual Assault*, in HANDBOOK OF SEXUAL ASSAULT AND SEXUAL ASSAULT PREVENTION 309, 312 (William T. O’Donohue & Paul A. Schewe eds., 2019) (“Shame invokes behavioral responses that focus on hiding the perceived flawed self, including withdrawal.”); Sana Sheikh, *Cultural Variations in Shame’s Responses: A Dynamic Perspective*, 18 PERSONALITY & SOC. PSYCH. REV. 387, 395–97 (2014) (exploring withdrawal as a self-regulatory shame-responsive behavioral strategy).

58. The correlation between shame and violent behavior is strongly supported by social science research. See Camp, *supra* note 2, at 1677; Donald G. Dutton, Cynthia van Ginkel & Andrew Starzomski, *The Role of Shame and Guilt in the Intergenerational Transmission of Abusiveness*, 10 VIOLENCE & VICTIMS 121, 127 (1995).

59. See, e.g., Jeffrey Stuewig & June Price Tangney, *Shame and Guilt in Antisocial and Risky Behaviors*, in THE SELF-CONSCIOUS EMOTIONS, *supra* note 31, at 371, 377 (“[S]hame-proneness [has been shown to be] consistently positively related to both alcohol and drug problems.”). As reported by one survivor, “I began to question my self-worth, self-confidence, and my true purpose in life. I thought of committing suicide many times. It was a way out for me.” *These Women Survived Domestic Violence. Now They’re Taking a Stand to Help Others*, AMNESTY INT’L (Oct. 24, 2019), <https://www.amnesty.org/en/latest/news/2019/10/gun-violence-report/> [<https://perma.cc/Q24G-GB59>].

behavior, but also from the behavior of others. For this reason, as examined below, shame can be a particularly common outcome within the context of IPV.

*B. Shame as Cause and Effect of IPV*

Shame is central to what motivates the use of IPV, and what outcomes result from it. Coercive control, specifically, is a type of IPV motivated by behaviors designed to undermine another's autonomy and dignity; a pattern of behaviors where causing internalized shame is an objective of the abusing party, if not the primary one.<sup>60</sup> Physical abuse, for example, can be motivated by a desire to shame as much as it can be motivated by a desire to physically injure. Physically abusive partners take away another's control of their body and space. Physical abuse can result in a wide range of harms observable to others, from those that are less extreme (e.g., bruising and scratches) to those that are permanent (e.g., scars or disfigurement).<sup>61</sup> Regardless of the injury itself, being physically manipulated and physically harmed can exploit a person's vulnerability and weakness, and can undermine their sense of their ability to protect or take care of themselves. As noted by sociologist Evan Stark, physical abuse occurring within a broader context of coercive control "demonstrate[s] a victim's subservience through marking or the enforcement of a behavior or ritual that is either intrinsically humiliating or is contrary to her nature, morality, or best judgment."<sup>62</sup> Whether temporary or permanent, physical injury can serve as a mark of shame: a reminder to survivors—and notice to the public—of their victimization.<sup>63</sup>

Similarly, shame can be both a cause and an effect of emotional abuse.<sup>64</sup> While some emotionally abusive behaviors can result in an astounding denigration of a person's dignity, others may assail it more slowly by undercutting their autonomy or tarnishing their social image.<sup>65</sup> Those tactics can include persistent criticism; communicating negatively about survivors to their friends, family, or co-workers; surveilling their movements; withholding affection; constraining access to food, money, or other basic necessities or comforts; or interfering with the parent-child relationship.<sup>66</sup> Any of these behaviors can have their intended effect: to undermine

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60. See EVAN STARK, *COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE* (2007).

61. See *id.* at 260–61 (discussing demands made by abusive partners for survivors to get tattoos or otherwise permanently modify their appearance).

62. *Id.* at 260.

63. See *id.* at 260–61.

64. See *id.* at 198–227; see also Lindner, *supra* note 26 (identifying humiliation as "the core agent of trauma"); Wilson, Droždek & Turkovic, *supra* note 26 (describing the prevalence of shame following a personal trauma).

65. See STARK, *supra* note 60, at 260–61 ("[Victims] have been made to sleep standing up, wear their 'bad' clothes for days without changing, eat without utensils, shower repeatedly or in cold water, denied toilet paper, and forced to use the bathroom with the door open, locks removed, or with a timer.").

66. See *id.* at 205.



another's sense of self and threaten their relationships, reputation, and social standing—to cause shame.<sup>67</sup>

Beyond the shame of the abuse itself, survivors of IPV also must contend with the shame of being betrayed by their intimate partner. Betrayal by someone we trust, love, or rely upon inflicts a distinct emotional injury.<sup>68</sup> Psychologists Jennifer Freyd and Carly Parnitzke Smith have identified this type of injury as *betrayal trauma*—the discrete psychological harm that results from being abused or seriously mistreated by a person you depend on for safety and security.<sup>69</sup> Betrayal trauma results when our “basic needs for solace, refuge, protection, and respect” are unmet,<sup>70</sup> disrupting held assumptions that serve as the foundation for long-lasting relationships.<sup>71</sup> The act of being betrayed by a loved one—with or without violence—can “incite deep feelings of shame.”<sup>72</sup>

To risk stating the obvious, survivors are vulnerable to betrayal trauma and its resulting shame because they are in an intimate relationship with the person who harmed them.<sup>73</sup> Abuse inflicted by an intimate partner “can shatter deeply held core beliefs or assumptions about personal identity and the nature of the world.”<sup>74</sup> It can disorient survivors’ understanding of who they are and what they believed they could rely on—their instincts, their world view, and their ability to correctly assess and trust another.<sup>75</sup> Further, survivors may blame themselves for the decisions made in the context of their abusive relationships, such as entering the relationship in the first place, staying after the abuse began, or choosing to raise children with an abusive partner. Any of the foregoing can cause a survivor to turn inward and assume that a fundamental character flaw “caused” their loved one’s betrayal or their own choices made in response to it.

For any of the above-mentioned reasons, survivors often experience an abiding sense of internalized shame from their IPV victimization. Indeed, survivors commonly report shame as a dominant—if not *the* dominant—injury from their relational abuse.<sup>76</sup> In response to their shame, survivors may adopt any of the behavioral responses described above. For some, those behaviors may include

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67. See *id.* at 260; La Bash & Papa, *supra* note 26, at 159.

68. Carly Parnitzke Smith & Jennifer J. Freyd, *Institutional Betrayal*, 69 AM. PSYCH. 575, 577 (2014).

69. See JENNIFER J. FREYD, BETRAYAL TRAUMA: THE LOGIC OF FORGETTING CHILDHOOD ABUSE 9–11 (1996).

70. Melissa Platt, Jocelyn Barton & Jennifer J. Freyd, *A Betrayal Trauma Perspective on Domestic Violence*, in 1 VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS 185, 191 (Evan Stark & Eve Buzawa eds., 2009).

71. See *id.*

72. *Id.* at 186.

73. *Id.*

74. Taylor, *supra* note 50, at 28851; see also La Bash & Papa, *supra* note 26.

75. See Platt, Barton & Freyd, *supra* note 70.

76. See discussion *infra* Part II; see also Sandra Thaggard & Jed Montayre, “*There Was No-One I Could Turn to Because I was Ashamed*”: Shame in the Narratives of Women Affected by IPV, 74 WOMEN’S STUD. INT’L F. 218, 218 (2019) (describing how shame informs a survivors’ experience).

actions designed to reclaim their sense of self or autonomy: leaving an abusive relationship, calling the police, or taking legal action. Others, however, may adopt behaviors designed to hide themselves from social scrutiny or judgment, or to prevent public exposure of their abusive experience: social withdrawal, defensiveness about their relationships, denial of the abuse, or incomplete reporting, to name a few.<sup>77</sup> As explained by one survivor, “[y]ou don’t want to tell anybody because you feel like a complete fool for staying—you protect them. You do everything you can so other people don’t find out that he’s abusing you.”<sup>78</sup> Fear of being blamed for one’s victimization and/or shame about the actual or anticipated reaction of others, in fact, serves as a strong motivator for holding one’s experience private.<sup>79</sup> As another survivor observed:

Shame tells the victim of psychological abuse that the degradation, putdowns, and judgments of their abuser are all true and thus threatening to the social self . . . . And even after they escape, lingering shame tells the victim of psychological abuse that people will think less of them if they tell the truth about what they have endured. That their peers will not accept them. That they will be rejected and outcast if they choose to speak their truth openly.<sup>80</sup>

While social withdrawal, denial, or any other shame-responsive behaviors may be self-protective, when viewed through an uninformed lens, those behaviors can be used by observers to undermine a survivor’s assertion of victimization. Indeed, survivors have reported feeling condemned, belittled, and disbelieved altogether,

77. See, e.g., Joanne M. Spangaro, Anthony B. Zwi & Roslyn G. Poulos, “*Persist. Persist.*”: A Qualitative Study of Women’s Decisions to Disclose and Their Perceptions of the Impact of Routine Screening for Intimate Partner Violence, 1 PSYCH. VIOLENCE 150, 151 (2011) (“Underdisclosure is a well documented aspect of IPV with at least 20% of victims never telling anyone else about it.”); Platt, Barton & Freyd, *supra* note 70, at 190–91; Allison E. Monterrosa, *How Race and Gender Stereotypes Influence Help-Seeking for Intimate Partner Violence*, 36 J. INTERPERSONAL VIOLENCE, at NP9153, NP9155–56 (2021) (“IPV victims consider prevailing attitudes about battered women, which tend to blame victims for their victimization, when deciding how to respond to the violence. They consider the possibility that their friends and family will think that they are stupid for staying in their relationships.” (citations omitted)); Bhuptani & Messman-Moore, *supra* note 57, at 314 (reporting on one study where researchers found that “victim-blaming responses to sexual assault disclosure” contributed to “victims feeling silenced—preventing future disclosure to others”); Alison Fogarty, Hannah Woolhouse, Rebecca Giallo, Catherine Wood, Jordy Kaufman & Stephanie Brown, *Mothers’ Experiences of Parenting Within the Context of Intimate Partner Violence: Unique Challenges and Resilience*, 36 J. INTERPERSONAL VIOLENCE 10564, 10567 (2021) (noting how “mothers who have experienced IPV may report feelings of self-blame”).

78. Maria Cramer, *Tawny Kitaen, Star of 1980s Music Videos, Dies at 59*, N.Y. TIMES (May 8, 2021, 3:06 PM), <https://www.nytimes.com/2021/05/08/arts/tawny-kitaen-dead.html> [<https://web.archive.org/web/20210508223205/https://www.nytimes.com/2021/05/08/arts/tawny-kitaen-dead.html>].

79. See Ferguson et al., *supra* note 24; see also Diane M. Quinn & Stephenie R. Chaudoir, *Living with a Concealable Stigmatized Identity: The Impact of Anticipated Stigma, Centrality, Salience, and Cultural Stigma on Psychological Distress and Health*, 97 J. PERSONALITY & SOC. PSYCH. 634 (2009).

80. Malizia, *supra* note 54.

leading one to observe, “[s]o you just don’t talk about [the abuse] because you don’t wanna deal with all that.”<sup>81</sup>

In sum, IPV can be a deeply shame-intensive experience that can lead to wide-ranging harms. However, whether survivors experience shame and how they respond to it is deeply contextual. Part of that context is related to a survivor’s social identity. The next Part examines why.

## II. SURVIVORS, IDENTITY, AND SHAME

Understanding how shame can shape survivors’ experiences requires examining the context within which their victimization occurs. While survivors who live at a privileged social location may experience shame for a host of reasons unique to their identity, for survivors with marginalized social identities, shame can flow not only from their abuse, but also from the stigmas and associated persistent negative assumptions with which they must contend. Those stigmas can result in internalized shame, and can deeply inform how survivors and their claims of victimization are responded to by others. This Section examines the nexus between survivors, stigmatization, and help-seeking.

### *A. The Shame of Stigmas and Unwanted “Identities”<sup>82</sup>*

Social identities are socially constructed. They develop within a socio-historical context where meaning is giving to observable and non-observable traits and attributes of the social group to which a person belongs, or is assumed to belong.<sup>83</sup> As observed by Professor Kimberlé Crenshaw, social identities are not “self-contained unit[s],” but rather a relationship between people and history, communities, and institutions.<sup>84</sup> While any individual attribute can lead to assumptions that may inaccurately reflect who a person is, what they value, or what motivates them, the most harmful are those drawn from stigmas attached to historically marginalized identities. Those assumptions commonly perpetuate narratives of inferiority by assigning or assuming individual “flaws” about a given

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81. Melissa E. Dichter, Leon Makaroun, Anaïs Tuepker, Gala True, Ann Elizabeth Montgomery & Katherine Iverson, *Middle-Aged Women’s Experiences of Intimate Partner Violence Screening and Disclosure: “It’s a Private Matter. It’s an Embarrassing Situation,”* 35 J. GEN. INTERNAL MED. 2655, 2657 (2020).

82. “Unwanted identity” is a term coined by researchers Tamara J. Ferguson and Heidi Eyre. See generally Ferguson et al., *supra* note 24.

83. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

84. National Ass’n of Indep. Schs., *Kimberlé Crenshaw: What Is Intersectionality?*, YOUTUBE (June 22, 2018), <https://www.youtube.com/watch?v=ViDtnfQ9FHc> [<https://perma.cc/3PEA-VMKT>].

trait.<sup>85</sup> Those assigned flaws can be used to justify discrimination, social exclusion, and persistent othering by differentiating “between groups—the ‘us’ and the ‘them,’ the acceptable and the unacceptable.”<sup>86</sup>

Stigmatized social identities are a catalyst for shame. Stigmatization can lead to profound inaccuracies about who a person is, and shame results when a person loses the ability to control their self-image or how they are seen or understood by others.<sup>87</sup> Stigmas are the antithesis of identity control. They routinely reduce individuals to negative, incomplete, or inaccurate pieces of themselves and assign, instead, an *unwanted* “identity” based on an individual trait.<sup>88</sup> As psychologists and researchers Tamara Ferguson and Heidi Eyre have explained, people experience unwanted identities when they perceive that others have ascribed to them “a characteristic that undermines their self-ideals.”<sup>89</sup> Because “[a]t its core, shame is an emotional response to misrecognition,”<sup>90</sup> stigmatizations and associated character inaccuracies have been identified as “the quintessential elicitor” of shame.<sup>91</sup>

Assignment of inaccurate or incomplete attributes is common among people who hold historically marginalized identities, including members of the LGBTQ+ community,<sup>92</sup> individuals who live with mental illness,<sup>93</sup> people who

85. See HARRIS-PERRY, *supra* note 11, at 108 (“Societies ubiquitously select certain groups and individuals for shaming, marking them off as ‘abnormal’ and demanding that they blush at what and who they are.” (quoting MARTHA C. NUSSBAUM, *HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW* 174 (2004))).

86. WALKER ET AL., *supra* note 2, at 52.

87. See, e.g., HARRIS-PERRY, *supra* note 11, 101–33 (identifying shame as an emotional reaction to misrecognition).

88. See Ferguson et al., *supra* note 24, at 133.

89. *Id.* at 136.

90. See e.g., HARRIS-PERRY, *supra* note 11, at 131.

91. *Id.*

92. Shame from sexual orientation/sexual identity has been attributed to both how one displays oneself and from the feeling of a need to conceal oneself. See generally Amy L. Hequembourg & Ronda L. Dearing, *Exploring Shame, Guilt, and Risky Substance Use Among Sexual Minority Men and Women*, 60 J. HOMOSEXUALITY 615 (2013); Sabra L. Katz-Wise, Margaret Rosario & Michael Tsappis, *LGBT Youth and Family Acceptance*, 63 PEDIATRIC CLINICS N. AM. 1011 (2016); Katie M. Edwards & Kateryna M. Sylaska, *The Perception of Intimate Partner Violence Among LGBTQ College Youth: The Role of Minority Stress*, 42 J. YOUTH & ADOLESCENCE 1721 (2013) (noting a strong relationship between shame and internalized homophobia among people who identify as LGBT); Jillian R. Scheer & V. Paul Poteat, *Trauma-Informed Care and Health Among LGBTQ Intimate Partner Violence Survivors*, 36 J. INTERPERSONAL VIOLENCE 6670, 6685 (2021) (“[Because of] chronic internalized stigma resulting from exposure to lifelong and current experiences of discrimination[,] . . . [even trauma-informed-care] may not sufficiently address pervasive negative core beliefs that contribute to shame related to [a person’s] LGBTQ identity.”).

93. See Nicolas Rüsçh, Andrew R. Todd, Galen V. Bodenhausen, Manfred Olschewski & Patrick W. Corrigan, *Automatically Activated Shame Reactions and Perceived Legitimacy of Discrimination: A Longitudinal Study Among People with Mental Illness*, 41 J. BEHAV. THERAPY & EXPERIMENTAL PSYCHIATRY 60, 60 (2010) (“Qualitative and quantitative studies of people with mental illness have shown that shame is a central feature of internalized stigma and reactions to stigma.” (citations omitted)); ROSLYNN CARTER WITH SUSAN K. GOLANT & KATHRYN E. CADE, *WITHIN OUR REACH: ENDING THE MENTAL HEALTH CRISIS* 1 (2010) (“Stigma is the most damaging factor

live in poverty,<sup>94</sup> individuals with disabilities,<sup>95</sup> and persons of color.<sup>96</sup> These inaccurate attributions, and the mistreatment that can result, risk an individual adopting—in small or large ways—the associated negative social messaging.<sup>97</sup> Microaggressions, bullying, or overt discrimination or hostility each can cause a person towards whom such behaviors are directed to internalize a sense of inadequacy, deservedness of mistreatment, or a “flawed” nature.<sup>98</sup> As noted by one sociologist:

One of the hallmarks of inequality is the imposition of shame. To be marked by the ravages of inequality, whether on the basis of class, gender, race, disability, sexuality or anything else, is constructed as both a source and an indicator of shame. Of course, this is a lie. *But it is hard not to feel ashamed when you are constantly blamed for your own exclusion.*<sup>99</sup>

As a stock social group, IPV survivors may evoke cultural sympathy, not stigmatization or judgment. Yet it takes little scraping to identify the myriad ways that survivors’ social identity impacts their experience with IPV and how they are perceived and treated when seeking help or assistance. Of particular relevance to their experiences are the intersecting identities of gender, race, and socioeconomic status.

### *B. Intersecting Social Identities*

Women, mothers, BIPOC individuals, and those who live in poverty disproportionately experience IPV.<sup>100</sup> They also represent significant numbers of

in the life of anyone who has a mental illness. It humiliates and embarrasses; it is painful; it generates stereotypes, fear, and rejection; it leads to terrible discrimination.”).

94. See generally WALKER ET AL., *supra* note 2 (examining the correlation between shame and poverty across cultures).

95. See Thomas P. Dirth & Nyla R. Branscombe, *The Social Identity Approach to Disability: Bridging Disability Studies and Psychological Science*, 144 PSYCH. BULL. 1300, 1308 (2018).

96. See, e.g., HARRIS-PERRY, *supra* note 11, at 107.

97. See Nicole M. Overstreet & Diane M. Quinn, *The Intimate Partner Violence Stigmatization Model and Barriers to Help-Seeking*, 35 BASIC & APPLIED SOC. PSYCH. 109, 119–20 (2013); see also HARRIS-PERRY, *supra* note 11, at 107 (identifying that shame from stigmatization can lead to psychological and physiological harm).

98. See Veronica R.F. Johnson & Mark A. Yarhouse, *Shame in Sexual Minorities: Stigma, Internal Cognition, and Counseling Considerations*, 58 COUNSELING & VALUES 85 (2013); Brown, *supra* note 30, at 49; HARRIS-PERRY, *supra* note 11, at 107.

99. John Falzon, *Politics of Shame*, EUREKA ST. (May 16, 2019) (emphasis added), <https://www.eurekastreet.com.au/article/politics-of-shame> [https://perma.cc/CMX9-FMDM].

100. See SHARON G. SMITH, JIERU CHEN, KATHLEEN C. BASILE, LEAH K. GILBERT, MELISSA T. MERRICK, NIMESH PATEL, MARGIE WALLING & ANURAG JAIN, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010–2012 STATE REPORT 120 (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> [https://perma.cc/A64R-P4KR] (reporting that multiracial, American Indian/Alaskan Native, and non-Hispanic Black women report the highest rates of IPV among all racial groups).

litigants seeking civil orders of protection.<sup>101</sup> This Section briefly examines how shame has been correlated with each of these social identities, individually. It then turns to an intersectional analysis.

People of color are routinely stigmatized and mistreated based on their racial and ethnic identities.<sup>102</sup> They must contend with the devastating effects of racism and white supremacy. Black people, in particular, must contend with the shame of stigmatizing narratives that perpetuate racial inferiority and the “problematizing” of Blackness.<sup>103</sup> According to Professor Melissa V. Harris-Perry:

[S]hame [is] a defining element of African American life. Being black in America has meant that your very existence is a problem . . . . The social and political realities of American racial equality make black people themselves into a constant problem that has to be observed, analyzed, and solved . . . . Stigmatizing

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101. See, e.g., Anne Groggel, *The Role of Place and Sociodemographic Characteristics on the Issuance of Temporary Civil Protection Orders*, 55 LAW & SOC'Y REV. 38, 50–51, 51 tbl.1 (2021) (noting that 51.4% of CPO petitioners had a shared child with the person against whom they were filing); Marsha E. Wolf, Victoria L. Holt, Mary A. Kernic & Frederick P. Rivara, *Who Gets Protection Orders for Intimate Partner Violence?*, 19 AM. J. PREVENTATIVE MED. 286, 287 tbl.1 (2000) (finding that out of 265 women who received CPOs, 40% had household income less than \$15,000; 20% had household income between \$15,000–\$24,999; 29% had a household income between \$25–49,999, and 11% had a household income above \$50,000); Ann Malecha, Judith McFarlane, Julia Gist, Kathy Watson, Elizabeth Batten, Iva Hall & Sheila Smith, *Applying for and Dropping a Protection Order: A Study with 150 Women*, 14 CRIM. JUST. POL'Y REV. 486, 493 tbl.1 (2003) (finding in a study of 150 women who received or received/dropped a protection order in Harris County, Texas, that out of 81 women: 38.3% were African-American, 27.2% were White, and 34.6% were Hispanic; 16.3% had less than \$5,000 annual income, 11.3% had an annual income between \$5,000–10,000, 32.5% had an annual income between \$10,000–20,000, 23.8% had an annual income between \$20,000–30,000, and 16.3% had an annual income greater than \$30,000); Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton & Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, 37 CRIM. JUST. REV. 337, 344 (2012) (finding in a sample of 153 participants who were immigrant women identified through organizations across 10 states and DC: 86% had a child; 67% had incomes of less than \$15,000; 18% had incomes less than \$25,000; and 44% were undocumented).

102. See PEW RSCH. CTR., ON VIEWS OF RACE AND INEQUALITY, BLACKS AND WHITES ARE WORLDS APART 59 (2016), [https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2016/06/ST\\_2016.06.27\\_Race-Inequality-Final.pdf](https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2016/06/ST_2016.06.27_Race-Inequality-Final.pdf) [<https://perma.cc/AZ7F-4XJC>]; HARRIS-PERRY, *supra* note 11, at 109–10; Amber J. Johnson, *Examining Associations Between Racism, Internalized Shame, and Self-Esteem Among African-Americans*, 7 COGENT PSYCH. 1, 3 (2020).

103. See Morgan C. Jerald, Elizabeth R. Cole, L. Monique Ward & Lanice R. Avery, *Controlling Images: How Awareness of Group Stereotypes Affects Black Women's Well-Being*, 64 J. COUNSELING PSYCH. 487, 487 (2017); Dee Watts-Jones, *Healing Internalized Racism: The Role of a Within-Group Sanctuary Among People of African Descent*, 41 FAM. PROCESS 591, 593 (2002) (“At the core of racism is the shaming of the African identity and culture.”). Shame that may result from legacies of racism and white supremacy must be distinguished from the pride associated with an individual's race and culture. As reflected by Professor Imani Perry, “[t]he injustice is inescapable. So, yes I want the world to recognize our suffering. But I do not want pity from a single soul. Sin and shame are found in neither my body nor my identity. Blackness is an immense and defiant joy.” Imani Perry, *Racism Is Terrible. Blackness Is Not*, ATLANTIC (June 15, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/racism-terrible-blackness-not/613039/> [<https://perma.cc/JJ6C-4BW8>].

blackness means that African Americans must constantly contend with social shaming.<sup>104</sup>

The psychological effects that can flow from these historical realities and from modern practices of racism that reinforce social devaluation that can flow from these historical realities, and from racism and other modern practices that reinforce social devaluation.<sup>105</sup> Internalized racism is the unconscious adoption and/or identification with “negative messages about [a stigmatized racial group’s] identity, value, limitations, human rights, and self-expression.”<sup>106</sup> Internalized racism can result not only from adopting or accepting negative stereotypes about one’s racial or cultural identity, but also from an awareness that those stereotypes exist and may be used by others to reinforce negative assumptions about oneself.<sup>107</sup> Any of those experiences can serve as a conduit for internalized shamed.

People who live in poverty must also contend with negative identity-based stigmatizations. In U.S. culture, poverty is routinely attributed to inherent, individual shortcomings caused by personal failure.<sup>108</sup> Dominant stock narratives are anchored in stigmas that identify people who live in poverty as lazy and unmotivated, uneducated, or a combination of both.<sup>109</sup> They are assumed to have chosen poverty, blamed for placing economic burden on themselves and their communities, and held accountable for a perceived failure—through lack of effort, desire, or ability—to improve their socioeconomic status.<sup>110</sup> To obtain social support, people who live in poverty report feeling like they must publicly “admit to [a] personal failure” of both being poor and seeking public assistance in response.<sup>111</sup> They also report feeling dehumanized, publicly exposed, and powerless to resist probing examinations about their private life.<sup>112</sup> For these reasons, among others, shame has been identified as a fundamental core of living in poverty.<sup>113</sup>

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104. HARRIS-PERRY, *supra* note 11, at 109–10.

105. See *Internalized Racism*, COMPLEX TRAUMA RES., <https://www.complextrauma.org/glossary/internalized-racism/> [<https://web.archive.org/web/20211023140005/https://www.complextrauma.org/glossary/internalized-racism/>] (last visited Nov. 27, 2022); see also Jerald et al., *supra* note 103, at 488.

106. See *id.*

107. As one illuminating example, a Black mother to teenagers described how she “frequently calls [the] school to check in on [her children] during the day” in order to display “exemplary behavior as a mother” and to counter the stereotypes she is aware exist for Black mothers. Sinikka Elliott, Rachel Powell & Joslyn Brenton, *Being a Good Mom: Low-Income, Black Single Mothers Negotiate Intensive Mothering*, 36 J. FAM. ISSUES 351, 364 (2015).

108. See WALKER ET AL., *supra* note 2, at 12.

109. See *id.* at 57.

110. See *generally id.* (examining the correlation between shame and poverty).

111. *Id.* at 149.

112. See *generally id.* (examining the impact of shame on individuals who live in poverty).

113. AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 17 (1982); see also WALKER ET AL., *supra* note 2, at 32 (examining the centrality of shame to the experience of poverty).

Women, too, are at distinct risk of experiencing social and internalized shame. While the extent of any person's shame exposure is inextricably dependent on their race, culture, and social location, there is "a shared experience of [shame among women given] how expectations generated from social/cultural expectations are enforced by individuals and groups and supported by media culture."<sup>114</sup> Women are conditioned to turn inward and feel ashamed about a range of aspects of their lives, including their physical appearance, professional choices, mental and physical health, and how they parent, to name a few.<sup>115</sup>

Women are also socially conditioned to "draw a larger sense of self-identity from their friendly, familial, and romantic relationships" than are men.<sup>116</sup> When those personal relationships run counter to cultural expectations, women are shaped to internalize fault and identify themselves as blameworthy for their inability to perform their socially expected roles, *even if* the source of their relational failure stems from limited access to support, unstable housing or economic insecurity, or abusive behavior by another.<sup>117</sup> Women who are mothers are scrutinized in ways that expose them to further social judgment and corresponding shame: mothers report being judged about everything from breastfeeding (or not) to working (or not);<sup>118</sup> for having postpartum depression and not reaching out for help, despite the stigmas associated with being a mother struggling with a mental health condition;<sup>119</sup> and for allowing their children too much independence, or not enough.<sup>120</sup> Within the context of custody litigation, specifically, mothers who do not ask for primary custody of their children have been met with the stigmatizing assumption of unfitness.<sup>121</sup> At the same time, mothers who reference IPV in support of their request for sole custody are distinctly scrutinized, and often experience worse custody outcomes than women who do not mention IPV at all.<sup>122</sup> In short, the

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114. Brown, *supra* note 30, at 46.

115. See, e.g., *id.* at 48.

116. Brown, *supra* note 30, at 43, 48.

117. See generally Brown, *supra* note 30.

118. See Erin N. Taylor & Lora Ebert Wallace, *For Shame: Feminism, Breastfeeding Advocacy, and Maternal Guilt*, 27 *HYPATIA* 76, 78 (2012) (discussing an advertisement proposed by the US Department of Health and Human Services that included "stark images of rubber nipple-topped insulin syringes and asthma inhalers").

119. See Abigail Wong, *Filicide and Mothers Who Suffer from Postpartum Mental Disorders*, 10 *MICH. ST. U. J. MED. & L.* 571, 577 (2006) (identifying how Andrea Yates, who drowned her five children following severe postpartum depression, had been "shamed into silence by her long history of mental health problems").

120. See Donna St. George, *Parents Investigated for Neglect After Letting Kids Walk Home Alone*, *WASH. POST* (Jan. 14, 2015), [https://www.washingtonpost.com/local/education/maryland-couple-want-free-range-kids-but-not-all-do/2015/01/14/d406c0be-9c0f-11e4-bcfb-059ec7a93ddc\\_story.html](https://www.washingtonpost.com/local/education/maryland-couple-want-free-range-kids-but-not-all-do/2015/01/14/d406c0be-9c0f-11e4-bcfb-059ec7a93ddc_story.html) [<https://perma.cc/U2XJ-TKAE>].

121. See Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 *MINN. J.L. & INEQ.* 311, 316 (2017).

122. *Id.*



potential for social shame, and the psychological injury that can flow therefrom, lurks behind nearly every decision a mother makes.

Yet when a survivor holds more than one of the identities described above, harms can overlap in ways that create distinct sources of powerlessness, marginalization, and shame.<sup>123</sup> From her work examining the experiences of Black women, Professor Kimberlé Crenshaw identifies as *intersectionality* the ways that identities interact to “shape the multiple dimensions of” an individual’s experience.<sup>124</sup> Intersectionality is a “prism” through which we can understand how oppression compounds to create distinctly oppressive structures that “affect[] different and intersecting classes of persons based on their race, gender, and class” in ways that cannot be understood when those identities are viewed in isolation.<sup>125</sup> Intersectionality reminds us that the impact of oppression is more than cumulative—it cannot be understood by “tallying” marginalized identities. Instead, an intersectional analysis recognizes how intersecting identities can create discrete experiences and harms.

Race, gender, and class can intersect in ways that position women of color to “experience shame more frequently than [other demographic groups.]”<sup>126</sup> Due in large part to the specific effects of systemic misogynoir—discrimination and prejudice directed specifically towards Black women<sup>127</sup>—Black women have historically been pushed to the economic margins of American society. They live with financial instability at rates higher than other demographic groups.<sup>128</sup> For related reasons, Black women also are more likely to be single mothers than White

123. Crenshaw, *supra* note 83, at 1244.

124. *See generally id.*

125. *See generally* Devon W. Carbado, Kimberlé Williams Crenshaw, Vickie M. Mays & Barbara Tomlinson, *Intersectionality: Mapping the Movements of a Theory*, 10 DU BOIS REV. 303 (2013); Margaret E. Johnson, *Menstrual Justice*, 53 UC DAVIS L. REV. 1, 24 (2019).

126. HARRIS-PERRY, *supra* note 11, at 106–07.

127. *See* MOYA BAILEY, MISOGYNOIR TRANSFORMED: BLACK WOMEN’S DIGITAL RESISTANCE (2021).

128. *See* Crenshaw, *supra* note 83, at 1241; Elliott, Powell & Brenton, *supra* note 107, at 353 (identifying that nearly forty percent of all Black families with single mothers live below the federal poverty level). According to the U.S. Census Bureau, in 2019 nearly thirty-five percent of Black families with children were headed by single women. *See* U.S. CENSUS BUREAU, TABLE A3: PARENTS WITH CORESIDENT CHILDREN UNDER 18, BY LIVING ARRANGEMENT, SEX, AND SELECTED CHARACTERISTICS (2019), <https://www.census.gov/data/tables/2019/demo/families/cps-2019.html> [<https://web.archive.org/web/20191119161951/https://www.census.gov/data/tables/2019/demo/families/cps-2019.html>] (last revised Oct. 16, 2019) (select “All Races [<1.0 MB]” under the heading “Table A3. Parents with Coresident Children Under 18, by Living Arrangement, Sex, and Selected Characteristics: 2019”). Black women also face workplace discrimination and are less likely to have access to paid leave than White women. ANGELA HANKS, DANYELLE SOLOMON & CHRISTIAN E. WELLER, CTR. FOR AM. PROGRESS, SYSTEMATIC INEQUALITY: HOW AMERICA’S STRUCTURAL RACISM HELPED CREATE THE BLACK-WHITE WEALTH GAP 27 (2018), <https://www.americanprogress.org/wp-content/uploads/2018/02/RacialWealthGap-report.pdf> [<https://perma.cc/9WZU-T66S>] (citing MILA FISHER, CTR. FOR AM. PROGRESS, WOMEN OF COLOR AND THE GENDER WAGE GAP, (2015), <https://www.americanprogress.org/wp-content/uploads/2015/04/WomenOfColorWageGap-brief.pdf> [<https://perma.cc/QW9F-W793>]).

women, and to rely on state sponsored assistance.<sup>129</sup> Through that reliance, Black women “are subjected to surveillance, judgment, and physical invasion” by the individuals and institutions to whom they turn for available support, and must contend with stigmas “promoted over centuries [that] portray[] black women as unfit to bear and raise children.”<sup>130</sup> Rather than attribute blame for their economic insecurity to the structural sources of racism that perpetuate it, society pathologizes Black women, attributing blame for their economic insecurity to identity-based flaws.<sup>131</sup> According to Harris-Perry, “[it] is not hard to imagine how these experiences produce lasting shame” and corresponding trauma.<sup>132</sup>

Beyond the stigmas examined above, Black women also must contend with stock narratives of physical and emotional invulnerability—the notion that Black women are stronger, tougher, and can withstand more harms than can women with other racial identities.<sup>133</sup> These assumptions persist despite data showing that Black women experience IPV at higher rates than most other racial demographics and are at higher risk of serious injury as a result of it.<sup>134</sup> While many Black women report

129. See Elliott, Powell & Brenton, *supra* note 107, at 353 (“Black women are almost three times as likely to be managing single parenthood and paid employment as White women; yet, despite their higher rates of employment, they are also far more likely to be raising children in poverty.”); see also HARRIS-PERRY, *supra* note 11, at 106–07; Vicki Lens, *Judging the Other: The Intersection of Race, Gender, and Class in Family Court*, 57 *FAM. CT. REV.* 72, 80 (2019).

130. Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 *UCLA LAW REV.* 1474, 1492 (2012); see also DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 196 (2002); HARRIS-PERRY, *supra* note 11, at 114 (identifying that Black mothers using welfare or other social supports have historically been “cast as carriers of a malignancy”).

131. See Dorothy Roberts, *Complicating the Triangle of Race, Class, and State: The Insights of Black Feminists*, 37 *ETHNIC & RACIAL STUD.* 1776, 1777–78 (2014); Michele Goodwin & Erwin Chemerinsky, *Pregnancy, Poverty, and the State*, 127 *YALE L.J.* 1270, 1300 (2018) (“And this moral construction of poverty directly and indirectly shapes the development of privacy norms for poor women of color . . . [T]he trope of the welfare queen embodies many of the characteristics that help this country to imagine poor Black women as immoral citizens, subjected to a barrage of insults and demeaning characterizations that suggests laziness, ineptness, disregard for offspring, sexual promiscuity, incompetence with financial resources and disrespect for self and society.” (citing KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* 107 (2017))); Ange-Marie Hancock, *Contemporary Welfare Reform and the Public Identity of the “Welfare Queen,”* 10 *RACE GENDER & CLASS*, no. 1, 2003, at 31, 40 (“The overall lack of attention to the needs of single poor African-American mothers, however, did not render them completely absent from the discourse. Indeed the visibility of the public identity of the ‘welfare queen’ is part of increasing public scrutiny of Black women’s lives.”).

132. HARRIS-PERRY, *supra* note 11, at 115. Attorney Brandi Colander compared the trauma and shame of systemic racism to domestic violence by stating, in part, “Folks, Black Americans have always been in an abusive relationship with America. We came here on terms that we did not set and all we simply do is seek to exist, survive, and ideally thrive from one generation to the next. The embarrassment and shame of coming home over and over and over again to your abuser is the essence of this moment. It is the rawness of feeling exposed.” Brandi Colander, *Double Consciousness in America: The Trauma We Absorb*, *MEDIUM* (June 4, 2020), <https://medium.com/@esqzxnq/double-consciousness-in-america-the-trauma-we-absorb-ce23a7ebc0d7> [<https://perma.cc/J2J8-S2KU>].

133. Monterrosa, *supra* note 77, at NP9156; see also Jerald et al., *supra* note 103, at 487; HARRIS-PERRY, *supra* note 11, at 215–216.

134. See SMITH ET AL., *supra* note 100.

identifying both power and accuracy in the social narrative of their strength and independence, its effects can undermine their claims of victimization and lead to a failure to recognize the effects of their shame and trauma.<sup>135</sup> Both experiences can have far reaching implications not only on Black survivors' safety and ability to effectively respond to their IPV, but also on the services provided to them. This includes, as examined below, the civil legal system.

### III. SHAME AND CIVIL PROTECTION ORDER LITIGATION

Survivors who seek help for their IPV often do so through the CPO litigation process. For some survivors, that process can lead to safety, security, and empowerment. For others, CPO litigation can have a counter effect, introducing or otherwise exacerbating emotional injury, including shame. This Section explores these varying outcomes. It begins by examining how the environmental conditions within which civil litigation, broadly, and CPO litigation, specifically, occurs can be correlated with shame. It then considers the benefits and risks of CPO litigation using a shame-oriented analysis. Finally, this Section examines how shame's effects may negatively impact a survivor's litigation experience.

#### *A. The Public Nature of Civil Litigation*

The majority of U.S. courtrooms are open to the public.<sup>136</sup> While the Supreme Court has found that the First Amendment generally provides a right of public

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135. Tamara Winfrey Harris, *Precious Mettle: The Myth of the Strong Black Woman*, BITCH MEDIA (May 13, 2014), <https://www.bitchmedia.org/article/precious-mettle-myth-strong-black-woman> [<https://perma.cc/RS5U-JAX7>] (“[T]here is a dirty side to the perceived uncommon strength of black women . . . . As long as vulnerability and softness are the basis for acceptable femininity (and acceptable femininity is a requirement for a woman’s life to have value), women who are perpetually framed, because of their race, as supernaturally indestructible will not be viewed with regard.”); *see also* Noliwe M. Rooks, *Renisha McBride and Evolution of Black-Female Stereotype*, TIME (Nov. 14, 2013), <https://ideas.time.com/2013/11/14/renisha-mcbride-and-black-female-stereotype/> [<https://perma.cc/PY7S-L3WU>] (“[The Strong Black Women stereotype is] a complicated and dehumanizing stereotype—and its debunking seems somehow at odds with feminism. No one wants to project the message that black women are weak and helpless. And yet when a 19-year-old with a broken-down car knocks on a door only to get shot in the face, we know that something is severely wrong in how society perceives black women as criminals or not, victims or not, and even women or not.”).

136. In the criminal context, the First Amendment guarantees open public courtrooms, with limited exception. *See, e.g.*, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 594–95 (1980) (Brennan, J., concurring in the judgment) (discussing how the First Amendment right of access to court proceedings and records is implicit in freedom of speech and serves an important function in a democratic society by enhancing trial fairness and its appearance); *Press-Enter. Co. v. Superior Ct. (Press-Enterprise I)*, 464 U.S. 501, 508–10 (1984) (First Amendment right of access to voir dire); *Press-Enter. Co. v. Superior Ct. (Press-Enterprise II)*, 478 U.S. 1, 13–15 (1986) (First Amendment right of access to jury selections and preliminary proceedings); *El Vocero de P.R. v. Puerto Rico*, 508 U.S. 147, 149 (1993) (First Amendment right of access to preliminary hearings). *But see* *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 218–19 (1979) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677 (1958)) (holding the First Amendment right of access to court proceedings and

access to criminal court proceedings, it has not found a similar constitutional right for civil proceedings.<sup>137</sup> However, most state and federal courts “have recognized that the openness of civil trials is [] necessary to promote free participation and communication in a democratic society.”<sup>138</sup> Open court principles include the ability to attend and watch civil trials and to inspect public records related to civil matters.<sup>139</sup>

Courts have generally determined that the public’s right to access court proceedings and pleadings is stronger than a litigant’s right to keep such proceedings private, regardless of the litigation subject matter. Open courtrooms serve a critical social function. They allow for the transparency of our judicial branch of government and public accountability to ensure judicial fairness and accurate application of law. With an audience observing, open courtrooms also inhibit judicial behavior that demeans, belittles, or humiliates the litigants who appear before them. In short, the integrity of the democratic process, adherence to the rule of law, and litigant protection demands general open access to courtrooms.

In light of these advantages, a desire to protect one’s privacy or to prevent the public dissemination of potentially embarrassing information, alone, is generally not sufficient to justify closing courtrooms.<sup>140</sup> Exceptions to open civil courtrooms are nearly universally limited to proceedings involving state-involved children.<sup>141</sup> Protecting the privacy of children generally drives these exceptions, with most

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records does not cover grand jury proceedings because “the proper functioning of our grand jury system depends upon [its] secrecy” to protect witnesses and those exonerated by the grand jury).

137. See *Richmond Newspapers, Inc.*, 448 U.S. at 578 (ruling on the right as it applies to criminal proceedings). While there can be limits in the context of criminal cases, those limits are for a small category of cases and the “State’s justification in denying access must be a weighty one.” *Pepe v. Pepe*, 609 A.2d 127, 130 (N.J. Super. Ct. Ch. Div. 1992) (citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982)).

138. Emilie S. Kraft, *Access to Courtrooms*, FIRST AMEND. ENCYC. (2009), <https://www.mtsu.edu/first-amendment/article/1547/access-to-courtrooms> [<https://perma.cc/MXG5-Y3K3>]; see *Doe v. Shady Grove Adventist Hosp.*, 598 A.2d 507, 511 (Md. Ct. Spec. App. 1991) (holding that “the policy reasons enunciated by the Supreme Court in support of public access to criminal proceedings apply with equal force to civil proceedings” (citing *State v. Cottman Transmission Sys., Inc.*, 542 A.2d 859, 863 (Md. Ct. Spec. App. 1988))).

139. See Rebecca Hulse, *Privacy and Domestic Violence in Court*, 16 WM. & MARY J. WOMEN & L. 237, 256 (2010) (“[T]he Third Circuit was the first federal court to proclaim a First Amendment right to attend civil hearings and to ‘inspect and copy public records and documents, including judicial records and documents’ in civil trials.” (quoting *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1069–70 (3d Cir. 1984))); see also *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 386 n.15 (1979) (“[I]n some civil cases the public interest in access, and the salutary effect of publicity, may be as strong as, or stronger than, in most criminal cases.”).

140. Hulse, *supra* note 139, at 257 (“As one judge put it, ‘embarrassment, damage to reputation and the general desire for privacy do not constitute good cause to seal court records.’” (quoting *Doe v. N.Y. Univ.*, 786 N.Y.S.2d 892, 902 (Sup. Ct. 2004)).

141. See Matthew I. Fraidin, *Decision-Making in Dependency Court: Heuristics, Cognitive Biases, and Accountability*, 60 CLEV. ST. L. REV. 913, 950 (2013) (“Unlike almost all other areas of law, child welfare court hearings and records are confidential in most states, with state laws and court rules preventing press and public from entering courtrooms to observe proceedings and preventing outsiders from reviewing court files.”).

jurisdictions shielding from public disclosure information about a child that could “embarrass, humiliate, traumatize, stigmatize and . . . delay the psychological healing that must take place.”<sup>142</sup> Closed juvenile courtrooms also reduce the appearance of formality, creating a sense of less adversarial proceedings and, theoretically, a safer space.<sup>143</sup> These proceedings aside,<sup>144</sup> and outside of extraordinary harm demonstrated by a litigant, most other civil litigation—from tort to family law—is publicly accessible.<sup>145</sup>

The presumption of open access also applies to most protection order proceedings.<sup>146</sup> While the nature of the underlying claim may be one based on experiences—similar to certain proceedings involving children—that are embarrassing, humiliating, or otherwise traumatizing to the survivor-litigant, those experiences alone are generally insufficient to justify depriving public access. While nearly all jurisdictions allow motions to close courtrooms based on a compelling reason, including particular categories of testimony or to protect particularly vulnerable witnesses, the general U.S. practice is that CPO courtrooms are open to the public.<sup>147</sup>

Maintaining open courtrooms may have particular importance within the IPV context. Judges have historically engaged in problematic treatment of survivors—treatment that has ranged from hostile to degrading to dismissive,

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142. Kathleen S. Bean, *Changing the Rules: Public Access to Dependency Courts*, 79 DENV. U.L. REV. 1, 3 (2001) (citing *In re T.R.*, 556 N.E.2d 439, 449–51 (Ohio 1990)).

143. *Id.*

144. Hulse, *supra* note 139, at 256–57.

145. See Fraidin, *supra* note 141, at 960.

146. Hulse, *supra* note 139, at 261 (“[P]resence of domestic violence in a case does not necessarily weaken the general presumption of openness.”). *But see* IDAHO R. FAM. L.P. 115(A) (2016) (“All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom; except that in an action for divorce, annulment, civil protection order or breach of promise of marriage, the court may exclude all persons from the courtroom except officers of the court, the parties, their witnesses, and counsel, provided that in any cause the court may exclude witnesses as provided in the IDAHO RULES OF EVIDENCE.”); W. VA. R. FAM. CT. R. 6(b) (2022) (“Family court proceedings are not open to the public.”).

147. See, e.g., FLA. STAT. § 92.55(2) (2020) (permitting closed courtrooms to protect privacy of testifying child); 5 PHILIP J. PADOVANO, FLORIDA CIVIL PRACTICE § 16:4 (2022 ed.) (following a presumption of open access, but authorizing closure when necessary “to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed” (citing *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. Dist. Ct. App. 1988))); 24 STANDARD PENNSYLVANIA PRACTICE § 126:258 (Laws. Coop. Pub. Co. ed, 2d ed. 2022) (noting Pennsylvania courts allow divorce hearings to be closed to protect the rights of the parties because “the First Amendment right of access to trials is not absolute, and trials are subject to closure where disclosure will work a clearly defined and serious injury to the party seeking closure” (first citing *Katz v. Katz*, 514 A.2d 1374 (Pa. Super. Ct. 1986); and then citing PA. R. CIV. P. 223(4))); AMY L. PEARSON, 7B CARMODY-WAIT 2d CYCLOPEDIA OF NEW YORK PRACTICE § 45:11 (Laws. Coop. Pub. Co. ed., 2020 ed.) (listing New York’s carve out of narrow exceptions for closing courtrooms and noting that “[t]he possibility of some unspecified future harm does not constitute a compelling interest justifying closure” (citing *In re Adoption of Doe*, 842 N.Y.S.2d 200 (Sur. Ct. 2007)).

despite lawful claims of harm.<sup>148</sup> Yet, despite the potential for reduction in the occurrence of judicial mistreatment (and the emotional injury that can flow therefrom), open courtrooms can create environmental conditions that enhance a survivor-litigant's risk of shame. These conditions are examined in Section III.B, below.

Our open civil legal system also broadly applies to court filings and related records. Public access to court records exists even if the litigant would identify the nature of the litigation as something they wished was held private. Indeed, some courts have explicitly noted that “embarrassment, damage to reputation and the general desire for privacy do not constitute good cause to seal court records.”<sup>149</sup>

In limited circumstances, however, a litigant's privacy interests can outweigh the public's interest in record access.<sup>150</sup> Concerns of physical harm, including harm from IPV, have served as the basis for shielding non-CPO related civil court records. For example, in *In re E.F.G.*, a survivor applied for a name change, in part, to remain hidden from the person who had abused her.<sup>151</sup> The litigant requested a waiver of the requirement to public notice and requested her application be placed under seal, and, therefore, not be publicly accessible. On appeal from the trial court's denial of her request, the appellate court found that requiring compliance with publication rules would result in an “injustice.”<sup>152</sup> Specifically, because the litigant was a victim of IPV, and had expressed a credible concern for her physical safety, the court found that demanding publication would place the survivor at “grave risk in pursuing her change of name because her abuser could easily locate her, her new name and her new address from either the publication of her application or the court records.”<sup>153</sup>

For related reasoning, civil protection order filings tend to be afforded greater protection from public disclosure than other civil pleadings. These protections are prompted, in part, by funding restrictions included in the Violence Against Women

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148. Stoeber, *supra* note 16, at 391 (noting that judges have engaged in blaming and denigrating behavior; ignored survivor concerns about safety; exhibited “bias against victim/survivors, and racist attitudes toward women of color” (citing JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES 164 (1999))); *see also* Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 451 (2019) (describing judicial mistreatment of survivors).

149. Hulse, *supra* note 139, at 257 (quoting *Doe v. N.Y. Univ.*, 786 N.Y.S.2d 892, 902 (Sup. Ct. 2004)); *see also* *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (making a similar finding).

150. *See, e.g.*, *Ucheomumu v. Peter*, Nos. 931, 1161, 2020 WL 2316646, at \*9 (Md. Ct. Spec. App. May 11, 2020) (finding that access to a paternity test could be shielded from public disclosure); *Indigo Real Est. Servs. v. Rousey*, 215 P.3d 977, 982 (Wash. Ct. App. 2009) (identifying proper standard for redacting records is weighing privacy interests against public interest to court records).

151. *In re E.F.G.*, 942 A.2d 166, 168 (N.J. Super. Ct. App. Div. 2008).

152. *Id.*

153. *Id.*; *see also In re Doe*, 773 N.Y.S.2d 215, 219–20 (N.Y. Civ. Ct. 2003) (ruling in favor of a survivor who petitioned the court for a name change and finding that given the survivor's fear of future retribution by her ex-partner who made threats to kill her a waiver of publication and sealing the court record was warranted).

Act (VAWA). VAWA restricts recipient states from making protective order records available on the Internet if such disclosure could reveal the identity or location of the victim.<sup>154</sup> As a result, while protection order filings are generally available to the public, greater effort often is required to obtain them than what is needed to obtain most other civil court filings.<sup>155</sup> Many jurisdictions also limit access to certain kinds of information contained in CPO cases regardless of how they are obtained, including the address of the filing party and the names and dates of birth of involved children.<sup>156</sup>

### *B. The Emotional Dimensions of CPO Litigation*

While most civil litigation has emotional implications for litigants, participation in the CPO process can be particularly emotion intensive. This Section begins by examining how the CPO process can counteract the shame that survivors may experience prior to entering a courtroom. It then considers how that process can introduce or exacerbate shame, paradoxically interfering with a survivor's access to safety and other forms of available relief.

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154. Violence Against Women Act, 18 U.S.C. § 2265(d)(3) (“A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order.”).

155. In D.C., for example, protective order records are not available online but can be accessed by appearing physically in the clerk's office or otherwise directly requesting them from the court. *See* D.C. SUPERIOR CT., DISTRICT OF COLUMBIA EACCESS USER GUIDE 2, <https://www.dccourts.gov/sites/default/files/eaccess/eAccess-User-Guide-Updated.pdf> [<https://web.archive.org/web/20220618103952/https://www.dccourts.gov/sites/default/files/eaccess/eAccess-User-Guide-Updated.pdf>] (last visited Nov. 27, 2022).

156. *See, e.g.*, 15 R.I. GEN. LAWS § 15-15-3(1) (2022) (“Upon motion by the plaintiff, his or her address shall be released only at the discretion of the family court judge.”); MINN. STAT. § 518B.01(3b) (2022) (“Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public and may be disclosed only to court personnel or law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.”); 23 PA. CONS. STAT. § 6112 (2020) (“During the course of a proceeding under this chapter, the court or hearing officer may consider whether the plaintiff or plaintiff's family is endangered by disclosure of the permanent or temporary address of the plaintiff or minor children . . . . Where the court concludes that the defendant poses a threat of continued danger to the plaintiff and where the plaintiff requests that his or her address, telephone number[,], and information about whereabouts not be disclosed, the court shall enter an order directing that law enforcement agencies, human service agencies[,], and school districts (both in which a plaintiff's child in custody of the plaintiff is or has been enrolled) shall not disclose the presence of the plaintiff or the child in the jurisdiction or district or furnish any address, telephone number[,], or any other demographic information about the plaintiff and child except by further order of the court.”); CONN. GEN. STAT. §§ 46b-15a(f), 16a(b) (2021).

### 1. Shame-Reductive Benefits

CPOs are the primary legal intervention used in response to IPV.<sup>157</sup> They provide a variety of relief designed to promote survivors' safety and security, including stay away and no contact provisions, custody, child support, and vacate orders.<sup>158</sup> Engaging with the CPO process can be shame-reductive for myriad reasons. First, the act of initiating a civil lawsuit against a person who has caused you harm can be empowering. It can allow one party to "accuse anyone else, however powerful, and compel at least some kind of response."<sup>159</sup> In this way, litigation can level the power differential that may otherwise exist between the parties. The act of holding another accountable, through litigation or otherwise, can also serve to validate a person's status as a "complete" member of society.<sup>160</sup> That validation can equate to dignity, and dignity is an antidote to shame.<sup>161</sup>

The shame reductive benefit of publicly holding a wrongdoer accountable may be particularly acute in the context of CPO litigation. The ability of an abused partner to initiate a lawsuit against the person who harmed them provides an opportunity to disrupt imbalanced relational dynamics. CPO litigation further affords survivors the opportunity, through pleadings and testimony, to *publicly* identify the person who caused them harmed and to name the harm experienced. Publicly naming a wrongdoer and identifying their wrongdoing can counteract shame by providing an opportunity to assert control over how one's image and narrative of harm is presented and understood by others: "Asserting one's dignity by holding others accountable is a kind of performance, and like any performance, it can succeed completely only when it has an appropriate audience."<sup>162</sup> An "appropriate" audience can include any person or group that validates a survivor's claim of abuse<sup>163</sup> or in front of whom a survivor feels accurately seen. When that audience includes a judge, there can be distinct shame-reductive benefits. Judge's hold status and power. A favorable outcome by a judge can serve as an objective marker of validation, countering narratives of self-blame or responsibility for one's victimization. Judges also have power to provide survivors the opportunity to move past their abusive—and potentially

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157. Many survivors avoid involvement with the criminal legal system for a host of reasons, *see* GOODMARK, *supra* note 15, or the criminal legal system is not available for reasons ranging from lack of extrinsic evidence, lack of witnesses, or lack of prosecutorial initiation.

158. *See, e.g.*, Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2020, Law 23-275, 68 D.C. REG. 1086,1086-93 (2021) (codified as D.C. CODE §16-1001-1005 (2022)).

159. Shapiro, *supra* note 14, at 517.

160. *Id.* at 520.

161. *See generally id.* *See also* Brené Brown, Listening to Shame, Speech at TED Official Conference (Mar. 1, 2012), [https://www.ted.com/talks/brene\\_brown\\_listening\\_to\\_shame](https://www.ted.com/talks/brene_brown_listening_to_shame) [<https://perma.cc/2E4V-LHUL>] (identifying empathy as the "real antidote to shame").

162. Shapiro, *supra* note 14, at 526; *see also* Judith Lewis Herman, *Justice from the Victim's Perspective*, 11 VIOLENCE AGAINST WOMEN 571, 594 (2005).

163. *See, e.g.*, Herman, *supra* note 162, at 585-86 (noting the value of validation and vindication by "bystanders" and "formal legal authorities").



shame-intensive—experiences by issuing favorable orders that include survivor requested relief. Simply put, the process of CPO litigation and the environmental context within which it occurs can allow survivors opportunities to flip the narrative of abusive power dynamics and obtain relief from future IPV victimization—experiences that can mitigate shame.<sup>164</sup>

## 2. *Shame-Enhancing Risks*

Despite the foregoing benefits, for some survivors, CPO litigation can be replete with experiences that stimulate or exacerbate shame. Four fundamental aspects of the CPO process explain why.

First, as noted above, civil litigation—by its nature—often requires public disclosure of one’s harm, denigration, or injury to obtain desired relief. This public “outing” of one’s victimization can create a dilemma for litigants. As observed by Professor Matthew Shapiro,

On the one hand, . . . civil litigation can promote one aspect of plaintiffs’ dignity by allowing them to call those who have wronged them to account. On the other hand, along the way, civil litigation can undermine another aspect of plaintiffs’ dignity, by forcing them to reveal personal information that is inconsistent with their public image and that they’d rather not share.<sup>165</sup>

For some survivor-litigants, identifying themselves (or being identified by others) as a victim in order to pursue a CPO may be inconsistent with how they view themselves or their relationships, or how they wish to be viewed by others. Further, to meet their burden of proof and obtain sought relief, survivors often must share potentially humiliating details about their experience—details about which, for reasons explored in Part I, they may feel deeply ashamed and otherwise may choose not to share even in the most private of settings.<sup>166</sup> Although those details may represent only a small part of a survivor’s lived experience, when presented publicly—even if only to a courtroom audience—they can become their dominant narrative.<sup>167</sup> Because shame is rooted in experiences that disconnect one’s understood or ideal self from one’s public image, that loss of identity control can serve as a significant shame trigger.<sup>168</sup>

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164. See discussion *supra* Part I (defining shame as being triggered, in part, by loss of identity control).

165. Shapiro, *supra* note 14, at 578.

166. Many CPO processes require survivors testify first at a temporary protection order hearing and again at a final hearing a few weeks later, unless their case resolves via dismissal or negotiation.

167. See discussion *infra* Part IV; see also Cucolo & Perlin, *supra* note 25, at 322 (“The perception of receiving a fair hearing is therapeutic because it contributes to the individual’s sense of dignity and conveys that he or she is being taken seriously.” (quoting Michael L. Perlin, Keri K. Gould & Deborah A. Dorfman, *Therapeutic Jurisprudence and the Civil Rights of Institutionalized Mentally Disabled Persons: Hopeless Oxymoron or Path to Redemption?*, 1 PSYCH. PUB. POL’Y & L. 80, 114 (1995))).

168. See discussion *infra* Part I.

Second, evidentiary rules can limit survivor-litigants' ability to share complete narratives of their abusive experiences. Relatedly, many litigants do not understand that a court may consider information beyond that directly related to their legal complaint. Because most survivors navigate the CPO process *pro se*, many are unaware of the rules regarding evidence admissibility.<sup>169</sup> As a result, survivor-litigants may find that they must defend their choices, including remaining in an abusive relationship after claiming their abuse began, or explaining strategies utilized in response to their victimization. Those strategies may include their use of violence against their partner or harm against their own children.<sup>170</sup> Any of these factors can interfere with a survivor's ability to fully and accurately shape and share their IPV experience and their public narrative.

Third, testifying about one's IPV in front of the person who caused it can be a shame-intensive and potentially traumatizing experience. For obvious reasons, seeing the person accused of harming you can be a stark reminder of your victimization and, among other injuries, of the shame experienced from their abusive behavior. Further, an abusive partner may use the venue of a courtroom as an opportunity to perpetuate further abuse, including tactics that intentionally intimidate, embarrass, or humiliate a survivor-litigant. Moreover, some jurisdictions require that survivors testify not only about their past abuse, but also about fear of future harm in order to meet their burden for an order of protection.<sup>171</sup> While lack of testimony on that latter point may result in a failure to obtain needed relief, providing that testimony also may cause discrete harm: according to one practitioner, providing testimony about fear of further abuse makes many of her clients "feel a great deal of shame [by having to admit] that they are afraid in front of the person who has been trying to elicit [a fear] response."<sup>172</sup>

Finally, CPO litigation can expose survivors to social shaming from the courtroom audience itself. Because of open courtrooms, most survivor-litigants

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169. See Stoever, *supra* note 16.

170. See STARK, *supra* note 60, at 253 (noting that desperate mothers have reported engaging in abuse of their children as a tool for self-protection); Fogarty et al., *supra* note 77, at 10566 (explaining how abuse of a child in front of his mother or abuse of a mother in front of her child can profoundly interfere with a mother's autonomy, control over her parenting, and ability to parent in ways consistent with her values).

171. While fear of the abusive partner is not explicitly required in most state CPO statutes, CPOs are "a type of injunction intended to intervene in abusive relationships and prevent further violence." Jane K. Stoever, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015, 1019 (2014) (citing LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 33 (2008)). As such, "trial judges have wide discretion in granting [CPOs] based on their perception of what is necessary to prevent further violence" including direct inquiry about a petitioner's fear of future harm. *Id.* at 1044 (first citing KY. REV. STAT. ANN. § 403.750(1) (West 2012); then citing OKLA. STAT. ANN. tit. 22, § 60.3(A) (West 2012); and then citing OR. REV. STAT. ANN. § 107.718(1) (West 2012)).

172. Interview with Practitioner (notes on file with author).

have little control over who is present during the presentation of their case.<sup>173</sup> The audience may include either strangers or people who know—directly or indirectly—one of the parties.<sup>174</sup> Either audience cohort can lead to humiliating or socially disorienting experiences. When the audience is comprised of strangers, survivor-litigants often have no future opportunities to recast their narrative beyond their victimization, or to broaden how they are understood in ways that more closely align with how they understand themselves. When an audience includes persons with whom one of the parties has a social connection, survivor-litigants not only must contend with the shame of public exposure of their victimization, but also with the risk of becoming a source of community gossip. Either of those audience groups can contribute to a shame-intensive litigation experience.

Courtroom audiences also may find a shared connection at the expense of the litigants they are observing. On many occasions, I have witnessed audience members snickering at, commenting about, or outright laughing at litigants in protective order hearings for a host of reasons—from the claims made, to the defenses asserted, to how litigants interact with the judge. That audience reaction can send a stark message that neither the litigants nor their claims are serious. More obviously, being laughed at by others when presenting a claim of victimization—or even when defending against it—can be a source of both social and internalized shame, reinforcing a sense that the litigant is not a person to be credited. Judges can contribute to a milieu that fosters litigant humiliation by themselves engaging in behaviors that belittle, undermine, or otherwise humiliate the parties who appear before them.<sup>175</sup> Even when judges rule in favor of survivor-litigants, I have witnessed many hearings where a technical legal win was wholly undermined by judges who blamed, demeaned, or embarrassed one or both of the parties. In contrast to the benefits of having a judge publicly credit litigants, when a judge adopts demeaning or personally dismissive rhetoric from the bench, she exposes the parties in her courtroom to a distinctly harmful, disempowering, and potentially shame-intensive experience.

For any of these reasons, the protection and empowerment possible from CPO litigation can be more “aspirational than descriptive.”<sup>176</sup> Survivors have

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173. Thematically common among survivors I have represented over the years is a sense of surprise that CPO hearings are open to the public.

174. By way of one example, my colleague and I were both supervising students for a client intake at the DC Superior Court. We ended up representing two clients who turned out to be cousins with separate temporary protection order hearings in the same courtroom on the same day.

175. See Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 360–61 (2011); see also Camp, *supra* note 2, at 1705 n. 137 (providing examples of judicial behavior that was so denigrating to survivors it resulted in public and judicial reprimand).

176. Shapiro, *supra* note 14, at 539.

reported feeling embarrassed and degraded by the civil legal process.<sup>177</sup> These outcomes can be worsened by the fact that survivor-litigants are often directed to the court process by others with social authority: police and other criminal system actors, anti-IPV advocates, lawyers, and child protection workers often recommend the CPO process as an alternative or supplement to prosecution, and as an effective tool for obtaining relief from abuse.

Implicit in such referrals is that the CPO process, at a minimum, will provide services in ways that comport with its primary user: through trauma-informed practices and trauma-sensitive personnel. Instead, when that process “visit[s] harm upon those dependent on [it] for safety and well-being,”<sup>178</sup> a distinct type of injury can result. Psychologists Carly Parnitzke Smith and Jennifer Freyd have identified the cause of this type of injury as *institutional betrayal*.<sup>179</sup> As observed by Smith and Freyd, institutional betrayal results when the institutions that a person depends upon or is directed to for help inflict either pragmatic harm—failure to provide services or relief to which a user is entitled—or psychological harm—increasing an institutionally dependent person’s emotional distress.<sup>180</sup> Both types of harm can be found in the CPO process: insufficient protection, invalidation of one’s claim of abuse, or the public aspect of civil litigation can lead to a survivor’s failure to obtain adequate relief and/or to experience a range of emotional injury, including shame.<sup>181</sup> And just as interpersonal betrayal can deeply disorient a person’s sense of self and self-worth, institutional betrayal can be similarly disorienting.<sup>182</sup> Indeed, Smith and Freyd have compared institutional betrayal to IPV, observing that the harm caused by institutions that fail to provide their designated supportive function

can be examined through a lens of betrayal trauma in much the same way as abuse occurring within a close personal relationship. This lens helps to account for the potential for betrayal even when an individual may not purport to “trust” an institution . . . as the necessity of the institution . . . may create an unavoidable dependency.<sup>183</sup>

Institutional betrayal also can result when litigants experience inequities in accessing or understanding the legal process. Most survivor-litigants in CPO courts

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177. See, e.g., PTACEK, *supra* note 148, at 148; STARK, *supra* note 60, at 260–61. As trauma researcher and psychiatrist Judith Herman has described, “[v]ictims understand only too well that what awaits them in the legal system is a theater of shame.” Herman, *supra* note 162, at 573.

178. Smith & Freyd, *supra* note 68, at 575; see also Carly Parnitzke Smith & Jennifer J. Freyd, *Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma*, 26 J. TRAUMATIC STRESS 119 (2013).

179. See *id.* at 120. Institutional betrayal has been linked to a variety of psychologically detrimental outcomes, including anxiety, depression, re-victimization, and shame. See *id.* at 122–23.

180. See *id.*

181. Smith & Freyd, *supra* note 68, at 578.

182. *Id.* at 576. According to Smith and Freyd, those institutions, alternatively, can “become sources of justice, support and healing”—an experience they identify as institutional courage. *Id.*

183. *Id.* at 578.

are *pro se*.<sup>184</sup> Lack of access to counsel can leave them “struggl[ing] to understand procedural rules, becom[ing] frustrated with the seeming impossibility of the legal system, or . . . overwhelmed by the economic, logistical, and social toll of cases.”<sup>185</sup> *Pro se* survivor-litigants may feel excluded from fully participating in their self-initiated legal process when access to substantive information is limited, or when procedural requirements are not clear or explained. This lack of inclusion has led some *pro se* litigants to attribute an inability to navigate the legal process to “their own personal failings since the structural hurdles that they face either go unnoticed or are not admitted.”<sup>186</sup> On many occasions, I have witnessed *pro se* survivor-litigants who fail to comport with technical court requirements be chided by clerks and judges. This is true despite the fact that they are not lawyers, have often been displaced by violence, have children to take care of, or otherwise are managing the effects of their abuse within a broader context of economic instability.<sup>187</sup> Any of these experiences can contribute to an environment of shame as they can betray a survivor’s sense of their value or belonging in the protective order process or their worthiness of availing themselves of the laws and procedures designed to protect them.

### C. Litigation and Shame of Abusive Partners

One final aspect of CPO litigation can shape a survivor-litigant’s help-seeking experience: the shaming of their intimate partner. Many survivors who seek relief and protection by engaging with the CPO process do not simultaneously desire to socially shame, through public humiliation or reputational damage, the person who harmed them. This may be particularly true when that person is a current or former intimate partner, is the father of their children, or is a person they have loved or still love. In a recent case I observed, a petitioner seeking an *ex parte* temporary protection order asked if she could approach the bench when the judge asked her to address the allegations listed in her complaint. At the time, other petitioners were in the courtroom waiting for their cases to be called. After the hearing, the petitioner disclosed to me that she was seeking civil protection from her ex-boyfriend based on IPV and a recent sexual assault. She shared that she asked to approach the bench

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184. Stoever, *supra* note 16, at 388 (citing D.C. ACCESS TO JUST. COMM’N WITH D.L.A. PIPER LLP, JUSTICE FOR ALL?: AN ANALYSIS OF THE CIVIL LEGAL NEEDS OF THE DISTRICT OF COLUMBIA’S LOW-INCOME COMMUNITY 83 (2008), <https://www.dcccesstojustice.org/files/CivilLegalNeedsReport.pdf> [<https://perma.cc/TM33-NZG8>] (identifying that a study of D.C. courts found that “approximately 98% of both petitioners and respondents in the Domestic Violence Unit proceed *pro se*”).

185. Stoever, *supra* note 16, at 388.

186. WALKER ET AL., *supra* note 2, at 43.

187. These examples are based on my personal observations and experiences representing survivors in the D.C. Superior Court for over ten years.

to both avoid having to share the details of her experience with strangers in the courtroom and to reduce the risk of damaging the reputation of her ex-partner.<sup>188</sup>

Avoiding contributing to the shame of an ex- or current intimate partner may be understood not only from a reputational standpoint, but from a safety one: People who inflict abuse experience internalized and social shame for the same reasons as people victimized by it—attribution of unwanted identities, chronic social marginalization, and engagement in behaviors contrary to one’s value system each may be sources of shame for those who harm others.<sup>189</sup> While some of those experiences occur outside of a relationship, each can impact a person’s behavior within it. That behavior may include adoption of shame-responsive strategies, including the use of physical and verbal aggression toward another. In fact, a significant body of research identifies male aggression and violence, in particular, as a direct byproduct of shame.<sup>190</sup> In other words, CPO litigation may expose survivors not only to social and internalized shame based on their own experiences, but to the shame of their partners and the consequences that may flow therefrom. Understanding these risks, survivors may choose to avoid litigation, instead seeking non-legal alternatives to cope with their abuse.<sup>191</sup> While those alternatives may be the safest and most logical for some, they may deprive others of a viable, effective tool for long-term abuse reduction.

#### *D. Shame, Survivors, and Litigation*

Given the myriad ways shame can shape their experiences, it is unsurprising that survivor-litigants—like any group experiencing shame—may adopt wide-ranging behaviors and psychological responses. As described in Part I, those may include responses that attempt to reduce shame’s negative impact or prevent others from finding out about the shameful experience. Indeed, survivors identify “not reporting or underreporting, their experiences with IPV or sexual violence ‘because they feel ashamed and responsible for the violence [inflicted upon them]; they fear family disintegration, physical reprisal, and being degraded in the courtroom.’”<sup>192</sup> While such withholding may serve a self-protective function, it also may have a damaging effect. In the context of CPO litigation, specifically, these shame-responsive behaviors may hinder survivors’ ability to obtain requested relief, particularly when withheld

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188. This experience occurred in Fall 2019.

189. See Camp, *supra* note 2, at 1715–23.

190. See *id.* at 1706.

191. See HARRIS-PERRY, *supra* note 11, at 122.

192. See discussion *supra* Part I; see also Camp, *supra* note 2, at 1705–06 (citing DONNA COKER, SANDRA PARK, JULIE GOLDSCHIED, TARA NEAL & VALERIE HALSTEAD, AM. CIV. LIBERTIES UNION, RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 7–8 (2015), [https://www.aclu.org/sites/default/files/field\\_document/2015.10.20\\_report\\_-\\_responses\\_from\\_the\\_field.pdf](https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf) [<https://perma.cc/NWE9-V7AT>]; Monterrosa, *supra* note 77, at NP9153, NP9168 (finding that Black women “reported that they did not disclose the abuse to their close family and friends while they were still in the relationship because they felt shame for being victimized”).

or underreported information disrupts the internal consistency of their testimony or is inconsistent with tangible evidence. Additionally, survivors may initiate the CPO process only to subsequently dismiss their case, fail to appear at court hearings, or stop communicating with their lawyers or other advocates in an effort to avoid the shame they anticipate or, in their brief time being court-involved, already experienced.

Observers of any of these behaviors may assume a survivor's apathy or lack of sincerity or truthfulness about their abuse, fear, or trauma. While any of these explanations could be accurate, they also could be deeply inaccurate. Examining what is presumed to be obvious or uncomplicated behavior through a lens of shame allows for far more nuanced possibilities. It allows an observer to shift from seeing the behaviors as undermining a survivor's claim of abuse to, instead, validating it. Yet most court and other system actors do not have the training or awareness to make that behavior-emotion connection. The ironic, and unfortunate, result can be that common and self-protective behavioral manifestations of shame can lead to outcomes that *prevent* survivors from obtaining the protection and relief needed to respond to their abuse.

#### IV. SHAME-INFORMED APPROACHES TO LITIGATION & LAWYERING

Recognizing how shame manifests, and creating conditions that avoid compounding it, are essential for those individuals and institutions to whom survivors turn for help. This Part provides strategies for engaging in *shame-informed* practices; those that center shame as a possibility within the survivor experience. It begins with an exercise to help those of us who work with survivors reflect on our own experiences with shame as a means for gaining empathic and more expansive understanding. Building upon existing trauma-informed lawyering models, this Part then advances suggestions for integrating shame into advocacy and judicial practices. It concludes by exploring opportunities for understanding and mitigating litigation-based shame exposure through strategies that prioritize survivor-litigants' dignity and narrative control.

##### *A. Recognizing Our Own Shame: A Self-Reflective Exercise*

Shame is a nearly universal human experience. By tapping into our own histories about which we have felt (or still feel) ashamed, most of us are situated for more accurate and empathic understanding about a person whose experience, at first glance, may appear quite different from our own. To orient us, we can engage in self-reflection about our own shame by considering the questions laid out at the beginning of this Article:

Identify a moment when you felt ashamed. What was that experience? Why does it stand out as shameful?

How did you feel when that experience was happening? Why do you think you felt that way? How do you feel now, recalling the experience?

How did you behave in response to your shame? Why do you think you behaved that way?

Who knows about that experience? If you shared it with others, what did they do to make it more or less shameful? Why did their behavior have that effect?

The answers to these questions need not be shared with clients or anyone else, of course. But, by becoming grounded in our own shaming experiences, we situate ourselves to recognize its signs and understand the discomfort, disorientation, and fear of judgment it can foster. All of this can help improve our professional competency because it can expand our emotional acuity and ability to connect with, and understand, the people we serve. It also can allow us to modify our practices to create space to allow clients to feel safe sharing stories of trauma and victimization, or to understand why they may choose not to. Finally, by tapping into our own histories with shame we are better situated to explore options with clients that consider both the legal *and* the emotional consequences of any given decision made in the course of litigation.

### *B. Integrating Shame into Trauma-Informed Advocacy Models*

Trauma-informed advocacy models offer critical frameworks for lawyers and others who work with survivors of interpersonal trauma. They both centralize understanding trauma's effects and offer tools for reducing the risk of re-traumatization when engaging with those seeking legal or other forms of help.<sup>193</sup> Trauma-informed advocacy models also allow for the expanded and nuanced understanding of another by recognizing the emotional, psychological, and behavioral manifestations of trauma. As noted by one trauma-informed services guidebook, engaging in a trauma-informed practice allows any professional working with clients an opportunity to “approach [them] from the standpoint of the question ‘What has happened to you?’ rather than ‘What is wrong with you?’”<sup>194</sup>

While most trauma-informed frameworks centralize awareness of the psychological and behavioral effects of trauma, shame is often only briefly mentioned, if at all, in many published tools.<sup>195</sup> However, given the nexus

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193. See, e.g., Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 359 (2016); Negar Katirai, *Retraumatized in Court*, 62 ARIZ. L. REV. 81, 88 (2020). Without a trauma-informed framework, the effects of trauma have been roundly identified as being misunderstood or exacerbated by people and institutions to whom a survivor turns for protection or support. Epstein & Goodman, *supra* note 148, at 399. For a powerful example of how behaviors associated with trauma may be misunderstood, listen to Ira Glass, Ken Armstrong & Robyn Semien, *Anatomy of Doubt*, THIS AM. LIFE (Feb. 26, 2016), <https://www.thisamericanlife.org/581/anatomy-of-doubt> [<https://perma.cc/48PS-L9XR>].

194. WASH. COALITION OF SEXUAL ASSAULT PROGRAMS, CREATING TRAUMA-INFORMED SERVICES: A GUIDE FOR SEXUAL ASSAULT PROGRAMS AND THEIR SYSTEM PARTNERS (2012), <https://www.nsvrc.org/sites/default/files/publications/2018-04/Trauma-Informed-Advocacy.pdf> [<https://perma.cc/QAF2-E6R9>].

195. See, e.g., Katz & Haldar, *supra* note 193; Tressell Carter, *Judging, Not Judging: Trauma-Informed Courts*, OPENMINDS (Dec. 2, 2017), <https://www.openminds.com/market-intelligence/executive-briefings/>



between shame and interpersonal trauma, trauma-informed practices must more consistently include examining the causes and effects of shame. Using the hallmarks of trauma-informed lawyering (TIL) introduced by Professors Sarah Katz and Deeya Haldar,<sup>196</sup> the following offers opportunities to more centrally incorporate shame into trauma-informed frameworks. While these suggestions focus on lawyers for survivors of IPV, they have broad application for professionals working with survivors of a range of interpersonal traumas.

Listening for and recognizing trauma indicators is the first hallmark of TIL.<sup>197</sup> Integrating shame into this hallmark begins with both understanding the correlation between shame and traumatic events, and habituating oneself to listen for shame's verbal indicators and to look for its behavioral ones. Some shame indicators may be easily recognizable: language that directly indicates a survivor's humiliation, embarrassment, or fear of judgment; expressions of self-blame; or behaviors that are shame-indicative, like social withdrawal, for example.<sup>198</sup> However, for reasons examined in this Article, indicators of shame also may be easily missed and/or misunderstood by an observing audience. As such, they may be interpreted as undermining survivors' claims of victimization or as behavior at odds with their

judging-not-judging-trauma-informed-courts/ [https://perma.cc/DY4L-5JVU]; Letter from National Child Traumatic Stress Network Justice Consortium to Judges, [https://www.nctsn.org/sites/default/files/resources//nctsn\\_bench\\_cards\\_for\\_the\\_trauma\\_informed\\_judge.pdf](https://www.nctsn.org/sites/default/files/resources//nctsn_bench_cards_for_the_trauma_informed_judge.pdf) [https://web.archive.org/web/20200811040042/https://www.nctsn.org/sites/default/files/resources//nctsn\_bench\_cards\_for\_the\_trauma\_informed\_judge.pdf] (last visited Aug. 11, 2020) (providing a NCTSN Bench Card for the Trauma Informed Judge); *Trauma-Informed Legal Advocacy (TILA) Project*, NAT'L CTR. ON DOMESTIC VIOLENCE TRAUMA & MENTAL HEALTH, <http://www.nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/> [https://web.archive.org/web/20210117192338/http://www.nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/] (last visited Nov. 27, 2022); *Establishing a Trauma-Informed Lawyer-Client Relationship*, AM. BAR ASS'N (Oct. 1, 2014), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-33/october-2014/establishing-a-trauma-informed-lawyer-client-relationship/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/october-2014/establishing-a-trauma-informed-lawyer-client-relationship/) [https://perma.cc/8XGT-DL7W]; TRAUMA INFORMED CARE PROJECT, ORCHARD PLACE, ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICE, [http://www.traumainformedcareproject.org/resources/Court%20Room%20TIC%20Sheet%20%20\(002\).pdf](http://www.traumainformedcareproject.org/resources/Court%20Room%20TIC%20Sheet%20%20(002).pdf) [https://web.archive.org/web/20220119124301/http://www.traumainformedcareproject.org/resources/Court%20Room%20TIC%20Sheet%20%20(002).pdf] (last visited Jan. 19, 2022); Substance Abuse and Mental Health Services Administration [SAMHSA], *Essential Components of Trauma-Informed Judicial Practice* (2013) (unpublished draft), [https://www.nasmhpd.org/sites/default/files/DRAFT\\_Essential\\_Components\\_of\\_Trauma\\_Informed\\_Judicial\\_Practice.pdf](https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf) [https://perma.cc/4M94-5TJ5]; TRAUMA & JUST. STRATEGIC INITIATIVE, SAMHSA, SAMHSA'S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH (2014), [https://ncsacw.samhsa.gov/userfiles/files/SAMHSA\\_Trauma.pdf](https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf) [https://perma.cc/SLP8-UK6R].

196. Katz & Haldar, *supra* note 193. The fourth hallmark identified by Katz and Haldar is "preventing vicarious trauma" in the lawyer. *Id.* at 363. While that hallmark is deeply relevant to engaging in a trauma-informed practice, I do not examine it in this Article given that vicarious trauma is experienced by the lawyer vis-a-vis the survivor, and this Article examines the experience of the survivor.

197. *Id.* at 359.

198. For example, a survivor might say something like, "I feel so ashamed," "I am so embarrassed," "this is my fault," "I don't know why I did/didn't do X," or other similar statements.

stated goals.<sup>199</sup> Lawyers and other advocates who understand the intersection between shame and trauma, and who habituate themselves to consider how behaviors may be shaped by both, will be better positioned to resist the initial, and often inaccurate, explanation for the behavior of the clients they serve.

The second hallmark of TIL is adjusting the attorney-client relationship to be responsive to a client's trauma. Here, Katz and Haldar identify success, in part, by a lawyer's ability to foster their client's trust and sense of safety.<sup>200</sup> Similar adjustments are crucial for shame-mitigation. The reason is simple: clients who feel that they can trust their lawyers and will not be judged or dismissed by them are more likely to share information about their victimization. In turn, lawyers who have a more complete understanding of their clients' experiences will be better situated to provide useful legal advice and explore strategies to help clients meet their goals. Lawyers can foster this trust, in part, by adopting strategies that are collaborative in nature; that assume their survivor-clients are competent to weigh the legal *and* emotional risks and benefits of a legal or extra-legal strategy; and that otherwise allow survivors to fully participate in the legal experience that lies before them.<sup>201</sup> These practices can mitigate shame because they serve to reorient power to survivors who may have had that power stripped by their partner or by others to whom they previously turned for help or assistance.

Relatedly, adjusting the attorney-client relationship to be responsive to a client's shame also demands adopting practices that prioritize clients' dignity and recognize their strengths. Shame can be such a devastating experience, in part, because of how it traps a person into an inaccurate or incomplete identity, and how it can disrupt their sense of worth or social value. To counteract those dignity-harming outcomes, lawyers can integrate a strengths-based approach to their practice. Adopted from the field of social work, strength-based practices focus on seeing a person through a generous and compassionate lens.<sup>202</sup> It centers a "profound belief in an individual's potential" even when that individual engages in behaviors that may appear detrimental to their self-interest.<sup>203</sup> By way of example, for reasons examined in this Article, some survivor-clients may present as distressed, angry, or agitated. Rather than seeing those behaviors as dysfunctional or pathological responses to being harmed by trauma, a strengths-based approach

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199. See discussion *supra* Part I.

200. Katz & Haldar, *supra* note 193, at 383.

201. These suggestions are central to the tenets of "client-centered" lawyering, a best-practice model of lawyering that creates an equalizing space for clients within the attorney-client relationship. See, e.g., *id.* at 375–78.

202. Dennis Saleebey, *The Strengths Perspective in Social Work Practice: Extensions and Cautions*, 41 SOC. WORK 296, 296 (1996).

203. Trevor Jay Manthey, Bryan Knowles, Dianne Asher, & Stephanie Wahab, *Strengths-Based Practice and Motivational Interviewing*, 12 ADVANCES SOC. WORK 126, 128 (2011). According to this piece, there are eight dimensions to strength-based practices: goal orientation, strengths assessment, environmental resources, the relationship, meaningful choice, collaboration, trials and opportunity, and change/growth potential. See *id.* at 129–34.

allows space to see those behaviors as forms of resilience; *adaptive* responses to “*surviving* trauma” and shame.<sup>204</sup> This expanded understanding can allow lawyers the ability to be a source of empowerment for their clients, which, in turn, can positively impact their client-connection and, ultimately, the effectiveness of their advocacy.<sup>205</sup>

The third hallmark of Katz and Haldar’s TIL framework is the adoption of litigation strategies that are trauma responsive.<sup>206</sup> In the IPV and trauma-informed literature, many of those strategies center on reducing the fear and anxiety survivors may experience when present in a space with their abusive partners.<sup>207</sup> Such strategies are crucial to consider when working with survivor-clients. Yet, for reasons explored herein, shame can be as common an outcome of IPV as anxiety and fear. As a result, reducing clients’ shame exposure during litigation may be as important to a trauma-informed practice as is reducing their exposure to fear and an unsafe environment.

For reasons previously described, there is no one litigation approach that will work for all survivor-clients because shame is such an individualized and context-specific experience. A strategy that may reduce the shame of one person may enhance the shame of another (e.g., publicly sharing her narrative). Thus, appropriate shame-responsive adjustments to litigation must vary depending on the individual client.

What is universal, however, is the need for lawyers to recognize the importance of including survivor-clients in shaping how their experience and their narrative is crafted and presented.<sup>208</sup> As observed by Professor Leigh Goodmark, “[t]he stories we tell give us the opportunity to define ourselves.”<sup>209</sup> The ability to shape how our stories are told may be “particularly important for marginalized groups, whose identities have been constructed by the dominant culture as a means of silencing and oppressing them.”<sup>210</sup> As noted by Vicki Lens in her extensive study on the experiences of mothers of color in family court,

[T]he lawyer-client relationship is a hierarchical one, with lawyers holding the reins of what story to tell and how to tell it.

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204. See SAMHSA, A TREATMENT IMPROVEMENT PROTOCOL: TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES 13 (2014) (emphasis added), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4816.pdf> [<https://perma.cc/C4M4-49FB>].

205. *Id.* at 22.

206. Katz & Haldar, *supra* note 193, at 383–84.

207. Ellen Gutowski & Lisa A. Goodman, “*Like I’m Invisible*”: IPV Survivor-Mothers’ Perceptions of Seeking Child Custody Through the Family Custody System, 35 J. FAM. VIOLENCE 441, 452 (2020) (noting that survivors identified that being in a shared physical space with an abusive partner “not only heightened their distress but sometimes made it impossible for them to tell their stories of abuse without fear of reprisal or intrusive symptoms that interfered with their ability to express themselves”).

208. Katz & Haldar, *supra* note 193, at 375.

209. GOODMARK, *supra* note 15, at 118.

210. *Id.* at 117.

Class and race can complicate even the most well-intentioned lawyer's choices. Even lawyers for the poor can subordinate and marginalize clients, substituting lawyer-driven narratives for client-driven ones.<sup>211</sup>

Lawyers can disrupt the hierarchy within the attorney-client relationship by allowing space for their clients to shape the experiences they share as part of their CPO proceedings. They can craft questions and arguments that identify not only what happened *to* their clients but how their clients overcame or responded to their abuse. They can ask a brief line of questions to allow clients to testify about what matters to them or otherwise expand their public image from one of “victim.” Or, they can keep their questions narrow, reducing the risk of unnecessary scrutiny or further public exposure. None of these options are meant to apply universally, nor supplant a lawyers' role in advising on strategy, or strengths and challenges of a particular approach. Instead, they are opportunities for creating collaborative, client-directed, and, therefore, potentially shame- and trauma-reductive, approaches to CPO litigation.

Beyond expanding on the TIL models as described above, shame-informed practices also demand that lawyers understand the shame and trauma that results from marginalization, discrimination, and other forms of social mistreatment.<sup>212</sup> To gain that understanding, lawyers must not only become educated on the correlation between shame and certain social identities, but also must commit to the necessary work of ensuring they do not contribute to those harmful narratives. Lawyers can demonstrate this commitment, in part, by engaging in self-reflection to recognize their own biases, and how those biases may impact not only the narratives they ascribe to the survivor-clients they serve, but to their own advocacy. Once they have that grounding, lawyers who are shame aware will engage in efforts to undo their biases, including, as identified in anti-racist practices, committing to making “conscious decision[s] to make frequent, consistent, and equitable choices daily.”<sup>213</sup> Shame-informed lawyers also will recognize how institutions—including legal institutions—perpetuate shame and other emotional harms through “discriminatory treatments, unfair policies or biased practices based on race” and through white supremacy and patriarchy, and will commit to dismantling power imbalances, unfairness, and inequality within those institutions.<sup>214</sup> Shame- and trauma-informed lawyering demand both this awareness and corresponding action.

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211. Lens, *supra* note 129, at 83.

212. See Amber J. Johnson, *Examining Associations Between Racism, Internalized Shame, and Self-Esteem Among African Americans*, 7 COGENT PSYCH. 1757857 (2020), <https://doi.org/10.1080/23311908.2020.1757857> [<https://perma.cc/K5XX-7FPT>]. See generally HARRIS-PERRY, *supra* note 11.

213. *Being Antiracist*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/learn/talking-about-race/topics/being-antiracist> [<https://web.archive.org/web/20220813180639/https://nmaahc.si.edu/learn/talking-about-race/topics/being-antiracist>] (last visited Aug. 13, 2022).

214. *Id.*

*C. Judges and Shame Mitigation*

Judges have incredible power to shape not only the legal outcome of a case, but the emotional experience of litigants appearing before them. This power can be particularly acute when litigants' claims are based on traumatic, humiliating, or emotionally intensive harms, or when litigants themselves are survivors of trauma.

Increasingly, judges are trained in trauma-informed practices, including practices that raise awareness about how courtroom environments can negatively impact trauma survivors, and how trauma itself can impact a litigant's presentation.<sup>215</sup> Given the layers of shame that may be experienced by certain categories of litigants, including survivors, that training should be expanded to include the dimensions of shame explored in this Article. Within an IPV context, judges should be trained on understanding the correlation between shame, trauma, and relational abuse. They should understand how shame can impact a person psychologically and behaviorally, and should use that understanding to inform how they assess the litigants before them and the criteria they use to credit or discredit witnesses or their testimony. Judges should also recognize how courtroom environments and procedures can create conditions ripe for shame. They should adopt zero tolerance policies for observers who laugh at, heckle, or chide litigants, and ensure that parties are given leeway to present their cases in ways that do not simultaneously belittle, humiliate, or demean the opposing side.<sup>216</sup>

Fundamentally, judges should hold in highest regard the dignity of the litigants who appear before them. Dignity is afforded, in part, by any of the foregoing. It also is anchored in actions that promote inclusion and deservedness of understanding: providing information about the legal process to unrepresented parties; offering clarity about what must be proven for a legal claim; explaining the basis for a particular ruling; and allowing litigants to ask questions and seek clarification about matters they do not understand.<sup>217</sup> When issuing oral rulings, judges can take a moment to slow down, look litigants in the eye, and treat them with compassion, even if ultimately ruling against them. Indeed, survivors have reported feeling vindicated by the *process* of litigation even when they lose, if they felt heard, treated with dignity, and received social cues that otherwise challenged the normalcy of their abusive experience.<sup>218</sup>

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215. See, e.g., *Trauma-Informed Courts*, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, <https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/> [https://web.archive.org/web/20220901033202/https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/] (last visited Sept. 1, 2022) (providing links to a variety of materials designed to train courts and judges in trauma-informed practices).

216. AM. JUDGES ASS'N, DOMESTIC VIOLENCE & THE COURTROOM: KNOWING THE ISSUES . . . UNDERSTANDING THE VICTIM 1 (2012), <https://amjudges.org/pdfs/domestic-violence-the-courtroom.pdf> [https://perma.cc/X38C-BCCS].

217. *Id.*

218. See Shapiro, *supra* note 14, at 578; Cucolo & Perlin, *supra* note 25, at 313; Brown, *supra* note 30, at 46; Engstrom, *supra* note 19.

Adopting any of the foregoing strategies need not, of course, be inconsistent with judicial impartiality. Transparency, empathy, compassion, and clarity are not “forbidden” by judges.<sup>219</sup> In fact, their utilization may reduce the risk of emotional harm to litigants and promote judicial efficiency and fairer legal outcomes. Empathy and emotional acuity, specifically, can be a critical gateway for judges to “better understand the position of the parties”; opportunities to see experiences from the lens of those who appear before them.<sup>220</sup> As argued by Professor Susan Bandes, “[t]he primary value of empathy is that it tells us not to assume that we are right, or objective, or impartial. It opens up a window of humility that can help guide a decision-maker to the correct outcome.”<sup>221</sup> For these reasons, empathy, along with the other foregoing approaches to judging, may be as critical to upholding survivor-litigants’ dignity as is the issuance of an order of protection in their favor.

#### *D. Environmental Control*

As discussed in Part I, shame is a social emotion, one exacerbated by public exposure of one’s perceived flaws, inadequacies, or victimization. In light of that, this Section examines opportunities for audience reduction and control. Insights for some of the suggestions advanced below have been gained through lessons learned from the changes made to court operations as a result of the COVID-19 pandemic. Among the most significant of those changes have been how audiences access court hearings, and how litigants participate within them. These changes have taught us a great deal about how courtroom environments can be spaces that enhance or reduce litigant shame.

##### *1. Alternatives to “Bulk Set” Hearings*

Bulk setting hearings is a standard practice in predominantly *pro se*, high-volume civil courtrooms across the country. Rather than providing individual cases discrete hearing times, all parties with a similar matter are directed to arrive at court at the same time. The practice of bulk setting hearings is a practical one: in high-volume courtrooms, bulk setting allows for easier docket management and court efficiency. It streamlines check-in processes, and allows brief matters (e.g., default hearings or continuances) to be resolved quickly without requiring court staff and judges to wait for parties to show up for a discrete time before moving to the next matter. A uniform arrival time also allows parties in multiple cases to attempt negotiation, if desired, without delaying the court’s ability to proceed to other cases on the docket.

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219. Susan A. Bandes, *Empathy and Article III: Judge Weinstein, Cases and Controversies*, 64 DEPAUL L. REV. 317, 320 (2015).

220. *Id.*

221. *Id.* at 321.

Yet, bulk set hearings can create shaming conditions. The mere act of bulk setting hearings—a practice flippantly referred to by many legal actors as “cattle call” settings—sends a message that an efficient court experience is not a priority for certain categories of litigants. Nearly uniformly, those litigants are economically marginalized and unable to afford legal counsel. When litigants become aware that their court cases are set at the same time as many others, it sends a message that the court values its time and resources over theirs because, quite simply, the litigants’ time and resources matter less.

Bulk setting hearings also increases the likelihood that survivor-litigants’ stories of victimization will be exposed to their communities. Prior to the pandemic, in DC Superior Court, for example, all parties to a CPO proceeding were ordered to court at 8:30 a.m. on the date of their hearing. Practically, this meant that CPO courtrooms were filled with petitioners, respondents, prospective witnesses, and other observers. As discussed in Part III, it is not a stretch to assume that a survivor-litigant, or her partner, will know (or will be known to) people present in the courtroom. Accordingly, bulk set hearings may not only guarantee that survivor-litigants will need to testify in front of an audience when presenting their claim, but they increase the likelihood that a member of that audience will have a social connection to them or the person against whom they are filing. For reasons examined in Part II, both known and unknown audience observers can contribute to shame, particularly when a person is testifying about IPV victimization—a potentially humiliating and shame-intensive experience.

Courtrooms that hear protection order cases must differentiate between being open and allowing for observers and creating conditions that *invite* an audience. The former must be provided; the latter, need not. Eliminating, or reducing bulk set hearing times in favor of times that are discrete, or even staggered, still allows observers, of course. But, it reduces the public exposure created by the nature of bulk set hearings. That reduction may be critical to ensuring that litigants’ privacy and dignity are not unnecessarily sacrificed in order to allow others access to CPO courtrooms.

If courts or judges are unwilling or unable to move to discrete or staggered set hearings, they should increase opportunities for litigants to control how certain testimony is received. Judges have broad leeway to allow litigants to approach the bench when providing particular kinds of testimony and should generously consider that option in CPO cases when requested, or when a litigant expresses distress about providing public testimony. As explored above, judges also have discretion to grant motions to close or modify access to a courtroom for a particular litigant or a particular case if they believe that the interest in confidentiality (significant harm to a litigant) outweighs public interest in access.<sup>222</sup> As courts consider this, they should examine the discrete harms that can result from public exposure of a potentially

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222. See discussion *supra* Part III.

degrading and traumatizing personal experience. Assertions of trauma, significant shame, or other forms of psychological harm that resulted from their abuse or that may result from publicly testifying about it, should be considered a basis for allowing these testimonial adjustments.

## 2. *Virtual Courtrooms?*

The COVID-19 pandemic has taught us a great deal about the adaptability of our legal system. What may have seemed both impractical and ineffective in the past became a new normal in 2020 when physical courtrooms across the country became primarily virtual. The transition from in-person to virtual hearings, albeit imperfect, allowed for critical adjustments to maintaining access to legal relief during a public health crisis. It also significantly altered how justice is accessed in the United States. As observed by Michigan Supreme Court Chief Justice Bridget McCormack, “This pandemic was not the disruption any of us wanted, . . . [b]ut it might be the disruption we needed to transform the judiciary into a more accessible, transparent, efficient, and customer-friendly branch of government.”<sup>223</sup> Now that the pandemic is abating, many courthouses are considering whether to retain some or all of those virtual modifications. From a shame-informed lens, the choice is complicated. Virtual hearings offer both shame-reductive benefits and shame-enhancing drawbacks.<sup>224</sup>

Virtual hearings can reduce a litigant’s risk of shame exposure for two primary reasons. First, they can offer a more “private” litigation experience. Theoretically, any member of the public may access virtual hearings, making the potential for audience exposure much larger than hearings held in-person. The reality, however, is that most members of the public do not attend virtual hearings. In some jurisdictions, following a “check-in” process, even litigants with matters bulk set for a morning check-in will be called only when the court it is ready to hear their case. As a result, many virtual hearings are attended only by the litigants, their lawyers (if any), the judge, and a judicial clerk.<sup>225</sup> This relatively “private” space can reduce a survivor’s risk of audience exposure, loss of identity control, and potential for reputational harm. Relatedly, it can allow survivor-litigants the space to testify more freely about facts that may be contrary to the image they wish to share or have

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223. Matt Reynolds, *Going Virtual: Courts Attempt to Balance Innovation with Access in Remote Proceedings*, A.B.A.J. MAG., Feb./Mar. 2021, at 44.

224. Though beyond the scope of this Article, virtual hearings offer other potential benefits, including reduced need for transportation to and from court and/or costs associated with parking; reduced need to take time off of work for court; the convenience of reduced time spent in a courthouse or courtroom; and easier witness availability. They also offer other potential challenges, including technology or internet “glitches” or access; longer wait times; and complicated processes for submission and authentication of exhibits.

225. In some courts, including the DC Superior Court where I practice and supervise law students, litigants with cases set at the same time may check-in and then leave the online platform until they are called by the court clerk.



understood by a broader observing audience. Fundamentally, virtual hearings can maintain the integrity of open access to courtrooms without amplified audience- and, therefore, shame-exposure.<sup>226</sup>

Second, for survivor-litigants who may need to testify about traumatic events or be in the same “space” as the person who caused their shame and trauma, environmental control may be particularly important. Virtual hearings can provide litigants the opportunity to testify in a familiar setting that allows for control over their environment in ways not possible in a physical courtroom. That control (e.g., food and drink intake, accessing soothing materials, lighting control) can serve to mitigate the risk of retraumatization by contributing to a survivor’s sense of safety.<sup>227</sup> Further, avoiding in-person contact with an abusive partner can help realign the power differential that may exist between the parties. These positive environmental controls can be powerful mitigators for shame.<sup>228</sup>

Despite the potential for shame-reduction, virtual hearings can modify the courtroom environment in ways that may *increase* a survivor’s shame-exposure. For some survivors, online hearings can create a complicated intimacy with their abusive partner. Unlike most in-person hearings, where the parties face the judge, in virtual hearings, the parties often have no choice but to look directly at one another on their screens. This format can be uncomfortable, at a minimum, as it can result in direct exposure to the person responsible for causing another’s trauma and shame.

Additionally, while in practice virtual hearings may reduce audience exposure, as noted above, such hearings *can* allow for a much wider audience than even bulk set, in-person hearings. Relatedly, when parties appear virtually, anonymous or “video off” participants may be watching. Both can leave parties without a sense of who, even generally, makes up the audience observing their case. That lack of information can impact both how survivor-litigants testify and what content they feel safe to include.

Video hearings also can result in a loss of content control and the related risk of viral public exposure. In one criminal hearing, a survivor of IPV appeared at a virtual hearing relating to charges brought against her boyfriend, the defendant, for assaulting her.<sup>229</sup> The defendant also appeared virtually. During the virtual hearing, the prosecutor interrupted the proceedings to identify concern about the survivor’s safety because she believed that the defendant was in the survivor’s apartment.<sup>230</sup> The prosecutor was correct. Police arrived at the survivor’s home moments later and found the defendant inside. The hearing and the subsequent arrest of the

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226. See Hulse, *supra* note 139, at 250.

227. See *id.*

228. *Id.*

229. Hannah Knowles, *A Zoom Hearing for Her Domestic Violence Case Went Viral. Now People Are Blaming Her, She Says*, WASH. POST (Mar. 12, 2021, 7:00 AM), <https://www.washingtonpost.com/dc-md-va/2021/03/12/mary-lindsey-coby-harris-zoom-hearing/> [<https://perma.cc/37HC-NDFE>].

230. *Id.*

defendant were recorded on the video hearing. That video was placed on YouTube. It has been viewed more than a million times; featured in nearly every major news outlet; and shared repeatedly on social media.<sup>231</sup> It has been used to demonstrate “a grim window into the intimidation that domestic violence victims face constantly.”<sup>232</sup> Yet it also demonstrates how easily victims are shamed and blamed for choices made about their abuse. The survivor from that video, after reviewing comments about her posted in news articles, observed that “A lot of people are saying, well, it’s her fault.” She noted how “frustrating” it was to have so many people watching and for her personal information to be so publicly shared. While she expressed gratitude that the police arrived, her gratitude was not driven by an expressed concern for her physical safety but “so I didn’t have to sit there and lie” about his whereabouts.<sup>233</sup> According to the survivor, she “mostly wishes it never happened, at least in its viral form. She [had even] told prosecutors she did not want to participate, *knowing that she would be on display*.”<sup>234</sup>

In light of this devastating experience, and other risks of virtual hearings, courts that intend to maintain them must consider how to do so in ways that ensure litigants will not be exposed to viral publicity or public shaming experiences. Three principles should guide court practice in this area. First, courts must allow court watch programs—programs designed to serve as an external check on judges and court proceedings—unfettered access to CPO hearings. Such access allows for a balance of maintaining the more intimate space of a virtual courtroom with an external check on judicial behavior and procedural accountability.

Second, courts must adopt practices that reduce the risk of loss of content control. While streaming or otherwise posting court hearing recordings to online platforms certainly allows public access, those practices subject hearings to the risk of expansive review. When posted online, videos of hearings can remain available well beyond the hearing date, making them far more accessible than in person hearings. According to one state DV coalition, videos of court proceedings posted online remained there for months and, despite raising concerns, the coalition was

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231. NowThis News, *Suspect Caught in House of Survivor During Zoom Hearing*, YOUTUBE (Mar. 10, 2021), [https://www.youtube.com/watch?v=n14Ir6bBryM&ab\\_channel=NowThisNews](https://www.youtube.com/watch?v=n14Ir6bBryM&ab_channel=NowThisNews) [<https://perma.cc/4JWF-SAEW>]; see also Knowles, *supra* note 229; *Domestic Abuse Suspect Arrested During Zoom Hearing*, BBC: NEWS (Mar. 9, 2021), <https://www.bbc.com/news/av/world-us-canada-56341651> [<https://web.archive.org/web/20210310204711/https://www.bbc.com/news/av/world-us-canada-56341651>]; Michael Ruiz, *Michigan Prosecutor in Zoom Hearing Catches Alleged Domestic Assaulter in Same Home as ‘Nervous’ Girlfriend*, FOX NEWS (Mar. 9, 2021, 6:40 PM), <https://www.foxnews.com/us/michigan-prosecutor-zoom-hearing-domestic-assaulter-same-home> [<https://perma.cc/X9N5-AE3T>]; David K. Li, *Virtual Court Hearing Takes Turn After Prosecutor Spots Assault Suspect in Victim’s Home*, NBC: NEWS (Mar. 11, 2021, 6:43 PM), <https://www.nbcnews.com/news/us-news/virtual-court-hearing-takes-turn-after-prosecutor-spots-assault-suspect-n1260698> [<https://perma.cc/XJ6F-ZGKZ>].

232. Knowles, *supra* note 229.

233. *Id.*

234. *Id.*

able to get only “one county to change its practices and remove videos after 24 hours.”<sup>235</sup> Courts should not use such practices. Rather, discrete links to court hearings should be offered to litigants and interested observers, and recordings should be maintained as are any other transcript—generally in-house and granted only through direct request.

Finally, courts should adopt policies for court observation, particularly when observers remain in “video off” mode. If observers choose to remain off-screen, courts should require they identify themselves in some way so that the parties and the court can have a sense of who is in the courtroom space. This identification could be sharing one’s name, organization, or even role (“student observer”; “media”). Even that general information can be an important piece of data for litigants assessing the risks and benefits of proceeding with litigation. Courts also should create clear policies banning the recording of hearings—as they are banned in most public courtrooms—and share those policies with virtual court observers.

#### *E. Non-Litigation Alternatives*

While any of the foregoing modifications to the CPO hearing process may reduce the risk of shame that can be inherent in civil litigation, for some survivors, *any* public exposure can lead to harmful consequences. As a result, accessible litigation alternatives are essential for some survivors who seek legal intervention. Included among the non-litigation alternatives is court-sponsored negotiation. Given that CPO cases are emergency litigation and tend to demand less complicated relief than longer term family court or other civil cases, court-sponsored negotiation can be an important option for avoiding the risks that can result from a public hearing. Court-sponsored negotiation can allow litigants the ability to obtain relief that may otherwise be ordered following a hearing, while reducing the legal *and* emotional risks of testifying publicly.<sup>236</sup> When offered by the court, litigants need not expend their own resources and often can have resolution on the day of their hearings—goals desired by many who engage with the CPO process.<sup>237</sup>

In many DV courts, court-sponsored negotiations are a regular part of the protection order process. In the DV Division of the DC Superior Court, for example, court-employed “attorney negotiators” meet with parties on the day of their hearing, individually, to discuss resolving CPO cases outside of a contested hearing. Attorney-negotiators do not assess the merits of the underlying claim; they

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235. *Id.*

236. *See* discussion *supra* Part III.

237. This suggestion for increased non-litigation remedies is distinct from calls for increased restorative justice (RJ) alternatives to IPV. *See* Laurie S. Kohn, *What’s So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517 (2010); Camp, *supra* note 2 (describing restorative justice litigation alternatives through a lens of shame). RJ alternatives also may be critical for shame-mitigation and to avoid some of the harms explored in this Article, but go beyond the scope of this piece.

are not mediators or judicial officers. Their role is relatively straightforward: to explain the hearing process, learn what the petitioner wants included in the final order, present that to the opposing party, and see if a consent order is possible.

Court-sponsored negotiation is not, of course, foolproof for shame-reduction. Focusing on the outcome of a CPO, rather than the process of litigating claims, may leave survivors feeling deprived of the ability to obtain external validation about their experience, or attain the other shame-reducing benefits of litigation. Consenting to a protection order without the opposing party admitting wrongdoing, or without a finding of harm by a judicial officer, leaves no record of abuse and can therefore undermine a goal of narrative redemption.<sup>238</sup> Untrained or undertrained attorney negotiators may, themselves, be sources of social shame if they engage in behaviors that are dismissive, microaggressive, or that fail to individualize survivor-litigants. And without proper awareness by court negotiators, negotiation *can* be a space for abusive partners to further shame, manipulate, or threaten survivors seeking protection.

Given these concerns, courts should invest in proper training of court negotiators, including training on factors that contribute to a litigant's shame. Negotiators should be trained to explain the range of legal options available to litigants, as well as the corresponding court processes. They should ensure litigants are aware that courtrooms may be publicly accessed and that an audience may be present if they go to a contested hearing. This information may be known already but, if not, it may be essential to helping survivor-litigants understand their options and choose the one that will best serve their desired goals.

#### CONCLUSION

Survivors of IPV are distinctly situated to experience shame. It can define their abusive experience and can shape any help-seeking that follows. Those experiences can be made worse by cultural narratives of social devaluation regarding survivors with marginalized social identities and those who behave in ways that deviate from expected stock narratives. For these reasons, survivors seeking legal protection from abuse may be among the most shame-exposed of any civil litigant.

While there is no panacea for eliminating shame from the survivor experience, recognizing its ubiquity and the devastating outcomes that can flow from it is a critical first step. This Article has introduced a framework to do just that. It places shame more centrally within the IPV and trauma-informed legal scholarship in an effort to illuminate a harm that is commonly overlooked and misunderstood. Armed with clarity regarding the nexus between survivors and shame, and with a critical awareness of its causation and effects, lawyers, advocates, and judges can be

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238. M. Kristen Hefner, Aneesa A. Baboolal, Ruth E. Fleury-Steiner & Susan L. Miller, *Mediating Justice: Women's Perceptions of Fairness in the Civil Protection Order Process*, 36 J. INTERPERSONAL VIOLENCE 3331, 3334–35 (2021).

better situated to compassionately understand survivors' experiences and to adopt strategies that mitigate the risk of contributing to their shame. Institutions that provide protective or other survivor-centered services can do the same. Courts, specifically, can balance the promotion of fair and open courtrooms with measures designed to reduce the risk of emotional harm that can result from publicly sharing one's story of victimization.

Any of these shame-responsive strategies can provide survivors with the ability to shape how they are seen and understood by others. That ability may not only be central to survivors' willingness to seek safety, protection, or other help, but to their ability to reclaim the dignity that may have been stripped from them by the layers of shame that may have shaped their abusive experience.