

# DIGITAL DOMESTIC VIOLENCE

by Timothy P. Flynn

**T**oday's technology enables people to customize their homes with smart appliances. With our cellphones, we now can control cameras, thermostats, lights, alarms, sound systems, garage doors, vehicles and some appliances from remote locations. These devices are designed to make life easier and more manageable.

Usually, one spouse or significant other takes the lead in mastering and manipulating this cellphone technology. Assume this other person has managed the requisite passwords to all of the couple's smart accounts. Imagine further that the relationship ends with a turn for the worse.

## **New Methods of Power and Control**

In the past 18 months, domestic violence reports across the country, many unprosecuted, feature malicious control of smart-home technology. Air conditioners turn on in the winter months, lock codes change preventing access to a home, sound systems blare music in the middle of the night, clips of security camera footage are transmitted, garage doors open remotely, and alarms go off randomly. These are just a few of the new modes of manipulation and control in the ever-evolving pattern of domestic violence.

While its modes of infliction have changed, domestic violence remains prevalent across all strata of our society. It did not take long for abusers to co-opt technology designed to make life more convenient. Digital domestic violence incorporates several components of the well-known "Power and Control Wheel." For example, remotely manipulating appliances or a vehicle projects intimidation to the extent that power is exercised to modify the victim's environment without warning or consent; it is often a component of a threat, made to induce compliance. When the digital manipulation involves electronic access to financial accounts, it becomes a form of economic control and abuse. All are recognizable components of the Power and Control Wheel that is domestic violence. These modern conveniences also have become methods by which to exercise harassment, revenge and control.

## **Request Injunctive Relief**

Lawyers representing victims in family court and other civil venues should consider the practice of requesting specific language in injunctions proscribing control of smart-home technology. The challenges are: proof of the control, seizure of the cellphone on which the offending app resides, and the expenditure of resources in cases where both parties are impoverished. Often, despite the threat of family court litigation and even when the abuser cannot afford basics like child support or family court representation, the cellphone, with all of its functionality, is not given up voluntarily. The cellphone is the last thing an abuser will give up or make available in any way. If the cellphone-based abuse and control can be alleged in an offer of proof, lawyers should consider requesting the court to enjoin the conduct and, if necessary, seize the device to neutralize the situation.

Obviously, this is far easier said than done. In some cases, the offending device may literally come walking through the door, having been taken by the alleged victim. In such cases, the issue of legal access to the device is paramount. As a general principle in such cases, evidence obtained through the violation of ownership rights, access without permission or in violation of the device owner's privacy, is not admissible and thus may not form the basis of a request for injunctive relief. The prospect of proving that the alleged abuser, in fact, possesses a cellphone containing apps used to access, manipulate and control components of the victim's smart home, is at best daunting. Viable excuses and defenses abound. Thus, the requested injunctive relief, even in the court of equity that is family court, may be elusive.

Some cases of digital domestic abuse involve jointly owned and jointly used accounts. This makes evidence gathering much easier. All the data on most devices can be downloaded with the assistance of a digital forensic expert. Companies such as N1 Discovery in Troy can mine

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electronic devices and provide a variety of data reports at a reasonable cost.

As in all cases, attention to the details of the offer of proof are critical. Consider building a circumstantial case against the abuser. If you construct a viable set of circumstances supported by competent evidence, you are helping the fact finder infer that abusive conduct has occurred. The key is to get the judge's attention by detailing specific instances of alleged abuse. Also, keep in mind that in most cases, an intermediary evidentiary standard of production and persuasion applies rather than the "beyond a reasonable doubt" standard.

### Minimizing the Risk of Abuse

As part of constructing a case for digital domestic abuse, have clients who are alleged abuse victims document their efforts to minimize, thwart or remove their exposure to this form of abuse. Here are some basic steps to take. First, get control of all the smart accounts in the home and implement a two-factor authentication. Most products, under the settings, provide for this component of extra security. Multi-factor authentication commonly includes use of a code in addition to the standard username and password. Another form is answering security ques-

tions. Clients should be instructed to make false answers to such basic security questions as the identity of their high school mascots or their mother's maiden name. In many cases of digital domestic violence, the abuser will have that information readily available.

Resetting the device to factory specifications will usually knock out an unwanted user's ability to access a device. If social media is any way involved, report the conduct immediately to the proper reporting agency. Finally, consider obtaining an IT consult or audit to identify all the victim's smart accounts, and examine the specific modes of access.

### Conclusion

Digital domestic violence is expected to increase rather than go away. If your client is a victim, educate yourself on the methods of preserving the evidence of such abusive conduct. Consider seeking injunctive relief up front by developing a solid set of facts and circumstances supporting your client's claims.



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