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Your host today:



**Alexia Peters, JD
Managing Attorney
FJC Alliance, Legal Network**

www.familyjusticecenter.org





"Local Services, Global Reach"

**Thank you to the US Department of Justice,
Office on Violence Against Women
for making this training possible!**

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Webinar Recording and PowerPoint Presentation Download Reminders

This webinar presentation is being recorded and will be posted on our website by the end of today's business day. We would like to remind you that in order to download webinar files and other materials from our Resource Library on our website, FJC Alliance Membership is required- it's free, quick, and easy to do. Members can log in to access members-only information.

Please note that registering for today's live webinar training does not sign you up as a member of the FJC Alliance. If you wish to become a member and obtain login credentials, please visit our website at www.FamilyJusticeCenter.org and click on "**Get Involved**" → "**Become a Member**". Please allow 24 hours for your application to be reviewed. Once your membership application is approved, you will be notified via email.



Your presenter today:



Jeff Greipp
Director
National Witness Protection Center



WITNESS INTIMIDATION IN DOMESTIC VIOLENCE CASES

Emerging Promising Practices And Coordinated Community Responses



US DOJ BUREAU OF JUSTICE ASSISTANCE Field Initiated Programs

- This project was supported by Grant No. 2010-MU-BX-K079 awarded by the U.S. Department of Justice, BUREAU OF JUSTICE ASSISTANCE (BJA). The opinions, findings, conclusions, and recommendations expressed in this presentation are those of the author(s) and do not necessarily reflect the views of BJA.



AEquitas: The Prosecutor's Resource on Violence Against Women

- NWPC is a project of AEquitas: The Prosecutors' Resource on Violence Against Women, a project of the Pennsylvania Coalition Against Rape (PCAR) and created in partnership with the Battered Women's Justice Project.



GOALS

Today's Presentation:

- Understanding victim dynamics and how abusers manipulate victim vulnerabilities.
- Examine solutions for the justice system and coordinated community responses.
- Understand how these solutions enhance evidence based prosecution practices.
- Discuss emerging national resources.



VICTIM DYNAMICS

- Why do so many victims fail to cooperate with the criminal prosecution?
 - Safety
 - Financial impact
 - Isolation
 - Emotional ties to the abuser
 - Children



A COMPLEX DECISION

- Continued abuse
- Lack of confidence in the justice system
- Cultural
- Immigration status
- Financial
- Emotional
- Loss of children
- Not being believed
- 3rd party pressure
- Humiliation
- Negative experiences with the justice system
- Employment
- Isolation
- Lack of support
- Housing
- Retaliation



IMPORTANT COMMUNITY EFFORTS

- Communities expend tremendous and important resources to support victims and witnesses:
 - Victim advocacy
 - Court protective orders
 - Housing/shelter
 - Prosecution
 - Law Enforcement
 - Health care programs
 - Other safety Services



OFFENDER EFFORTS

- Offenders know community support leads to accountability and respond through:
 - Isolating the victim
 - Discouraging victims from reporting abuse
 - Discouraging confidence in the community
 - Using third parties to influence victims
 - Manipulating the victim's emotions
 - Threatening the victim



COMPLEX DECISION





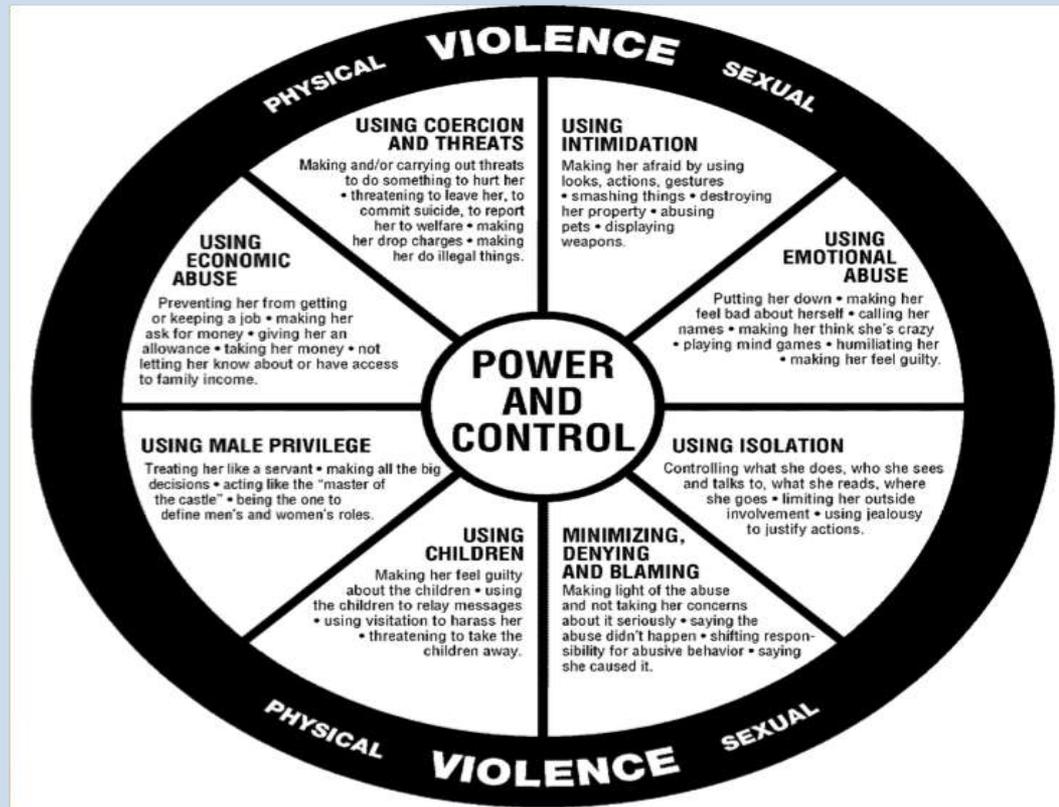
Complex Decision



- We must apply an understanding of these dynamics AND
- Recognize that batterers use them to exploit the justice system and circumvent efforts to keep victims safe



POWER AND CONTROL

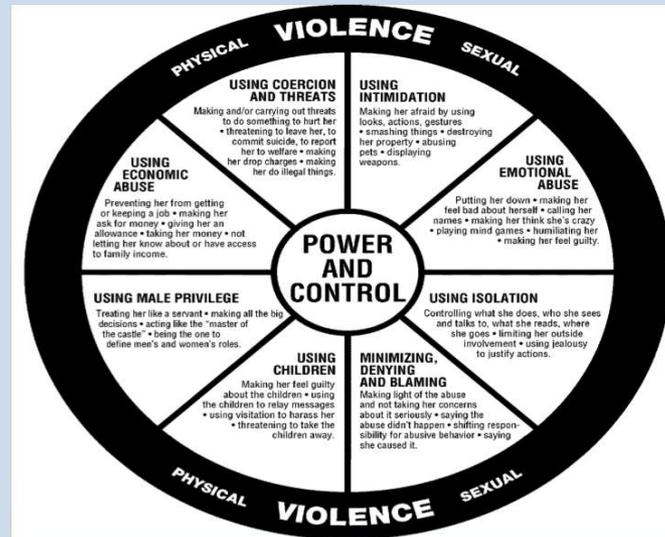


Power and Control Wheel Duluth Minnesota Domestic Abuse Intervention Program



POWER AND CONTROL

- The power and control does not end with arrest; it typically continues and increases throughout the prosecution and through post conviction supervision.





VICTIM EXPERIENCE

- Victims are pulled in two very different directions during the criminal justice system.





RULE

- Offenders work hard to counter the community efforts initiated to keep victims safe and hold offenders accountable.
- To ensure safety and responsibility, responses must be attentive to both the present case and the ongoing dynamics that victims experience and offenders manipulate when the criminal justice system is engaged.



UNDERSTANDING INTIMIDATION

Recognizing Coordinated Community Response (CCR) Gaps



CONDITIONS FOR INTIMIDATION

- Constitutional right of confrontation protects the accused but can be abused by abusers to transform the key witness into a target for intimidation.
- Justice system is focused on the protection of a criminal defendant's rights.
- Justice system is heavily congested.
- Communication with victims throughout the entire prosecution is challenging.



INTIMIDATION BUILDING BLOCKS

Successful Intimidation

Defendants' Manipulation
of Right to Confrontation

Court
Delays

CCR Neglect

Experienced
Offenders

Court
Congestion



SCOPE OF THE PROBLEM

- Victim intimidation is a unique crime.
- Intimidation is among the most under reported crimes.
- Intimidation is typically only reported by a victim if it is unsuccessful.



SCOPE OF THE PROBLEM

- Witness intimidation affects nearly every category of crime witness and is among the most under reported crimes.
- In cases of domestic violence, witness intimidation is “*near universal.*”

Kerry Murphy Healy, National Institute of Justice, *Victim and Witness Intimidation: New Developments and Emerging Responses*, Research in Action, October 1995.



DOMESTIC VIOLENCE PROSECUTIONS

- The relationship between the defendant and the victim presents unique challenges in a criminal prosecution.
- Domestic violence, elder abuse, non-stranger sexual assault and child abuse prosecutions present lower levels of offender accountability when compared to other categories of crime such as gun possession, drunk driving, property crime and many other crime categories.



DOMESTIC VIOLENCE PROSECUTIONS

- Prosecutors experience a higher probability of retaining cooperative victims during a criminal prosecution when cases are expedited or ‘fast-tracked.’
- The longer a domestic violence case is pending in court the lower the probability the victim will remain cooperative.



DOMESTIC VIOLENCE PROSECUTIONS

- Accordingly domestic violence prosecutions and other abuse cases can be viewed in the following formula:

DV Evidence + Time \leq Offender Accountability



OTHER PROSECUTIONS

- Many other criminal prosecutions such as drug possession crimes, drunk driving, felons in possession of firearm cases do not follow the same equation and are not affected by time as directly and result in acceptable accountability levels.

Evidence + Time = Acceptable Accountability



VICTIM EXPERIENCE

- When offender accountability fully rests on the testimony of a victim at trial the prosecution creates an environment that is ripe for intimidation by transforming a witness into a target to eliminate accountability.
- 6th Amendment to the United States Constitution:
- *“Every defendant shall enjoy the right to confront witnesses against him in a court of law.”*



JUSTICE SYSTEM

- The right of confrontation requires the prosecution to produce witnesses in court following an often lengthy and time consuming discovery and pre-trial process.
- If the prosecution fails to produce a key witness and their testimony is not otherwise admissible at trial the prosecution is often dismissed.



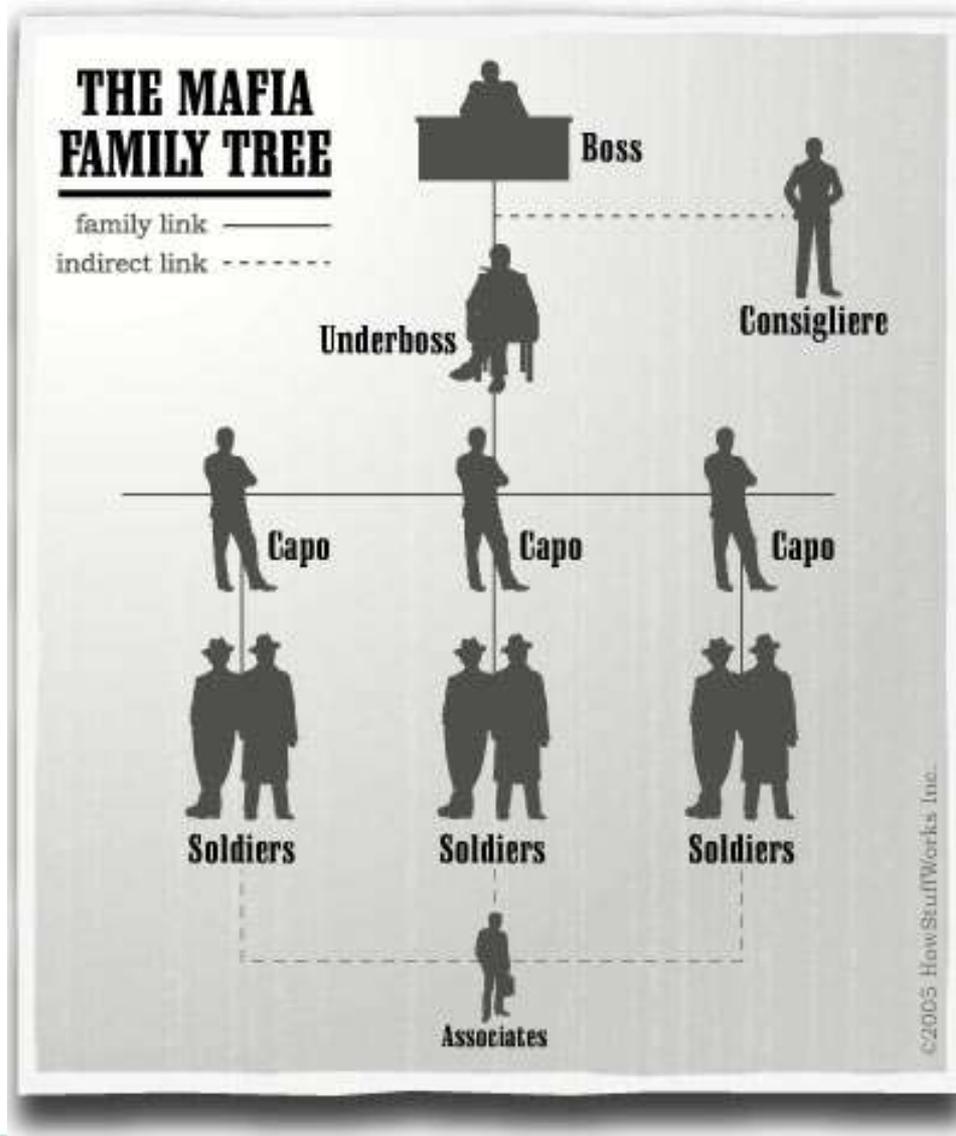
DISTRACTIONS

- Certain offenders have occupied public attention, distracting us from larger system wide problems of intimidation and from developing more comprehensive responses.
- While narrow responses to these specific offenders may be successful in isolated cases, they have proven to be incomplete and myopic responses for the justice system.











ORGANIZED CRIME

- Organized crime has occupied the public's attention as the crime category where witness intimidation occurs.
- Public perception often focuses on gangs, the 'mafia' and other crime syndicates as unique organizations that:
 - Coerce witnesses
 - Bribe witnesses
 - Blackmail witnesses
 - Threaten witnesses
 - Batter witnesses
 - Murder Witnesses



ORGANIZED CRIME

- When law enforcement attempts to address the underlying crime perpetrated by organized crime syndicates, tremendous resources are employed to protect evidence (the witness) in significant cases.



ORGANIZED APPROACH

- These “category” responses for specific offenders/crimes have provided limited accountability through:
 - Witness relocation program
 - Surveillance by law enforcement
 - Victim/witness education
 - Media attention
 - Legislative reforms: Racketeer Influence and Corrupt Organizations Act (RICO)



WITNESS RELOCATION

- Justice systems have attempted to isolate victims from intimidation through relocation
 - Expensive
 - Excessive impact on witnesses
 - Witnesses may still fail to testify
 - Resources can only apply to a limited number



ORGANIZED CRIME

- Organized crime has at times become so successful in thwarting the criminal justice system that law enforcement often turns to alternative investigations into other corresponding criminal behavior to deliver methods to hold these offenders accountable.



NESS APPROACH

- Organized crime is so successful in intimidating witnesses and victims they are often unable to be held accountable for their direct criminal enterprise.



Al Capone
Convicted: Tax Evasion



Special Agent Elliot Ness
Evidence Based Prosecution



HISTORIC PROBLEM

- Intimidation is as old as the right of confronting witnesses.
- Media has popularized the focus of witness intimidation onto gangs and organized crime and created misconceptions of how widespread the problem truly is.



REALITY

- All victims and witnesses are vulnerable to intimidation.
- Victims of domestic violence and other cases of abuse may be the most vulnerable.



VICTIMS EXPLAIN

- In 1999, prosecutors in Milwaukee WI conducted an informal study involving domestic violence victims subpoenaed for approximately 100 misdemeanor domestic violence prosecutions.
- Approximately 30% of the victims appeared in court to testify
- Victims explained to prosecutors why they were participating in the criminal justice system:
 - Safety – of self and/or children
 - Closure to abuse (justice)
 - Support offender (or recanting)
 - Respect for subpoena and justice system
 - Offenders ongoing behavior



OFFENDERS' ONGOING BEHAVIOR

- Victims complained to prosecutors that they received bombardments of:
 - Insincere apologies for the abuse
 - Repeated demands not to cooperate in the criminal prosecution
 - Repeated requests for them to lie under oath at trial or in an affidavit
 - Repeated inducements including bribes of money, property and other promises
 - Threats to injure



VICTIMS EXPLAIN

- These communications regularly came to victims in the form of:
 - Letters
 - Telephone calls from custody facilities
 - Voice mail messages
 - Email communications
 - Gifts, with promises and threats attached to them



OFFENDERS' ONGOING BEHAVIOR

- Victims complained to prosecutors that they received bombardments of:
 - Apologies (FULL CONFESSIONS)
 - Repeated demands not to cooperate in the criminal prosecution (INTIMIDATION)
 - Repeated requests for them to lie under oath at trial or in an affidavit (SOLICITATION TO COMMIT PERJURY)
 - Repeated inducements including bribes of money, property and other promises (BRIBERY/BLACKMAIL)
 - Threats to injure (THREAT TO A WITNESS)



VICTIMS EXPLAIN

- In 1999, prosecutors and other criminal justice partners in Milwaukee WI did not systematically educate victims of domestic abuse about evidence and how to:
 - Recognize it
 - Preserve it
 - Report it
- The results were devastating...



VICTIMS EXPLAIN

The evidence was being inadvertently
destroyed...

... by victims.



LESSONS LEARNED

- Systematic failures are present when allied criminal justice professionals fail to educate and empower victims of abuse to identify and preserve evidence and report intimidation.
- Victims destroy powerful evidence and do not report intimidation when they do not recognize its significance.



IMPACT OF NEGLECT

- Justice system rewards criminal behavior (i.e. intimidation) with complete dismissals of prosecutions.
- Victims in greatest need are placed at greatest risk.
- Victims lose faith in criminal justice systems.
- Batterer criminal justice experience teaches them the rewards of intimidation (dismissals of prosecutions) and how to become more effective in silencing victims.



NEW SOLUTIONS

- Can we systematically change our responses to effectively protect victims and improve criminal justice responses?

DV Evidence + Time \leq Accountability



NEW SOLUTIONS

- Can the response reverse the simplified equation and result in improved accountability over time?

DV Evidence + Time \geq Accountability



UNDERSTANDING OFFENDERS

- If victims' lack of understanding contributes to underreporting, will victim education work?
- Who is responsible for educating victims?
- Can a community systematically respond?



NEW APPROACH: R-P-R

- Provide training and resources for allied criminal justice professionals so that they teach victims how to RECOGNIZE, PRESERVE, and REPORT (RPR):
 - Recognize intimidation as a crime
 - Preserve intimidation evidence and
 - Report the intimidation



SYSTEM EDUCATION

- Training should include everyone that comes into contact with a domestic violence victim or witness:
 - Community Victim Advocates
 - Prosecutors and Law Enforcement
 - Health Care Professionals
 - Judiciary
 - Defense Attorney's
 - The public (Media: Television News; Radio; PSAs)



RESULTS

- Dramatic increases in confession evidence, to underlying criminal prosecutions.
- Increase in number of offenders accepting responsibility in court for underlying criminal behavior.
- Increase in the number of victims that participate in the criminal process.
- Lower victim vulnerability.
- Increased prosecution for all forms of abuse.



RIGHT OF CONFRONTATION

Can This Approach Impact Constitutional
Analysis and Evidence Based
Prosecution?

YES
(1666 – 2010)



EVIDENCE BASED PROSECUTION

- A coordinated community RPR response to intimidation significantly improves the ability to sustain evidence based prosecution practices.
- These evidence based prosecution practices enable the development of compelling cases and proceed to trial without a victim's testimony or when a victim is testifying as an 'uncooperative' witness.



UNITED STATES CONSTITUTION

- The 6th Amendment to the United States Constitution is part of the Bill of Rights which provides:

“In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him...”



ORIGINS

- The United States established the right of confrontation through the passage of the 6th Amendment which adopted the right of confrontation as it existed through the common law of England from the Magna Carta, written in 1214.



CONFRONTATION

- Despite the ancient history of this right of confronting witnesses, it wasn't until 1666, in the homicide trial of Lord Moreley, that England first addressed a fundamental question:

“Does the right to confront a witness still apply if the witness is absent because of the defendant’s own intentional conduct?”



FORFEITURE BY WRONGDOING

- *“The accused has a right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by his own wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away.”*

Lord Moreley’s Case, 6 St. Trls 770, (1666) Eng.



FOUNDATIONS

- This “forfeiture by wrongdoing” tenant has existed since 1666 and incorporated throughout US common law:
 - Reynolds v. United States, 98 U.S. 145 (1878)
 - Crawford v. Washington, 541 U.S. 36 (2004)
 - Giles v. California, 544 U.S. 128 U.S. 2678 (2008)



UNITED STATES CONSTITUTION

- *“The Constitution gives the accused the right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by his own wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away.”*
 - Reynolds v. United States, 98 U.S. 145 (1878)



UNITED STATES CONSTITUTION

- *“The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, his is in no condition to have asserted his constitutional rights have been violated.”*
 - Reynolds v. United States, 98 U.S. 145 (1878)



FEDERAL & STATE FORFEITURE

- There is wide use of forfeiture by wrongdoing:
“[a]ll federal and state courts that have addressed this issue, that we could find, have concluded that when a defendant procures a witness’s unavailability for trial with the purpose of preventing the witness from testifying, the defendant waives his rights under the confrontation clause to object to the admission of the absent witnesses hearsay statements.”
Devonshire v. US, 691 A2d 165 (DC App. 1997)



FORFEITURE & PUBLIC POLICY

- Fifth Circuit Court of Appeals:
“... to permit such a subversion of a criminal prosecution would be contrary to public policy, common sense, and the underlying purpose of the Confrontation Clause... and make a mockery of the system of justice that the right was designed to protect.”
U.S. v. Thevis, 665 F.2d 616 (5th Cir. 1982)



PURPOSE OF FORFEITURE

“The common-law forfeiture rule was aimed at removing the otherwise powerful incentive for defendants to intimidate, bribe, and kill the witnesses against them—in other words, it is grounded in ‘the ability of courts to protect the integrity of their proceedings.’ Davis, 547 U. S., at 834.”

Giles v. California, 544 U.S. 128 U.S. 2678 (2008)



FORFEITURE APPLICATION

- Common law “forfeiture by wrongdoing” is applied when a defendant engages in conduct designed to prevent the witness from testifying.
- Defendant forfeits the right to the confrontation clause objection when:
 - The witness is unavailable to testify due to the defendant’s wrongdoing.
 - The defendant intended to achieve that results.



WHAT IS “WRONGDOING?”

- Letters encouraging victim not to testify.
 - *State v. Hallum*, 606 NW2d 651 (Iowa 2000)
- Significant influence, including ‘influence and control’
 - *Steele v. Taylor*, 684 F2d 1193 (6th Cir. 1982)
- Knowledge, complicity, planning or in any other way.
 - *People v. Pappalardo*, 152 Misc 2d 364 (NY1991)
- Evidence of past relationship relevant, but may not be enough by itself.
 - *US v. Montague*, 421 F3d 1099 (10th Cir. 2005)



DOMESTIC VIOLENCE

Justice Scalia:

“Acts of domestic violence are often intended to dissuade the victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecution.”

See *Giles*, 128 S.Ct. at 2693.



DOMESTIC VIOLENCE

“Where such an abusive relationship culminates in murder, the evidence may support a finding that the crime expressed the intent to isolate the victim and to stop her from reporting abuse to the authorities or cooperating with a criminal prosecution rendering her prior statements admissible under the forfeiture doctrine.”

See *Giles*, 128 S.Ct. at 2693.



DOMESTIC VIOLENCE

“Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify.”

See Giles, 128 S.Ct. at 2693.



FORFEITURE HEARINGS

- Burden of Proof:
 - Preponderance of Evidence: FRE 104(b) But varies depending on the jurisdiction.
 - Clear and Convincing is the standard for other jurisdictions.
- Procedure: FRE 804(b)(6) and other state statutes.
- *United States v. Huddleson*, 485 U.S. 681 (1988).
- Equitable forfeiture jurisdictions.



FORFEITURE HEARINGS

- HEARSAY IS ADMISSIBLE
 - Evidence:
 - History of abuse
 - Prior charges filed and withdrawn
 - Testimony from bond hearing, prior cases
 - Evidence from police, former prosecutor, family, etc., about victim's fear of defendant and prior cases
 - Anything to show what he did to prevent / discourage her from testifying



FORFEITURE STRATEGIES

- Prosecutions for FORFEITURE CRIMES satisfy the preponderance burden:
 - Solicitation to commit perjury
 - Intimidation of witness
 - Bribery of a witness
 - Threat of a witness
 - Battery of a witness
 - Extortion
 - Etc.



ORGANIZED FORFEITURE

- Domestic violence offenders dismantle prosecutions in a methodical “organized” forfeiture.
- They are not unique offenders.
- They are predictable offenders.
- All categories of criminal defendants recognize the weaknesses of witnesses and exploit them.
- Domestic violence and other abuse victims are among the most vulnerable and exploited.



UNDERSTANDING INTIMIDATION

CAUTION!



CAUTION

- Victims are NOT investigators!
- Encouraging victims to obtain this information from their offenders places them at higher risk.
- Could violate the defendants' right to counsel by turning a victim into a police agent.



CAUTION

- Victims should be provided guidance when recognizing, preserving and reporting this behavior:
 - If the defendant calls immediately hang up and call police.
 - If the defendant calls back don't answer but save any messages he leaves you.
 - If he shows up in person, get to a safe place and call police.



BUILDING BLOCK REVIEW

Successful Intimidation

Defendants' Efforts to Manipulate
of Right to Confrontation

Delays

Police Neglect

Prosecution
Neglect

Court
Congestions



SYSTEM SOLUTIONS

- Ways to reduce intimidation:
 - Fast track domestic violence prosecutions.
 - Develop a coordinated community response to intimidation with law enforcement, advocates, and prosecutors.
 - Develop full CCR training and protocols.
 - Victim education and support.
 - Investigate and prosecute forfeiture crimes.
 - Evidence based prosecution practices.



IMPROVED BUILDING BLOCKS

Accountability

Forfeiture motions, forfeiture
crime prosecutions and evidence
based prosecutions

Fast Track
Prosecutions

Police & CCR
Responses

Prosecution
Responses

Contextual
Analysis



PRIOR VICTIM EXPERIENCE





NEW VICTIM EXPERIENCE

Offender
Manipulation

- Reported & Monitored
- Accountability

Community
Efforts

- Prosecution
- Safety Services & Advocacy



EVOLVING RESOURCES

- National Witness Protection Center, funded by US DOJ Bureau of Justice Assistance (BJA)
 - Training (Local, state and national level)
 - Technical Assistance for criminal justice professionals
 - Policy Review and Development
 - Tool Kits and publications
 - Website



WITNESS PROTECTION vs WITNESS SECURITY

- **Witness Protection:** Complete protection of the crime witness and coordinated community responses to reduce the prevalence of witness intimidation. Includes witness having access to restorative resources, safety services, intimidation education, civil order protections, accessible and responsive criminal justice practitioners and systems, evidence based prosecution practices, effective intimidation prosecution and other institutional responses witness safety and offender accountability.
- **Witness Security:** A component of witness protection, involving the physical security of the witness, family and possible third parties. Efforts to prevent intimidation and physical assault through safety and security evaluations, witness relocation (if available and qualifying), secure access to courts (courthouse, courtroom, vicinity) and access to competent and responsive safety and security professionals.



NWPC PILOT SITE INITIATIVE

- NWPC is funded to collaborate with three pilot sites representing different population and geographically diverse communities:
 - San Diego, California
 - Duluth, Minnesota
 - Knoxville, Tennessee



NATIONAL WITNESS PROTECTION CENTER (NWPC)

- The National Witness Protection Center (NWPC) is a resource to all criminal justice practitioners and allied professionals in all areas of crime including criminal gangs, violence against women, homicides and property crimes and is a project of AEquitas: The Prosecutors' Resource on Violence Against Women and the Pennsylvania Coalition Against Rape (PCAR).



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More Resources:
AEquitasResource.org



"Local Services, Global Reach"

Questions?

Please submit your questions via your question feature on your toolbar.

Save The Date

**2012 International Family Justice Center Conference
April 17-19 2012 in New Orleans, LA**



The three-day conference will include discussions on issues related to the handling of domestic violence, child abuse, sexual assault, and elder abuse cases in the context of the Family Justice Center model. The conference faculty includes nationally & internationally recognized subject matter experts, advocates, and survivors. During the conference participants will have the opportunity to meet with survivors and professionals who currently work in Family Justice Centers in the United States and internationally.





*Thank you for joining today's
presentation*

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Witness Intimidation
Webinar Q&A Session
June 23, 2011

Unanswered Questions:

Following the webinar Jeff Greipp was asked the following questions and his responses are included:

1. Would you consider violation of a criminal protective order sans direct intimidation evidence of indirect or an intent to intimidate?
“To properly answer this question, we need to determine the offender’s specific intent and context for the violation. Although the contact may have been an attempt to intimidate a victim, a court will require evidence of what was conveyed to the victim during the contact that lead the victim or others to this conclusion. If there was no communication a court will require evidence of what the contact alone was intended to do to the victim in the context of the violent abuse. It is important to have evidence of not only the intentional act, but evidence of what the defendant was attempting to intimidate the victim from disclosing. This evidence along with the full context of the history of abuse, may contain sufficient grounds to conclude that the contact is evidence of intimidation, criminal conduct and or forfeiture of the defendant’s right to confront that witness in court, should the witness become unavailable at trial as a result of the defendant’s intentional act. With a question about any specific case, AEquitas is a 24 hour technical assistance provider and can work directly with you to assess the individual circumstances of a violation.”
2. Child protective services are often called in by law enforcement and approach the victim with intimidation, threats, and take the children or threaten to do so. it is often this fear and charging of the victim with failure to protect that effects the majority of our victims to no longer call law enforcement and to refuse to cooperate.
“The disclosure of abuse may trigger numerous services, mandatory processes and other interventions in a persons life that a victim did not originally anticipate or wish to occur. It is very important that institutional responses to abuse foster greater disclosure, safety and stability in victims lives rather than hindering their ability to continue disclosing and or testify about their abuse in court. To constitute an act of forfeiture by wrongdoing, the victims unavailability must be the result of the defendant’s intentional act to achieve that result. Its also important to note that it is often not possible to prove beyond any reasonable doubt what is in the victims mind that is leading to their unavailability at trial. If the court has evidence that the defendant did certain acts intentionally to achieve this result the court may declare his right to confront that witness at trial whether the victims actual unavailability was the defendants intentional act alone or a combination of factors in association with the defendant’s intentional act. However, if the victims unavailability is not associated with an intentional act of intimidation by the defendant the court may not forfeit the defendants constitutional right of confrontation.”



Witness Intimidation
Webinar Q&A Session
June 23, 2011

3. How can we deal when the abuser plays the victim? Some abusers convince the community they are the victim.

“Bias against victims of abuse is often the poisoned fruit of community apathy is often born of ignorance. Many abusers may manipulate the community into developing certain bias against victims of domestic violence when communities do not have a greater appreciation or interest for the impact of abuse on victims, families, the criminal justice system and the community as a whole. This requires criminal practitioners to also serve as community advocates, to inform the public about the impact of abuse and how many victims need their support when attempting to leave abusive relationships. This was most apparent in this discussion when a local news station conducted several investigative reports on how abusers re-victimize their victims during the criminal justice system. Following the broadcast of each investigative report into witness intimidation the community experienced an increase in awareness, disclosure of intimidation crimes and developed an intolerance for this behavior in the criminal justice system. This intolerance and community enlightenment lead to the passage of numerous improvements in the State’s witness protection laws as well.”

4. What can we do to hold local law enforcement accountable for appropriately document a domestic violence case on the scene so that they are providing the DA with what they need to prosecute a case?

“Effective responses require law enforcement, prosecutors, advocates and other criminal justice professionals to routinely witness intimidation (intimidation recognition, evidence preservation and reporting) with all crime victims. Institutional responses can be developed through policy implementation, protocol reviews and training which the National Witness Protection Center is working to develop and implement in collaboration with each of its three pilot communities.”

5. How does Orders of Protection help in getting the victim into court on D.V.?

“Civil protection orders are among one of the most important resources for victims of abuse. It ensures that victims have access to protection whether there is a criminal case pending in court or not, enables victims to obtain the desired level of protection they need whether they are ready to disclose the abuse to a criminal court or not. Criminal protective orders also provide protection in ensuring that during the course of the prosecution the defendant is held accountable for attempting to contact the victim that is expected to testify at trial. Although the presence of a court order will not guarantee a victims ability to testify in court, greater resources and options for protection help. Moreover, many victims testifying in a prosecution will experience intimidation by the defendant while the case is pending in court. Protective orders ensure accountability when this occurs.”



Witness Intimidation
Webinar Q&A Session
June 23, 2011

6. Is there a jurisdiction that has an intimidation law that would be a good model for other jurisdictions?
“Many states have excellent intimidation statutes. For resources and examples of numerous statutes please feel free to contact me following this webinar. It is also important to consider that although many states have strong laws, there are different forms of intimidation and with each specific act of intimidation a different model statute may present itself as the most effective response.”
7. Do you have training material for officers regarding incorporating evidence of forfeiture of wrongdoing into their current investigations? *“As we mentioned, AEquitas and the National Witness Protection Center offers this training. If you are interested in this training or the development of materials for a specific jurisdiction you may find more information or contact us at www.AEquitasResource.org”*
8. In PFA and PFS if there is contact to bribe or threaten or intimidate should this result in charges being filed, its being reported here but nothing done. Any suggestions?
“Threats, intimidation, bribes to provide false information to law enforcement, prevent testimony or otherwise inhibit an individuals access to either the civil or criminal justice system is a crime in most states. NWPC and AEquitas can assist you in familiarizing yourself with which statutes may be relevant in these circumstances and how to improve the criminal justice response to these disclosures.”
9. Would expert testimony from someone who has worked with DV victims for a long period of time be helpful in a hearing in forfeiture by wrongdoing to make the connection between the prior history of abuse and the "subtle" points of intimidation (e.g., "I guess we're going to lose the house...") when the prosecution is trying to meet its burden?
“Experts that have significant experience in working with domestic violence victims are incredible resources for judges in making any number of conclusions about the evidence before them in a domestic violence case and can be helpful in forfeiture by wrongdoing hearings. Whether an expert witness will help in a specific case will largely depend on the evidence that is available to present to the court and the familiarity with how the court views expert witnesses. Courts will employ their judicial discretion in evaluating the evidence and many find expert witnesses helpful in these circumstances. If the evidence before the court shows clear intentional acts to dissuade the victim from testifying in court and a historical context of the abuse that supports that conclusion an expert witness may not be necessary.”
10. Isn't letters or phone calls from abusers considered privileged information under the marital communications rule of evidence?



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“This is an excellent question. Marital privilege is the state specific rule that provides all communications between spouses as privileged. However, this privilege requires that the only party to the conversation is each spouse. If a third party is present the communication privilege does not apply. In the context of phone calls placed from custody facilities, the party calling from custody and receiving the call from an individual in custody are routinely placed on notice that the calls are recorded and monitored prior to the conversation taking place. Accordingly this calls do not fall into that definition of privilege. Secondly, any marital communication in furtherance of a criminal act is similarly not privileged. When a defendant is soliciting a victim to commit a crime, or revictimizing the victim, such communications do not fit within the standard definitions of marital privilege. Furthermore, many custody facilities routinely warn inmates that any outgoing written correspondence is subject to monitoring and search. Accordingly, letters sent after such notices are received constitute consent in many jurisdictions that similarly are not protected by the privilege. It is very important to caution that no one, including law enforcement, should open US Mail without the express consent of the recipient. Opening US Mail without consent once it leaves a correctional institution may be prohibited by law and require a search warrant to open if the receiving party has not already opened it or consented to its opening. As a further caution because of the marital privilege and various privacy laws practitioners should become familiar with the laws of the state they work in to be sure that any work in this field furthers victim safety and offender accountability and to ensure that no one questions any decisions made that may invoke these laws.”

11. In small communities if family members of offenders intimidate victims can that be used against the offender?

“It is a crime in many states to commit certain forms of intimidation against a crime witness/victim. That is a crime whether it is committed by the defendant themselves or independently by a third party such as a family member. In order for an act of intimidation to be admissible at trial it must be both relevant and not unfairly prejudicial to the defendant. In many circumstances this will require evidence that the defendant intended that this occur or was knowledgeable about it occurring. If no connection to the defendant can be made, the intimidation may still be relevant to demonstrate to the court why a victim is recanting a statement to law enforcement or to explain some other evidence.”

12. I have recently worked with a Chinese DV victim. The perpetrator called victim's family members in China to intimidate them. Prosecutor's office thinks it is hard to prove such international threat. What would be the proper way to pursue this? Exert pressure by writing to the prosecutor to bring it to the light of the court?

“Intimidation is becoming increasingly complex with advances in technology that may present offenders greater access to victims or their families. It is important to know that under the laws of personal and subject matter jurisdiction defendants may be guilty of the crime of intimidation in



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many states whether the defendant intimidated the victim directly in the state or did so by threatening a third party either outside of the county, state or country. These cases are very challenging to prove in court however this does not undermine the importance of working with victims to disclose their awareness of these acts of intimidation nor the systems need to fully exhaust investigative resources in responding to these disclosures. For technical assistance in reviewing any specific form of intimidation our contact information is contained in this webinar and available to you at any time."