

Building Attention to Witness Intimidation into Your Domestic Violence Policy

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Duluth, Minnesota, is known for its power and control conceptualization of the dynamics of battering (the power and control wheel), and also for the Duluth Model—a collaborative structure of domestic violence victim advocates and criminal justice practitioners that began in 1981 with the U.S.'s first domestic abuse intervention project.¹ Since then, Duluth has also committed itself to self-evaluation and problem solving. In the 1990s and early 2000s, Duluth and St. Louis County, Minnesota, conducted safety audits of law enforcement and probation responses to violence against women and implemented recommendations for change that improved victim safety and held offenders accountable.² In 2011, the Department of Justice's Office on Violence Against Women selected Duluth as one of three demonstration sites for creating a Blueprint for Safety, a comprehensive plan integrating knowledge, research, demonstration projects and practice into a "blueprint" for city and county agencies responding to domestic violence.³ Duluth is now creating one collective policy, encompassing each agency in the justice system, to (a) maximize state control over violent offenders; (b) intervene quickly when there are new acts of violence, intimidation, or coercion; and (c) shift the burden of holding offenders accountable for violence or abuse from victims to the system.

Also in 2011, after attending training on recognizing and responding to witness intimidation, Duluth criminal justice agencies partnered with AEquitas and the Battered Women's Justice Project to use the safety audit process to determine where and how witness intimidation arises in the justice process, and how successful the system was in providing safety to victims and witnesses.⁴ A local team composed of representatives of service providers and justice system partners, including two supervisors from the

Defining the Problem

Victims are sometimes reluctant to report incidents to police or help prosecute offenders. Such reluctance may be in response to perceived or actual threats of retaliation by the offender or his or her associates, or may result from community norms that discourage residents from cooperating with police and prosecutors. In some communities, close ties between witnesses, offenders, and their families and friends may also deter witnesses from cooperating. These relationships can provide context for understanding witness intimidation. Witness intimidation is closely associated with organized crime and domestic violence.* In a study about whether they would use the criminal justice system again, 19 percent of the 178 domestic violence victims interviewed told interviewers they'd been harmed again by their assailants after the arrest but before the case closed, suggesting a deliberate ploy by many defendants to deter victims from cooperating with prosecution.†

A victim may also recant initial reports to police or refuse prosecution efforts as a result of the perpetrator's appeals for sympathy through descriptions of suffering from mental and physical problems, intolerable jail conditions, and life without the victim. The intention to recant or refuse prosecution efforts can be further solidified by the perpetrator's minimization of the abuse and invoking images of life without each other.‡ Duluth Police Department sergeants had similar examples of cases in which in-custody domestic violence defendants used economic and emotional pressure on victims during phone calls in hopes of dissuading them from interaction with prosecutors. Some tactics included refusing to pay bills, threatening to let the marital home go into foreclosure, blaming the victim for a loss of reputation or employment, professing love for the victim, and promising to quit drinking.

Notes:

* For more information, see Kelly Dedel, *Witness Intimidation*, Problem-Oriented Guides for Police: Problem-Specific Guide Series, no. 42, United States Department of Justice's Community Oriented Policing Services, July 2006, www.cops.usdoj.gov/Publications/e07063407.pdf (accessed November 5, 2014).

† Ruth E. Fleury-Steiner et al., "Contextual Factors Impacting Battered Women's Intentions to Reuse the Criminal Legal System," *Journal of Community Psychology* 34, no. 3 (2006): 327-342.

‡ Amy E. Bonomi et al., "Meet Me at the Hill where We Used to Park," *Social Science & Medicine* 73, no. 7 (2011): 1054-1061.

Duluth Police Department, observed 9-1-1 call takers and dispatchers, court proceedings, court hallway activity, and offender groups; conducted focus groups with vic-

tims; interviewed criminal justice practitioners; reviewed prosecution files; and reviewed historical reports compiled by the domestic violence response team.⁵ Team



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▶ Learning from File Reviews and Victim Focus Groups

Duluth Police Chief Gordon Ramsay visited the audit team's first file review session and told team members that, in his experience, offenders perpetrating witness intimidation often do so to retaliate against witnesses for reporting the offender's conduct to police. He asked one of his staff members to create and conduct a word search of all Duluth police reports filed in the last two and a half years that would identify reports where a victim, witness, or police officer mentioned retaliation or concerns about retaliation. The search produced nearly 800 police reports. Team members then found an example of this in one of the next files they reviewed, which noted that by the time officers arrived, the victim did not want to get the offender in trouble and appeared afraid of him getting arrested and then retaliating against her. Victim focus group participants also expressed fear of retaliation and reported retaliation for past reports to police via property damage, pet abuse, stalking, and false reports of victim wrongdoing to police or child protection authorities.

▶ Trial Delay—A Window of Opportunity for Intimidators

The most dangerous time for a victim or witness is between arrest and trial. According to the National Institute of Justice, "[T]rial delays experienced in most jurisdictions allow ample opportunity for intimidation."^{*}

Duluth Police Department sergeants felt that delays in violence against women cases contradicted victims' expectations of the criminal justice process as they see it on television, specifically in relation to the ease of access to technology and science to analyze evidence. Delays can also result in the original investigator being moved to a new assignment and a new investigator assigned to the case—another off-putting development to victims. This can not only impact the progress of investigations, but can also, as one victim reported, make victims feel as though police do not care. Sergeants noted the longer a defendant can delay a case, the less likely he or she will be held accountable. They gave the example of courts routinely granting continuances to defendants, which appears to a victim as though the justice system is expecting a victim to wait endlessly for the defendant's timetable. Several victim focus group participants mentioned the commonality of delays and how they provided additional opportunity for the perpetrators to stalk and harass.

Note:

^{*} For more information, see Kerry Murphy Healey, "Victim and Witness Intimidation: New Developments and Emerging Responses," *Research in Action*, National Institute of Justice (October 1995), 5, www.ncjrs.gov/pdffiles/witintim.pdf (accessed November 5, 2014).

members debriefed their findings at team meetings and identified the following four gaps in witness safety and offender accountability: (1) offenders intimidated witnesses at points in the justice system where their role as a witness was recognized or exposed; (2) information that could have increased witness safety or offender accountability wasn't shared between agencies, between responders, or between responders and witnesses; (3) offenders intimidated witnesses at points of delay in processing cases; and (4) offenders took advantage of their close proximity to victims and witnesses in the courthouse to intimidate them.

While Duluth's concurrent Blueprint for Safety policy work incorporated attention to witness intimidation, the policy didn't offer guidance for police officers and other responders on identifying, documenting, or responding to it. Therefore, to address the gaps in witness safety uncovered during the audit, the local team recommended creating practice guides and training to aid in identifying, documenting, investigating, and prosecuting witness intimidation. Practice guides and training would also guide responders in educating, assessing danger, and safety planning with victims about the potential for witness intimidation. Prior to the conclusion of the audit, the Duluth Police Department had already taken a step in this direction by including a question about intimidation as part of responding officers' domestic violence risk assessment protocol. Team members reviewed 30 misdemeanor domestic violence cases and saw how helpful the risk assessment question about intimidation was in gathering the history of intimidation and assessing risk, but also saw that it was not necessarily geared toward developing evidence for charging the offender with an intimidation crime. No follow-up questions were suggested for officers to ask if victims gave a positive answer



to the question about witness intimidation. Additional information that could support charges of witness tampering would be helpful to prosecutors, who may then be able to use a forfeiture-by-wrongdoing prosecution strategy if an intimidated victim does not appear for trial. Forfeiture by wrongdoing is an exception to a defendant's right to confront witnesses against him. If a defendant causes a witness to be unavailable for trial through his wrongful acts with the intention of preventing that witness from testifying, then the introduction of the absent witness's prior statements is not barred by the U.S. Constitution.

The team also recommended educating victims about witness intimidation. At the time of the audit, there were no policies or procedures for if or how police officers and other responders should address witness intimidation with victims and witnesses. Victim focus group participants hadn't heard of witness intimidation and said no one in the criminal justice system—officers, advocates, prosecutors, judges, probation officers, attorneys—had ever mentioned the possibility of being intimidated, explained what witness intimidation was, or gave instructions on what to do about it. One victim summed this up well by pointing out that she had always received information about the legal implications of not obeying a subpoena, but never received any information about how victims may be pressured to disobey a subpoena, nor was it explained that such pressure may be a crime. Several victims and victim advocates expressed surprise that this sort of pressure, often in the form of post-arrest phone calls from jail, is common in research and, in the United States, in actuality. They were of the opinion that if victims of just-arrested abusers were made aware of the likelihood of these phone calls and of their manipulative purpose, these victims would be better prepared to deal with the calls and less likely to be susceptible to intimidation. They suggested that since local police officers were engaged in this audit of the response to witness intimidation and were now learning about how intimidation occurs in the community, that this information on witness intimidation be incorporated into victim support group sessions, especially when new participants join the group. Information to educate victims on witness intimidation could be communicated via the group facilitator's commentary, an invited speaker such as a law enforcement investigator, or a printed handout.

Finally, team members recommended taking advantage of Duluth's existing coordinated community response (CCR) structure to address systemic problems such as delays or gaps in information sharing that provide windows of opportunity for offenders to intimidate victims into dropping out of the criminal justice process.

Domestic Assault Arrest/Incident Risk Questions

1. Do you think he or she would seriously injure or kill you or your children?
2. Does he or she have access to guns?
3. Have you ever been forced to perform sexual acts under threat of violence?
4. How frequently and seriously does he or she intimidate, threaten, or assault you?
5. Can you describe the most frightening event or worst incident of violence involving him or her?

What Is Learned from Asking about Intimidation?

Witness or victim intimidation "may involve tactics including physical violence, explicit or implicit threats of physical violence, property damage, and courtroom intimidation"; and, in domestic violence cases, may also include economic threats and threats concerning child custody and deportation.*

Offenders may confront witnesses verbally, damage the property or homes of witnesses; park or loiter outside witnesses' homes or places of employment; send notes and letters or make nuisance calls; threaten or assault witnesses' children, spouses, parents, or other family members; or murder witnesses or their family.†

Similarly, Duluth team members reviewing misdemeanor domestic violence files found that victims' responses to police officers' risk questions indicated offenders intimidated victims by sending notes, making phone calls, name-calling, yelling, breaking things, threats, and assaults.

Notes:

* For more information, see Kerry Murphy Healey, "Victim and Witness Intimidation: New Developments and Emerging Responses," Research in Action, National Institute of Justice (October 1995), <https://www.ncjrs.gov/pdffiles/witintim.pdf> (accessed November 5, 2014).

† For more information, see Kelly Dedel, *Witness Intimidation*, Problem-Oriented Guides for Police: Problem-Specific Guide Series, no. 42, United States Department of Justice's Community Oriented Policing Services, July 2006, <http://www.cops.usdoj.gov/Publications/e07063407.pdf> (accessed November 5, 2014).

Team members identified a number of points at which attention to witness intimidation and related system problems could be “plugged in” to existing relationships between the police department and other agencies, such as the following:

- Duluth Police Department’s weekly CompStat meetings, as well as print and online media (such as the department’s Facebook page), could be used to prioritize and publicize the location of offenders who fail to appear for court (audit team members reported some delays in domestic violence cases were caused by defendants who didn’t show up for court).⁶
- Existing interagency meetings on Blueprint for Safety policy work could be used to address intimidation opportunities such as delay, as well as offender accountability issues such as dismissed or reduced charges that may have been caused by witness intimidation.
- Existing relationships with non-domestic violence organizations such as the local sexual assault advocacy program and the local animal shelter could be used to address newly identified (by the audit) kinds of intimidation, such as offenders coercing victims into unwanted sexual activity or offenders’ threats to harm victims’ pets.

With 2014 being the endpoint of Duluth’s Blueprint for Safety policy work, the Duluth Police Department and other criminal justice agencies in Duluth will be fine-tuning where and how to build in practice guides on identifying, documenting, and responding to witness intimidation. Agencies and audit team members have collected investigative questions about witness intimidation that could compose such a guide. Victim advocates welcomed knowledge about witness intimidation from local law enforcement and collected witness intimidation fact sheets and brochures from other criminal justice agencies, and have begun to incorporate this information into support group sessions with victims.⁷ But most importantly, Duluth Police Department supervisors reported that simply involving them in this audit of the local response to witness intimidation put the problem of witness intimidation on officers’ radar. Before the audit had even been completed, supervisors reported receiving requests for training on witness intimidation and examples of police reports where officers had begun to ask victims more investigative questions about witness intimidation. Involvement in the investigation of a problem and in the creation of a solution paved the way to department-wide interest, investment, and commitment to improving policy. ❖

Chief Gordon Ramsay was appointed Duluth police chief in 2006. He is currently the president of the Minnesota Chiefs of Police Association and immediate past chair of the Mid-Size Agencies Section of the IACP.

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Notes:

¹Over several months in 1984, Duluth’s Domestic Abuse Intervention Project asked women in educational groups for women who had been battered to describe the specific behaviors of the men who battered them. The tactics chosen for the Power and Control Wheel were those that were most universally experienced by battered women; Domestic Abuse Intervention Programs, Home of the Duluth Model, 2011, <http://www.theduluthmodel.org/training/wheels/html> (accessed November 5, 2014).

²The Safety Audit is a tool used by interdisciplinary groups and domestic violence advocacy organizations to examine how the work of criminal justice professionals is organized to further common goals of enhancing safety and ensuring accountability when intervening in cases involving intimate partner violence. For more information, see Praxis International, “Institutional Analysis/Community Assessment,” http://praxisinternational.org/praxis_institutional_analysis_community_assessment_home.aspx (accessed November 5, 2014).

³For more information, see Praxis International, “Blueprint for Safety,” http://www.praxisinternational.org/praxis_blue_print_for_safety.aspx (accessed November 5, 2014).

⁴AEquitas: The Prosecutors’ Resource on Violence against Women is a national resource center supporting prosecutors and allied professionals in the prosecution of violence against women, see www.aequitasresource.org; The Battered Women’s Justice Project is a national resource center offering training, technical assistance, and consultation on promising practices of the justice system in addressing domestic violence, see www.bwjp.org/bwjp_home.aspx.

⁵The Duluth Police Department inputs information from domestic violence reports into a local Domestic Abuse Information Network (DAIN), a database program designed for use by domestic abuse agencies. DAIN assembles information necessary to track and monitor domestic assault cases in a

coordinated community response to domestic violence. It can evaluate demographic data, number and types of arrests, case processing time, case dispositions, and re-offenses—as well as analyzing police, court, and offender program records and more. DAIN also can produce reports showing trends in the system and can help determine policy or procedural changes that might need to be made.

⁶Duluth Police Department’s use of CompStat has already played a role in targeting property and traffic crime offenders and reducing property and traffic crime. For more information, see Gordon Ramsay, “What Are We Doing,” *Chief’s Blog*, August 2, 2012 (<http://squadone.blogspot.com/2012/08/what-are-we-doing.html>); and “Shaken, Not Stirred: Duluth Police Department Takes Charge in Combating Speeding and Impaired Driving Crashes,” *Official Blog of the International Association of Chiefs of Police*, July 31, 2013, <http://theiacpblog.org/2013/07/31/shaken-not-stirred-duluth-police-department-takes-charge-in-combating-speeding-and-impaired-driving-crashes> (accessed November 5, 2014); the Duluth Police Department’s Facebook page is viewed extensively and is one of the 10 most “liked” pages in the United States among police departments of similar size, “Eh? Duluth Cops Are Popular Online,” *Duluth News Tribune*, August 3, 2013, <http://www.duluthnews.tribune.com/content/eh-duluths-cops-are-popular-online> (accessed November 6, 2014).

⁷Several criminal justice agencies have published printable fact sheets or brochures about witness intimidation for domestic violence victims online. See, e.g., Missouri Office of Prosecution Services, *It Helps to Know the Law on Victim and Witness Tampering*, <http://mops.mo.gov/pdf/Witness%20Tampering%20Brochure%20Missouri%20Edits%20for%20printing.pdf> (accessed November 5, 2014), or Denver City Attorney’s Office, *What May Happen While Your Case Is Pending*, <http://www.denvergov.org/LinkClick.aspx?fileticket=85dZaXXSLuc%3d&tabid=444900&mid=514775> (accessed November 5, 2014).

IACP provides the Domestic Violence Model Policy to the law enforcement community without charge at www.theiacp.org/portals/0/pdfs/DomesticViolencePolicy0606.pdf. For more information and resources, please visit the Police Response to Violence Against Women page (www.theiacp.org/Police-Response-to-Violence-Against-Women#Domestic_Violence).