

IDENTIFYING AND PROSECUTING WITNESS TAMPERING

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AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

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WHAT IS WITNESS TAMPERING?

May also be referred to as witness intimidation, witness coercion, or witness dissuasion.

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Urban criminal justice system professionals said more victims were intimidated in domestic violence cases each year than in gang or drug crime.

K. Healey, "Victim and Witness Intimidation," *Research in Action*, National Institute of Justice, October 1995, <https://www.ncjrs.gov/pdffiles/witintim.pdf>

Domestic violence victims appear at elevated risk for retaliation, especially when living with or economically dependent on the offender, or in contact with the offender because of shared parenting.

Buzawa & Buzawa, 1996

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Witness intimidation is most associated with organized crime and domestic violence.

Kelly Dedel, Witness Intimidation, Office of Community Oriented Policing Services, 2006, <http://www.cops.usdoj.gov/files/ric/Publications/e07063407.pdf>

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Intimidation may involve tactics including physical violence, explicit or implicit threats of physical violence, property damage, and courtroom intimidation;

And in domestic violence cases, also economic threats, and threats concerning child custody and deportation.

K. Healey, "Victim and Witness Intimidation," *Research in Action*, National Institute of Justice, October 1995, <https://www.ncjrs.gov/pdffiles/witintim.pdf>

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OFFENDERS MAY

- Confront witnesses verbally
- Send notes and letters, or make nuisance calls
- Park or loiter outside the homes of witnesses
- Damage witnesses' houses or property
- Threaten witnesses' children, spouses, parents, or other family members
- Assault or murder witnesses or their family.

Kelly Dedel, Witness Intimidation, Office of Community Oriented Policing Services, July 2006, accessed December 22, 2011, <http://www.cops.usdoj.gov/files/ric/Publications/e07063407.pdf>

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Most explicit acts of intimidation take place where police exert little control: at the witness's home, school or work; or while the witness is running errands or socializing.

Fyfe & McKay, 2000

But witnesses also report being intimidated at the crime scene, while at the police station making a statement and while in the courthouse waiting to testify. Some report being intimidated while on the witness stand.

Kelly Dedel, Witness Intimidation, Office of Community Oriented Policing Services, July 2006, accessed December 22, 2011, <http://www.cops.usdoj.gov/files/ric/Publications/e07063407.pdf>

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FACTORS THAT INCREASE CHANCES OF WITNESS TAMPERING

1. The violent nature of the initial crime
2. Previous personal connection to defendant
3. Geographic proximity to the defendant
4. Cultural vulnerability – i.e., membership in easily victimized group, such as the elderly, children, or recent or illegal immigrants.

K. Healey, "Victim and Witness Intimidation," Research in Action, National Institute of Justice, October 1995, <https://www.ncjrs.gov/pdffiles/witintim.pdf>

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Children and females may be at greater risk of intimidation than adults and males

Elliott, 1998

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THE MOST DANGEROUS TIME

- Most dangerous time for a victim or witness is between arrest and trial. Trial delays experienced in most jurisdictions allow ample opportunity for intimidation.
- Second most dangerous period for victims and witnesses is during the trial itself.

K. Healey, "Victim and Witness Intimidation," Research in Action, National Institute of Justice, October 1995, <https://www.ncjrs.gov/pdffiles/wilintim.pdf>

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PERVASIVENESS

36% of witnesses in criminal courts in Bronx County, New York revealed being directly threatened; of those who hadn't, 57% feared reprisals

Community-oriented Policing Services, Witness Intimidation, 2006

Milwaukee County Assistant District Attorney Dedinsky: "80-90% of the time when we were able to locate phone calls, we'd find criminal behavior." Charges ranged from bribery to intimidation.

Vera Institute of Justice, Prosecuting Witness Tampering from Behind Bars, 2006

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EMOTIONAL APPEALS

After listening to 3 hours of jails calls each for 17 men in custody on DV charges who called their victims, researchers observed:

“Perpetrators are not threatening the victim, but are using more sophisticated emotional appeals designed to minimize their actions and gain the sympathy of the victim.”

A. Bonomi, R. Gangamma, C. Locke, H. Kafafiasz & D. Martin, “Meet Me at the Hill Where We Used to Park,” Social Science & Medicine, 73:1054-1061, 2011

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IN THE EXAMPLES DISCUSSED SO FAR, WHAT CRIMES WERE COMMITTED?

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PROBLEM

“Only unsuccessful intimidation ever came to the attention of police or prosecutors.”

K. Healey, “Victim and Witness Intimidation,” Research in Action, National Institute of Justice, October 1995, page 2, <https://www.ncjrs.gov/pdffiles/witintim.pdf>

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PROBLEM

- If offender accountability rests on victim testimony, the environment is ripe for intimidation; the victim is also a target.
- 6th Amendment: “Every defendant shall enjoy the right to confront witnesses against him. . . .”
- If the prosecution fails to produce a key witness whose testimony is not otherwise admissible at trial, the prosecution is often dismissed.

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PROBLEM

- Unfortunately, the person most likely to have evidence of intimidation, bribery, subornation of perjury, etc. (i.e., the victim) has been the least informed on recognizing it as evidence and reporting it.
- Subsequently, many victims put aside or throw away evidence of intimidation.

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PROBLEM

Media focus on witness intimidation in gang cases has set the stage for lack of awareness in violence against women cases

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PROBLEM

- ◉Witness protection or relocation programs used to isolate crime witnesses from intimidation are:
- Expensive
 - Only used for a limited number of victims and witnesses
 - Not a guarantee victims or witnesses will testify
 - Life-changing for victims and witnesses

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PROBLEM

“These gaps in our communities’ responses are places that victims fall through and offenders crawl through.”

Excerpt from a role play on the realities of the justice system, created by Graham Barnes for the National Training Project of Domestic Abuse Intervention Programs, Duluth, MN

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WHAT CONDUCT IS BEING CHARGED AS WITNESS TAMPERING?

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CONDUCT

- Following probation agent (MD, 2012)
- Disabling witness's car (IN, 2011)
- Convincing witness to sign affidavit of gun ownership (LA, 2011)
- Using civil suit to coerce victim (MI, 2010)
- Blocking victim's car (NM, 2010)
- Making embarrassing photos of victim (WA, 2012)
- Killing witness's livestock (MI, 2010)

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CONDUCT

- Making throat-slitting motion to witness (FL, 2010)
- Accepting bribe to help man make false confession (NJ, 2010)
- Volume of calls (212) itself was witness-tampering (MO, 2010)
- Having 3rd party deliver notes to witness telling witness what to say (PA, 2010)

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CONDUCT

- Offering cash and hotel room to witness (FL, 2010)
- Offering child custody and payment of fines to witness (PA, 2010)
- Offering crack to 3rd party to deliver note to witness (MD, 2010)
- Passing note to witness in courtroom (PA, 2010)

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PROMISING PRACTICES

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DOCUMENTATION

- Police officers in Duluth, MN ask victims if they've been intimidated, as part of their domestic violence response protocol:
- "How frequently and seriously does he intimidate, threaten or assault you?"
 - "She said intimidation occurs daily, mostly with notes. When her husband is intoxicated, his phone calls to her are continuous. Threats don't occur, though her husband threatens to leave. As far as assaults, they hadn't occurred in a long time. He was arrested for DV and had an OFP against him in the '90's, which alleviated the assaults for a while."

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DETECTION

"Knox County Detention Facility's phone system will require voice recognition beginning January 2012. Inmates will be required to create a voice record when they are booked in that will then be used by the phone system to verify the identity of the inmate making the call. Inmates will no longer be able to avoid having their calls monitored by switching PIN numbers, as the need for PINs will be eliminated."

R. Martinson & M. Belgum-Gabbert, Improving the Justice System Response to Witness Intimidation: Pilot Project Report, Knoxville, Tennessee, AEQUITAS, 2012, page 82.

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TAKING AWAY THE TOOLS

“In an effort to cut down on contraband and witness intimidation, the Yakima County jail will require all inmate mail to be written on postcards.”

Ross Courtney, "Yakima Jail Bans Envelopes in Mail," Yakima Herald, October 5, 2010, <http://www.yakima-herald.com/stories/2010/10/05/jail-mail-inmates-to-be-limited-to-postcards>

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PROTECTION

[In cases where intimidation is suspected or likely, such as gang cases] “Witnesses’ addresses and other identifying information should be redacted before . . . discovery items are turned over to the defense. Some states’ laws prohibit a defense attorney from giving witness information to anyone other than a defense investigator. It is good practice to get a court order prohibiting the defense attorney from disclosing witness identification information.”

J. Anderson, "Gang-related Witness Intimidation," National Gang Center Bulletin, 2007, page 5

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DETERRENCE

- See, e.g., Thomas Finneran and Todd Feinburg, “Check-in Requirement Could Curb Witness Intimidation,” BostonHerald.com, October 4, 2010.
- See, e.g., Kimball Perry, “Judges Consider Banning Cell Phones in Court,” Cincinnati.com, July 4, 2010, <http://news.cincinnati.com/article/20100704/NEWS010702/7050304/Judges-consider-banning-cell-phones-court>

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MESSAGE

Prohibition against witness intimidation a condition of protective order

"L.A. Carwash Workers Win Major Victory to End Worker Abuse," L.A. Union, August 17, 2011, <http://launionafcio.org/fullstory/?id=1376>

Announcement of witness intimidation arrests on law enforcement websites; description of witness intimidation and safety resources on prosecutor websites

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MONITORING

◉In instances where the defendant uses gang members, friends, etc. to intimidate his victim:

- Probation condition prohibiting gang-member probationers from attending court proceedings unless they are participants in an action or are subpoenaed by one of the parties.
- To increase supervision for persons with suspected gang associations, Tennessee Probation & Parole and Nashville PD are piloting the use of GPS to monitor these individuals and see whether it impacts their associations.

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CALL TO ACTION

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**CALL ATTENTION TO INTIMIDATION
IN HIGH RISK/HOMICIDE WORK**

“I am chairperson of the County DV Fatality Review and we have identified intimidation as a risk factor”

AEquitas technical assistance request

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**CALL ATTENTION TO INTIMIDATION
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“ . . . 45% of IP [intimate partner] homicide assailants were previously charged with a violent crime. Of those charged with a previous violent crime, all were charged with assault. In addition to assault, 62% of these assailants were also previously charged with other crimes: attempted murder, armed robbery, manslaughter, kidnapping, breaking and entering, malicious destruction of property, threatening, and intimidation.”

Massachusetts Intimate Partner Homicide Review 2005-2007

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“[T]here were 33 domestic violence homicide incidents Aspects include [that] when perpetrators had a record of arrest on domestic abuse-related charges, such as battering, restraining order or harassment order violations, or intimidating a victim, such charges were often dismissed or reduced to disorderly conduct, thereby avoiding the firearms prohibition.”

Wisconsin Domestic Violence Homicide Report 2008

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**CALL ATTENTION TO INTIMIDATION
IN HIGH RISK/HOMICIDE WORK**

“The Committee has conducted lethality assessments based on information available in 38 cases Property damage with the intent to intimidate or control [was present in] 12”

Montgomery County Domestic Violence Homicide Review Committee 2009

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