

Domestic Violence Victim
Intimidation:
Understanding and Overcoming
the Impact on the Criminal Justice
System

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Presenters

- **Honorable Judge Douglas Miles (Ret.),
Colorado Springs, Colorado**

In memory of:

- **Executive Director, Jeff Greipp, National
Witness Protection Center**

[1][2] Punishing the Protectors: The Illinois Domestic Violence Act Remedy for Victims of Domestic Violence Against Police Misconduct
Kathryn E. Luchman, Loyola University Law School Law Review 2008

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Goals

- **Recognize the prevalence of intimidation in
domestic violence cases.**
- **Understand the impact of intimidation on
the victim, the persecution and the courts**
- **Identify methods of capturing acts of victim
intimidation.**
- **Identify methods of addressing and
counteracting acts of victim intimidation.**

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The Prevalence Of Intimidation In DV Cases and the Effects

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Question

■ In domestic violence prosecutions, what is the approximate percentage of victims that you believe appear at trial to testify truthfully?

- ◆ A 100%
- ◆ B 75% - 100%
- ◆ C 50% - 75%
- ◆ D 25% - 50%
- ◆ E Less than 25%

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Participation

■ Justice systems experience less participation by victims of domestic abuse in court than any other category of crime. Why is this a common court experience?

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Victim Dynamics

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

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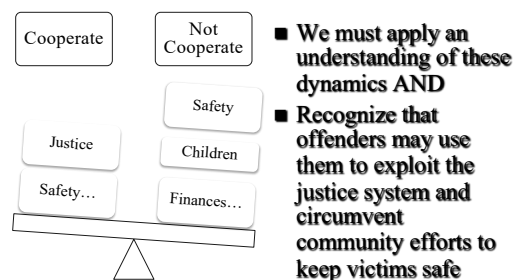
A COMPLEX DECISION

- Continued abuse
- Lack of confidence in the 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

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Complex Decision



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Offender Typology

- Domestic violence offender research has identified and classified offender characteristics.
- Classifications vary according to the definition of domestic violence utilized.
- Offender typology research generally identifies a distinction between coercive control violence and other forms of violence.

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Offender Typology

- Is it coercive control or something else?
- Coercive control is a pattern of ongoing emotional, verbal, psychological and physical abuse. The essence of these types of abuse is to coerce—manipulate—with the singular focus to dominate and have control over an intimate partner

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Offender Typology

- Something else:
 - ◆ Reactive/Responsive Violence
 - ◆ Situational Violence
 - ◆ Pathological Violence
 - ◆ Antisocial Violence

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Offender Typology and Intimidation

- The probability of victim intimidation is highest in coercive control domestic violence cases, but
- Victim intimidation and manipulation may occur in all typologies

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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

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Offender efforts

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

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Power and Control

The power and control does not end with arrest; it typically continues and increases throughout the prosecution.



1984, Domestic Abuse Intervention Project, Duluth, Minnesota

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Rule

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

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Scope of the Problem

- Victim intimidation is a unique crime.
- Intimidation is typically only reported by a victim if it is unsuccessful. (*NIJ Anderson 2007*)
 - ◆ Successful intimidation results in the silencing of a crime victim or witness.
- This dynamic results in intimidation being among the most underreported crimes.
- It can extend beyond the crime witness and affect their families, friends and co-workers.

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Scope of the problem

- **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.

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Research and Literature

- **Criminal justice system professionals said more victims were intimidated in DV cases each year than in gang or drug crime (National Institute of Justice, *Victim & Witness Intimidation*, 1995).**
- **Domestic violence victims appear at elevated risk for retaliation, especially when living with the offender, economically dependent on the offender, or in contact with the offender because of shared parenting (Buzawa & Buzawa, 1996).**

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Research and Literature

- **Intimidation may involve tactics including physical violence, explicit or implicit threats of physical violence, property damage, and courtroom intimidation**
- **In domestic violence cases, also economic threats, and threats concerning child custody and deportation (NIJ, *Victim & Witness Intimidation*, 1995)**

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Conditions for Intimidation

- **Constitutional right of confrontation protects accused but can be used 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**

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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**

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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 others.**

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DV Prosecutions

- Prosecutors generally 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 and contributes to lower rates of offender accountability.

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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 explained to prosecutors why they were participating in CJS
 - ◆ Safety – of self and/or children
 - ◆ Closure to abuse (justice)
 - ◆ Support offender (or recanting)
 - ◆ Respect for subpoena and system
 - ◆ Offenders ongoing behavior

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Offenders’ Ongoing Behavior

- Victims also complained to prosecutors that they received bombardments of:
 - ◆ Insincere apologies
 - ◆ Repeated demands not to cooperate in 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

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Victims Explain

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

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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 and
 - ◆ Report it
- The results were devastating...

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Victims Explain

This evidence was being inadvertently destroyed...
...by victims

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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**

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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 system**
- **Offender's experiences teach them to be more sophisticated intimidators**

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Impact On The Courts

- **The prevalence of intimidation in domestic violence cases affects every point of judicial decision making in the criminal process:**
 - ◆ **Initial Appearance**
 - ◆ **Bail Assessments**
 - ◆ **Motion Practice**
 - ◆ **Trial**
 - ◆ **Post-Conviction Supervision**

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Judicial Decision Making And The Affects Of Intimidation In Domestic Violence Cases

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Judicial Ethics

- **Balancing**
 - ◆ **Procedural Integrity**
 - ◆ **Judicial Impatality**

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Judicial Decision Making

- **How can intimidation affect judicial decision making?**
 - ◆ **Victim requests for modifications of no contact orders**
 - ◆ **Victim recanting statements**
 - ◆ **Victim requests for prosecution dismissals**
 - ◆ **Victims that appear before the court as defendants for being coerced into committing crimes by their abusers**
 - ◆ **Victims that fail to appear in court in response to a subpoena or other non-compliance with court orders**

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Judicial Discretion

- Appreciating the risk to domestic violence victims enables the court to:
 - ◆ Better fashion orders of no contact, pre-trial conditions of release and sentencing conditions
 - ◆ Question attorneys and witnesses for victim contact
 - ◆ Properly assess arguments and evidence argued by counsel

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Legal Processes to Address Intimidation

- Lethality Assessments
- Protection Order violation response
 - ◆ Bond forfeiture
 - ◆ Criminal Charges
 - ◆ Arrest
- Forfeiture by Wrongdoing
- Ceawford hearings

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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

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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

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Summary

- Educate victims about intimidation
- Frequent contact with victims during pendency of the case
- Use lethality assessments to identify risk
- Use legal process to prosecute without victim participation
 - ◆ Crawford hearings
 - ◆ Forfeiture by wrongdoing
- Respond to protection order violations
- Provide secure and safe access to the courthouse

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Questions and Discussion

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