

FROM THE DIRECTOR

In this issue of our newsletter, Rhonda Martinson provides an in-depth explanation of the role of witness intimidation in domestic violence cases. In a review of 67 fatality review team reports published over a nine-year period, she identifies instances where teams identified or described witness intimidation. Martinson also shares perspectives from professionals in the field about the relationship between witness intimidation and risk in an effort to highlight why teams should explore this significant issue in reviews.

Martinson consults on coordinating and assessing criminal justice responses to domestic violence, trains on domestic violence response, investigation and prosecution, and writes articles, reports, and training materials about criminal justice responses to domestic violence. She managed AEquitas' special initiative *Improving the Justice System Response to Witness Intimidation*, a federally funded project to develop, evaluate, and refine justice system responses to witness intimidation.

Sincerely,



Neil Websdale, PhD

Program Updates

NDVFRI serves as the national training and technical assistance provider for domestic violence fatality review teams across the country.

In 2015, staff and consultants provided training in thirteen states:

- Arkansas
- Arizona
- Colorado
- Florida
- Iowa
- Illinois
- Kentucky
- Massachusetts
- Michigan
- Montana
- Oklahoma
- South Carolina
- Tennessee

NDVFRI also hosted two webinars on fatality review.

- What Happens Before an Intimate Partner Homicide?
- More than a Vision: Native American Fatality Review

Please visit ndvfri.org to view recordings of these sessions. Sign up for our newsletter to receive information about future events.

“We Need Information on Witness Intimidation - Our DV Fatality Review Identified It as a Risk Factor”

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Introduction

The title of this article is an excerpt of an email I received in 2012 while managing the *Initiative on Improving the Justice System Response to Witness Intimidation*.¹ Since then, I continued to research, write,² and train³ criminal justice professionals on witness intimidation in domestic violence cases. That email – from the chair of a domestic violence fatality review team - prompted me to include in my research the review of many domestic violence fatality review reports.

What is Witness Intimidation?

State statutes around the country criminalize threatening, intimidating, coercing, or dissuading a witness from giving testimony in any official proceeding. These laws also criminalize preventing witnesses from calling 911, inducing witnesses to testify falsely, and retaliating against witnesses after they have testified.

Crime victims are sometimes reluctant to report incidents to police or help prosecute offenders. Such reluctance may be in response to perceived⁴ or actual threats⁵ 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.⁶ In some communities, close ties⁷ between victims, witnesses, offenders, and their families and friends may also deter victims/witnesses from cooperating. Relationships among victims/witnesses and offenders can provide context

for understanding witness intimidation, as witness intimidation is closely associated with two types of crime that depend on relationships - gang crime and intimate partner violence.⁸

As early as 1984, a community-based domestic violence program conceptualized the dynamics of intimate partner violence as a Power and Control Wheel by asking women who had been battered to describe the specific behaviors of the men who battered them, and then depicting on the Wheel those most universally experienced by battered women,⁹ including “using coercion and threats,” “making her drop charges,” and “using intimidation.” A domestic violence 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.¹⁰

Victim reluctance to report or aid prosecution may be in response to perceived or actual threats to retaliation by the offender or his or her associates, or may result from community norms.

Why Should Witness Intimidation Be a Concern in Domestic Violence Fatality Reviews?

In a series of structured interviews about victim and witness intimidation with criminal justice professionals, prosecutors observed that when offenders discover intimidation enables them to avoid conviction and incarceration, intimidation attempts increase and become more violent. Prosecutors and law enforcement investigators that were interviewed agreed that the most dangerous time for victims for these intimidation attempts and increased violence was the time between the arrest and trial of the offender. Trial delays experienced in most jurisdictions allow ample opportunity for defendants to intimidate victims of and witnesses to their crimes from participating in the prosecution process.¹¹ Additionally, 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 had in fact been harmed again by their assailants after the arrest but before the case closed. The researchers noted that this type of contact may have constituted the crime of witness tampering, which wasn't often prosecuted; that one in five victims being assaulted again before their case closed suggested a deliberate ploy by many defendants to deter victims from cooperating with prosecution; and that when the perpetrator gets away with these acts, it sends a powerful message not only to the perpetrator but also to the victim about the level of protection the criminal legal system is prepared to offer. It was not surprising, then, to the researchers that victims they interviewed that experienced additional abuse before the initial court case closed were less likely to use the criminal legal system if abuse continued.¹²

Some of the factors increasing the likelihood that victims or witnesses will be intimidated are the violent nature of the initial crime and the defendant's access to the victim or witness,¹³ both of which are often present in domestic violence that ends in homicide. Unfortunately, we often don't see or hear about domestic violence perpetrators' intimidation of their victims from those victims calling for help or participating in prosecutions or other legal processes. Witness intimidation is the one crime in which only **unsuccessful** attempts are ever reported or discovered.¹⁴ When the crime of intimidating domestic violence victims and witnesses is successful, victims and witnesses don't call 911, don't go to court, and don't use services; the domestic violence in their lives stays hidden.

If the goals of reviewing domestic violence fatalities are to prevent domestic violence and domestic homicide, provide safety for battered women and their children, hold accountable both perpetrators and the agencies that come into contact with the parties, and enhance a community's coordinated response,¹⁵ it would be extremely important and valuable during reviews to inquire into any perpetration of witness intimidation past or present, as intimidation is the very epitome of cutting off a victim's access to help, safety, and justice. Inquiring

into the perpetration of witness intimidation while reviewing a victim's homicide could expose gaps in the community's coordinated response to violence against women and highlight points of intervention that could benefit from policy-making, resources, or training.

Looking for Witness Intimidation in Domestic Violence Fatality Review Reports

National Domestic Violence Fatality Review Initiative (NDVFRI) staff reviewed 59 domestic violence fatality review reports published between January 2012 and May 2015 from 43 jurisdictions (19 state teams and 24 county or city teams)¹⁶ for documentation of witness intimidation, tampering, coercion, dissuasion, or threatening. I reviewed an additional 8 reports selected randomly from publication times before (2006 – 2011), during, and after (December 2015) the January 2012 to May 2015 time period. These additional 8 reports were from 8 jurisdictions (5 state teams and 3 county or city teams). While teams in most of these 67 reports appeared to regularly document some demographics such as age, gender, and race, and the presence of some risk factors such as presence of firearms, recent separation of the parties, or the parties' substance abuse, none of the teams appeared to regularly inquire into or document the occurrence of witness intimidation, tampering, coercion, dissuasion, or threats. However, three teams sought out and documented – in each of their reviewed cases - the existence of intimidation crime¹⁷ or intimidating conduct¹⁸ generally. One team documented perpetrators' prior criminal history, including witness intimidation.¹⁹

Additionally, in team discussions about themes in recent domestic violence cases generally (not necessarily the homicide cases under review), one team reported that investigators listening to jail recorded phone calls between the defendants and victims in domestic violence cases heard defendants attempting to influence the victim's anticipated testimony, and threatening the victim into changing her story or not appearing in court at all, and used those calls as the basis for charging the defendant with witness intimidation.²⁰ Another team identified

that documentation of history, context, risk, and danger of domestic violence needs to be more consistently thorough, as this links to identifying self-defense or predominant aggression. Consultants working with this team identified cases in which victims were hesitant to involve law enforcement for fear of being arrested. Consultants also noted gaps in communication between agencies that diminish chances of successful prosecution, and failure to thoroughly document victim intimidation. This team noted lack of information at pretrial inhibits the ability of judges to account for victim safety in establishing release conditions, and that engagement of victims remains inadequate in many cases due to failure to locate and make personal connections with victims.²¹

I then re-reviewed each of these 67 reports for descriptions of victim experiences or perpetrator conduct that may not have been specifically *identified* as witness intimidation, tampering, coercion, dissuasion, or threats, but that may have *in effect* described perpetrator conduct intended to or having the effect of preventing a victim from calling for help or testifying in court, or conduct intended to retaliate against a victim after he or she called for help or testified in court. I found a number of such descriptions. Some were articulated in the form of team discussions or insights about themes in several cases being reviewed, or in recent serious domestic violence cases that did not result in homicide. For example:

- The use of technology by offenders to control, coerce, and stalk victims was present in all cases reviewed. Manners in which use of technology impacts abusive relationships include harassment (sending unwanted text messages), stalking (tracking software that can be discretely downloaded onto the victim’s phone without his/her knowledge) and coercing a victim into talking to the offender (using caller-ID spoofing to alter how the offender’s phone number appears on the victim’s phone so that the victim thinks

Understanding permanency, public availability and potential impact of information placed online is critical to victim safety.

someone else is calling). Social media is also a factor in abusive relationships. Individuals may innocently report information online that can be used to harm them (e.g., location) or, with or without intention, anger an abusive person. Understanding permanency, public availability and potential impact of information placed

online is critical to victim safety. Advances in technology have left criminal justice systems scrambling to keep up as they work to investigate technology-assisted crimes. Regular and consistent training on this ever-changing issue will be an important component of offender accountability.²²

- Offenders manipulate victims into believing law enforcement officers do not support the victim’s version of events. If the offender has personal knowledge or friendship with a law enforcement officer, the victim may be at even greater risk of manipulation. Further, infrequent court dates and continuances place victims at increased risk for abuse by defendants. Lack of regular court dates for criminal cases delays accountability for the defendant.²³
- The team repeatedly observed instances in which an offender commits a new domestic violence offense while awaiting trial on another.²⁴

Other descriptions were of conduct by a particular perpetrator of a homicide under review by the team. For example:

- While the victim was on the phone with 911, the perpetrator shot her multiple times, killing her.²⁵
- Prior to being killed, the victim told the perpetrator she wanted to turn him in to authorities for using her credit cards.²⁶
- Just after the victim called police, police received a 911 call about the killings of the victim and her brother by the perpetrator.²⁷
- The perpetrator has previous convictions for damage to property, disorderly conduct and

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interfering with a 911 call involving other victims.²⁸

- After shooting a man to death in the presence of his ex-girlfriend, the perpetrator left the scene with his ex-girlfriend and his current girlfriend. The ex-girlfriend was later found murdered. The perpetrator of the first shooting and his current girlfriend are charged with killing his ex-girlfriend after the initial shooting.²⁹
- A 73-year old committed several murders before ending his own life. The gunman, the petitioner in the divorce from his ex-wife, went on a multi-jurisdictional killing spree, shooting five victims. All were connected to his divorce - ex-wife, ex-wife's attorney, and ex-wife's friends who assisted or took her side during and after the divorce. The shootings were systematically planned as the gunman knew the working times and habits of all victims. Five people died, including the gunman, and one was seriously wounded. One year prior to the divorce being final, there were allegations of physical abuse from both parties. An order of protection was issued against the gunman.³⁰
- The last time the victim left the perpetrator, the perpetrator threatened to testify against her at the upcoming custody hearing about one of her children from another relationship. The perpetrator told the victim that he would not testify if she reconciled with him. The victim never made it to the hearing, which was scheduled for the day after she was killed.³¹
- The perpetrator continued to contact the victim while on release for an assault charge. The victim believed any cooperation with law enforcement put her and her family at risk. She had seen the perpetrator's behavior escalate after his arrest. He had put a gun to his head and threatened suicide in front of her, only agreeing to put the gun down when she assured him she would not call police. At one point the perpetrator

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managed to stay hidden in the home while law enforcement officers attempted to elicit the victim's cooperation. Through instilling fear, the perpetrator gained control over the entire family and made their interactions with law enforcement appear uncooperative. In the month before her death, the perpetrator assaulted the victim and she obtained a temporary relief from abuse order. On the day of her final hearing, she came to court. The perpetrator did not appear, but was waiting outside the courthouse for her to make sure she did not go forward with the order. She called a family member to report she had not gone through with the final order because this would have made the perpetrator angry. He was on conditions of release from the criminal case that included no contact with her and no weapons.³²

- The perpetrator dragged the victim behind a building. She escaped and ran to a gas station to call 911. Her friend went behind the gas station to see if he was still there and was attacked by the perpetrator. The responding officer did not make an arrest because the perpetrator was no longer at the scene and he did not write a report. Later that day, the victim called 911 again because the abuser was in their hotel room. The same officer responded and required the victim and her friend to sign the warrants. The perpetrator was arrested; while in the back of the officer's car, he told the victim, "When I get out of jail, I am going to kill you." She applied for a temporary protection order while he was in jail. A week later, the perpetrator went before the judge; his bond was initially set for \$3,500 for battery against the victim's friend and \$2,500 for battery against the victim. The judge modified the bond to \$5,000 for which the perpetrator was permitted release on his own signature without actually paying bond. He was ordered to stay away from the victim's friend and have no violent contact with the victim. Within two hours of his release, he ambushed the victim and her friend while they

were walking home. He stabbed her in the stomach with a screwdriver and twice in her head, leaving the weapon embedded above her eyebrow. She was five months pregnant with their child and, while in a coma, gave birth to her son through cesarean section 100 days later. Two months later, still in a coma, she succumbed to her injuries and died as a result of the stabbing.³³

- The victim filed for divorce and a temporary protection order. The ex parte TPO was granted. The presiding judge listened to a voicemail in which her husband told her she should take him seriously and “stop playing games because women have gotten killed or hurt.” A week later, the TPO was dismissed by the judge at the second hearing for the petitioner’s failure to prove her allegations by a preponderance of the evidence. Two months later, on the same date as a child support hearing was to be held, her husband kidnapped her and forced her to drive away. When she attempted to flee from the car at a busy intersection, he gunned her down.³⁴

Even if not specifically identified as witness intimidation, tampering, coercion, or threats, it’s clear that a number of teams reviewed cases where prior to or during the homicide, the perpetrator did something that appeared to have the impact of preventing the victim from calling for help or go to court, or of retaliating against the victim for calling for help or going to court in the past.³⁵ Any actions or history of actions of this sort that the perpetrator took is information of potential value in improving investigation and prosecution of domestic violence. Federal and state case law has indicated that when it can be shown by a preponderance of evidence that a defendant caused a witness’s unavailability to testify, the defendant may have forfeited his or her right to confront that witness. This determination of “forfeiture by wrongdoing” means that a prosecutor could, for example, call as a witness a law enforcement officer to testify to what the witness said, instead of being stopped from prosecuting because of an unavailable witness whose unavailability was caused by the defendant.

Courts have said that what would be highly relevant or helpful in making a determination of forfeiture by wrongdoing is a showing by a prosecutor of past acts or a history of isolating the victim, stopping her from reporting abuse, cooperating with a criminal prosecution, abuse or threats of abuse intended to dissuade the victim from seeking outside help,³⁶ and so on.

And even though in most of the 67 reports, teams **did not** regularly inquire into or document witness intimidation, their findings and recommendations were indicative of frustrations, policy changes, and training issues similar to those identified by individuals who **did** inquire into and document witness intimidation. I am referring to team members in the three cities that participated in the initiative to investigate witness intimidation that I managed over three years. Those similarities of policy and training issues are:

- Being a better and more proactive monitor of points of systemic intervention where witness intimidation of domestic violence victims was taking place (jail phone calls, courtrooms³⁷ and court hallways, etc.)
- Creating policy³⁸ and protocols that address these points where intimidation takes place, and conducting regular staff training on these policies and protocols as well as the issue of domestic violence and witness intimidation itself
- Keeping law enforcement and prosecution up-to-speed on strategies for investigation and prosecution of witness intimidation crimes, as well as continued prosecution of the underlying domestic violence case when witness intimidation has been successful at securing the victim’s recantation or absence from court
- Working with advocates and others in regular, direct contact with domestic victims on specialized or heightened safety planning that may be necessary when witness intimidation is likely or has already taken place.³⁹

Thoughts and Suggestions from Professionals in the Field

Team members and other professionals in the field with whom I have discussed⁴⁰ the connection between witness intimidation and danger posed by domestic violence offenders to their victims have expressed that on the one hand, if witness intimidation is part and parcel of domestic violence dynamics, shouldn't we assume it is likely to be present in any given case and if so, what is the value of investing the time in looking for it and documenting it regularly? On the other hand, **how** and **where** in the criminal justice response to domestic violence the intimidation is taking place would affect the team's understanding of how local agencies and organizations do and don't work together, identification of specific systemic problems, and articulation of specific recommendations to address them.

Several team members observed that not everyone on their team or in their local criminal justice system has the same definition of witness intimidation or tampering, nor the appropriate way to investigate it. For example, if witness intimidation is often hidden, how would a fatality review team obtain accurate information about it after the victim's death? Would it be appropriate, for another example, to accept anecdotal information about conduct that was perceived as intimidating by the victim's family members and friends? What if such anecdotes revealed circumstances where a victim did not participate in a previous domestic violence prosecution but it is not clear whether an act by the defendant simply had that impact or whether the defendant **intended** his or her act to have that impact? These team members said if teams were to be encouraged to inquire into and document the existence of witness intimidation in cases under review, it would be important to have available an agreed-upon definition, a checklist that could guide the review of documents for intimidating conducts and accurate documentation of information about perpetrator intent or victim impact, sample

How and where in the criminal justice response to domestic violence the intimidation is taking place would affect understanding of how agencies do and don't work together, identification of specific systemic problems, and articulation of specific recommendations to address them.

questions to ask of the victim's family members and friends, and guidance or training on interviewing victims' family and friends.

To the latter point, the team members said many of their fellow team members feel uncertain of interviewing generally, let alone on a new area of inquiry such as witness intimidation: not knowing who to interview, when to interview, or where to interview; discomfort with talking to someone whose loved one was murdered in your community; not being a good note-taker or reporter of interviews; fearing one is going to hear and not know what to do with information that is potentially negative about a particular service provider or service agency; etc. These are some of the individual feelings and experiences that can make fatality review team members anxious about the prospect of interviewing a victim's family members or friends. It would be important to provide guidance or training on interviews generally, such as *Expanding the Forensic Narrative: Engaging Surviving Family Members in the DV Fatality Review Process*.⁴¹

The teams in the three cities that participated in the initiative to investigate witness intimidation that I managed attended mini-trainings on witness intimidation before engaging in any investigative activities. Team members came to a common understanding of how witness intimidation was defined and worked with me to create note taking tip sheets specific to witness intimidation for observations, interviews, and file reviews they were going to conduct.

Other team members said that to keep team members on the same page and not overwhelm them with too many new things to look for, it could be helpful to prioritize or designate particular cases in which to look for witness intimidation, instead of expecting teams to look for it in all cases. One team member gave the example of looking for witness intimidation in cases where the perpetrator had a prior record of felony-level domestic violence that

wasn't successfully prosecuted, as an indicator that a search for witness intimidation was more likely to be a fruitful and informative one for the team and for the eventual audience of the team's report. Another team member suggested treating the inquiry into witness intimidation as a sort of pilot project that would be done with a particular case or small group of cases, after which the team could then debrief and decide whether the inquiry produced valuable information so that it should be incorporated in future reviews.

Conclusion

Some of the goals of reviewing domestic violence fatalities are to prevent domestic violence and domestic homicide and provide safety for battered women and their children. As stated earlier, it would be extremely important and valuable during reviews to inquire into any perpetration of witness intimidation past or present, as successful witness intimidation is the very epitome of cutting off a victim's access to help, safety, and justice.

Team members and other professionals in the field pointed out that today, there are many types of evaluations, reports, assessments, reviews, and "report cards" of criminal justice agencies and organizations that serve victims. While they may agree in principal with recommendations in domestic violence fatality review reports, audiences for these reports have their attention drawn all too quickly to the next report of a local problem of importance, unless there is specific, well-articulated detail on **how** and **where** systemic problems and offender manipulation of the system is taking place. Inquiring into the perpetration of witness intimidation while reviewing a victim's homicide could not only expose gaps in the community's coordinated response to violence against women but also identify policy, resources, and training (**how**) that are needed at particular points of intervention (**where**). Teams and community members reading fatality review reports will then have detailed information and guidance to go beyond a list of findings and recommendations to then visualize **how** criminal justice agencies can actually implement recommendations⁴² and **where** to prioritize agency time and resources in doing so.

References

1 The Initiative on Improving the Justice System Response to Witness Intimidation (IWI) was funded September 2010 to September 2013 by the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, and housed at AEquitas: The Prosecutors' Resource on Violence against Women, a national resource center supporting prosecutors and allied professionals in the prosecution of violence against women. IWI's mission was to improve justice for and safety of domestic violence victims and witnesses by developing, evaluating, and refining justice system practices that raised community awareness and increased victim safety and offender accountability for witness intimidation. Three pilot sites were selected for the project: Duluth, Minnesota; Knoxville, Tennessee; and San Diego, California. These communities agreed to investigate the occurrence of and response to witness intimidation in their communities via activities such as file reviews; individual interviews and focus groups of criminal justice practitioners and victims; and observations of 911 call-taking and dispatching, court appearances and hearings, jail visitation and phone recording, and batterers' group meetings. Each site then produced findings in relation to witness intimidation and witness safety, identified systemic gaps in providing witness safety and offender accountability, and made recommendations addressing those gaps.

IWI also developed, cataloged, and maintained resources for justice system professionals on investigating and prosecuting intimidation crimes and criminal cases affected by intimidation.

2 See, e.g., Ramsay, G., & Martinson, R. (2014). Building Attention to Witness Intimidation into Your Domestic Violence Policy. *The Police Chief*, (81)12, 34-37.

3 E.g., Martinson, R. (2015). Reducing Victim Intimidation and Retaliation: Developing Multi-agency Policies and Practices. Presentation at the Battered Women's Justice Project's conference Broadening Your Multi-Agency Response to Domestic Violence and Sexual Assault: Increasing Access to Justice in Denver, CO.

4 Threats that the general public may not perceive as threatening but that the victim may, within the context of the situation,

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understand as threats are gestures (pretending to shoot a gun or slash one's throat), prolonged stares, standing in close proximity to the victim, loitering near or driving by the victim's residence, flooding the victim's phone with calls or text messages, making references to knowledge about the victim's loved ones, etc.

5 Of 109 witnesses intimidated in felony criminal prosecutions, 64% were intimidated in face-to-face verbal confrontations, 23% by phone threats, 17% by property stolen, damaged, or destroyed, 7% by physical attacks, and 6% by display of a weapon. Connick, E., & Davis, R. (1983). Examining the Problem of Witness Intimidation. *Judicature* (66)10, 442. Intimidation tactics may also include courtroom intimidation, and in domestic violence cases, economic threats, and threats concerning deportation or child custody. Healey, K. (1995). Victim and Witness Intimidation: New Developments and Emerging Responses. National Institute of Justice Research in Action (NCJ 156555), p. 4.

6 See criminal justice literature and news articles about the "No snitches" or "Snitches get stitches" ethic in many communities.

E.g., Whitman, J. & Davis, R. (2007). Snitches Get Stitches. A report published by the National Center for Victims of Crime.

E.g., Zagier, A. (2012). Street Campaigns against Snitches Move Online as Witness Intimidation Vexes Law Enforcement. *The Republic*, a division of Home News Enterprises (April).

7 In recent years, these ties can be forged and exploited not only physically but also via text messages, social media, and so on. See, e.g., Chuck, E. (2013). Witness Intimidation on Social Media: Law Enforcement's Growing Challenge. *NBCNews.com* (November). Additionally, cyberstalking and e-harassment may be more intense than in-person harassment, as the impact is more devastating due to the 24/7 nature of online communication, inability to escape to a safe place, and global access of the information. Carli, E. (2011). Electronic Harassment and Cyberstalking: Intervention, Prevention, and Public Policy. A presentation at the American Psychological Association's 119th Annual Convention in Washington, DC.

8 Dedel, K. (2006). Witness Intimidation. *The Problem-specific Guides for Police* (Guide No. 42).

9 Domestic Abuse Intervention Programs (2011). What is the Duluth Model? <http://theduluthmodel.org/about/faqs.html#wheels>.

10 Bonomi, A., Gangamma, R., Locke, C., Katafiasz, H. & Martin, D. (2011). Meet Me at the Hill Where We Used to Park. *Social Science & Medicine*, (73)7, 1054-1061.

11 Healey, K. (1995). Victim and Witness Intimidation: New Developments and Emerging Responses. National Institute of Justice Research in Action, (NCJ 156555), p. 5.

This Research in Action is based on structured interviews with 32 criminal justice professionals from 20 urban jurisdictions, including prosecutors; victim services directors; federal, state, and local law enforcement officers; judges; and scholars. Also included are the insights offered by a working group of 20 criminal justice professionals, to exchange information on emerging responses to the problem of victim and witness intimidation.

12 Fleury-Steiner, R., Bybee, D., Sullivan, C., Belknap, J., & Melton, H. (2006). Contextual Factors Impacting Battered Women's Intentions to Reuse the Criminal Legal System. *Journal of Community Psychology*, (34)3, 335.

13 Four factors increase chances victims or witnesses will be intimidated: the violent nature of the initial crime, previous personal connection to defendant, geographic proximity to the defendant, and membership in an easily victimized group, such as the elderly, children, or recent or illegal immigrants. Healey, K. (1995). Victim and Witness Intimidation: New Developments and Emerging Responses. National Institute of Justice Research in Action (NCJ 156555), pp. 1-2.

14 Testimony submitted to the American Bar Association Criminal Justice Section's Victims Committee during special hearings on witness intimidation (1979).

15 National Domestic Violence Fatality Review Initiative (2015). Why Conduct a Fatality Review? <http://www.ndvfri.org/faqs.php>

16 The total of reports is more than the total of jurisdictions because some jurisdictions publish yearly and some do not; so that within the stated time period there may be two or three reports from the same jurisdiction, published during different years about different homicides.

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17 A review of 47 domestic violence homicides in Massachusetts that took place 2005-2007 indicated that approximately 45% of the perpetrators were previously charged with assault. Of this 45%, 62% were also charged with other crimes such as attempted murder, armed robbery, manslaughter, kidnapping, breaking and entering, malicious destruction of property, threatening and intimidation. Astion, M. & O'Brien, K. (2009). Massachusetts Intimate Partner Homicide Review: An Overview of District Attorney Cases Between 2005 and 2007, (June), 15.

Some states, such as Massachusetts, have a crime of witness intimidation, and also have a crime of intimidation: "whoever commits an assault or a battery upon a person or damages the real or personal property of a person with the intent to intimidate such person because of such person's race, color, religion, national origin, sexual orientation, gender identity, or disability" M.G.L. Ch. 265 §39(a)

In the citation at the beginning of this footnote, the report doesn't indicate whether "intimidation" refers to witness intimidation, intimidation, or both kinds of intimidation crimes.

18 A review of 23 domestic violence homicides that occurred in San Diego County, California 2003-2006 indicated intensifying threats and intimidation or emotional abuse were present in 62.5% of the cases. Domestic Violence Fatality Review Team (2006). Domestic Violence Fatality Review Team County of San Diego 2006 Report, p. 11.

A review of 38 domestic violence homicides in Montgomery County, Ohio that took place 1995-2008 indicated 12 of 38 perpetrators damaged property in an attempt to intimidate or control their victims. Montgomery County Domestic Violence Death Review Committee (2009). Montgomery County Domestic Violence Death Review Committee Report, (No. 6), p. 3.

In these citations, the reports don't indicate whether intimidation refers to intimidating victims from getting help or going to court, intimidating victims into doing or not doing something the perpetrator wanted, or both.

19 "[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 Coalition against Domestic Violence (2008). Wisconsin Domestic Violence Homicide Report 2008, p. 2.

20 The Baltimore City Domestic Violence Fatality Review Team (2014). The Baltimore City Domestic Violence Fatality Review Team 2014 Recommendations, p. 3.

Regarding suspects incarcerated after arrest, Milwaukee County, Wisconsin Assistant District Attorney Paul Dedinsky reported, "80-90 % of the time when able to locate jail phone calls, we'd find criminal behavior." Charges ranged from bribery to witness intimidation. Vera Institute of Justice (2006). Prosecuting Witness Tampering, Bail-jumping, and Battering from Behind Bars, p. 3.

21 Coconino County Domestic Violence Fatality Review Team (2012). Coconino County Domestic Violence Fatality Review Team Annual Report 2012 Submitted to Arizona Attorney General, p. 11.

22 Connecticut Coalition against Domestic Violence (2013). Upon Further Examination: 2013 Findings & Recommendations Connecticut Domestic Violence Fatality Review Committee, p. 8.

23 Maine Domestic Abuse Homicide Review Panel (2012). Working Together to End Domestic Violence Homicide in Maine: Report of the Maine Domestic Abuse Homicide Review Panel, (Report No. 9), pp. 27, 19.

24 New Mexico Intimate Partner Violence Death Review Team (2012). New Mexico Intimate Partner Violence Death Review Team Annual Report 2012, p. 23.

25 The Duval County Domestic Violence Fatality Review Team, a Subcommittee of the Domestic Violence Intervention Project (2013). Domestic Violence Fatality Review 2013 Report: An Examination of Domestic Violence Homicides in Duval County, Florida, p. 53.

26 Minnesota Coalition for Battered Women (2013). 2013 Annual Femicide Report, p. 21.

27 Minnesota Coalition for Battered Women (2013). 2013 Annual Femicide Report, p. 21.

28 Minnesota Coalition for Battered Women (2013). 2013 Annual Femicide Report, p. 25.

29 Minnesota Coalition for Battered Women (2013). 2013 Annual Femicide Report, p. 26.

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30 Yuma County Domestic Violence Review Team (2012). Yuma County Domestic Violence Review Team 2012 Report Submitted to the Arizona Attorney General, p. 5.

31 The Georgia Commission on Domestic Violence, and the Georgia Coalition against Domestic Violence (2012). The 2012 Georgia Domestic Violence Fatality Review Annual Report, p. 29.

32 State of Vermont Domestic Violence Fatality Review Commission (2015). State of Vermont Domestic Violence Fatality Review Commission Report 2015, pp. 12, 15.

33 The Georgia Commission on Domestic Violence, and the Georgia Coalition against Domestic Violence (2013). The 2013 Georgia Domestic Violence Fatality Review Annual Report, pp. 37-38.

34 The Georgia Commission on Domestic Violence, and the Georgia Coalition against Domestic Violence (2013). The 2013 Georgia Domestic Violence Fatality Review Annual Report, p. 42.

35 It will be important to remember that some members of domestic violence fatality review teams are working directly with offenders regularly – batterers’ group facilitators, probation officers, substance abuse counselors – and have training and experience with different kinds of batterers, which impacts the kinds of assessments one does for offender programming and probation conditions. There has been a great deal of research and literature produced on domestic violence perpetrator profiles and typologies. See, e.g.:

Jacobsen, N. & Gottman, J. (1998). When Men Batter Women – articulating two types of men who batter women – pit bulls and cobras. After studying over 200 couples they found batterers they eventually called pit bulls became physiologically aroused as their anger intensified, but those labeled cobras calmed down internally as they became increasingly aggressive.

Holtzworth-Munroe, A. & Stuart, G. (1994). Typologies of Male Batterers: Three Subtypes and the Differences among Them – proposing a typology consisting of three subtypes of batterers: family-only, dysphoric/borderline, and generally violent/anti-social.

Johnson, M. (2008). A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence - delineating three forms of partner violence: intimate terrorism, violent resistance, and situational couple violence. Johnson distinguishes among the three by analyzing the role of power and control in the relationship.

The relevance of this mention of batterer typology to identifying witness intimidation while reviewing domestic violence homicides is two-fold. First, it may impact the team’s identification of and discussion of intentional versus incidental witness intimidation. During the IWI project I managed, I observed batterer’s groups in three cities. Men talked frankly of their experience of intimidation. Some talked of learning intimidation from their fathers, siblings, and peers as a way to interact with everyone – to survive tough circumstances, to get what you want, to be a “winner,” or to “be a man.” These men were surprised at being accused of being intimidating and typically did not articulate their behavior in the context of preventing their partners from calling police or going to court. Others, however, did articulate their behavior in the context of witness intimidation, employing it only against their partners when the possibility of calling police or participating in a prosecution arose. The second point of relevance is that it may impact the team’s finding of a systemic problem (e.g. How is witness intimidation defined and identified?), the team’s recommendation to address a systemic problem (e.g., Is there a protocol or documentation aid for defining and identifying witness intimidation?), and how and where a team’s recommendation can be implemented (e.g., Is there a need for education or training for practitioners? Which ones? Is there a difference in documentation ability, information-sharing, or data privacy that will have to be accommodated? How?).

36 See e.g., the U. S. Supreme Court case *Giles v. California*, 554 U.S. 353, 377 (2008).

37 Team members reviewed bench books addressing witness intimidation in the courthouse, such as Free to Tell the Truth – Preventing and Combatting Witness Intimidation in Court: A Benchbook for Pennsylvania Judges at <https://www.courts.phila.gov/pdf/report/ri/Free-to-Tell-the-Truth-Preventing-and-Combatting-Intimidation-in-Court.pdf>

38 See, e.g., the Policy on Intervening in Acts of Witness Intimidation within the Jail, Warrants, and Court Security chapter of Duluth, Minnesota’s Blueprint for Safety at <http://www.theduluthmodel.org/cms/files/5-Duluth-Jail-Warrants-Chapter-4.pdf>.

39 Team members reviewed the work product of victim advocates and prosecutors in other cities, such as the information sheets alerting victims to witness intimidation (what it is, how to respond, and who to call) produced by the Denver City Attorney’s Office at <https://www.denvergov.org/content/dam/denvergov/Portals/772/Documents/Before%20Case%20Goes%20to%20Trial.pdf>, and the Missouri Office of Prosecution Services at <http://www.moprosecutors.gov/files/FSV%20Materials/Witness%20Tampering%20>

Brochure%20Missouri%20Edits.pdf.

40 In the last five years, I have written a half-dozen reports and articles about witness intimidation, and many more where witness intimidation was a topic within a larger topic of domestic violence. I have consulted on writing policy on responding to witness intimidation, conducted 30 trainings on witness intimidation in domestic violence cases, and attended many trainings on witness intimidation and risk/danger in domestic violence cases by other experts in the field. I have met with, conversed with, and exchanged emails with members of domestic violence fatality review teams, high risk teams, case review teams, coordinated community response teams, domestic violence policy and training review teams, and domestic violence advocacy and resource centers about the connection between witness intimidation and danger posed by domestic violence offenders to their victims.



For more information on witness intimidation, please visit our partner
Fatality Reviews and Safety Assessments site
to view a keynote presentation by Rhonda Martinson.

<http://frasafety.org/video.php>

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