# DRAFT COURT OFFICER RESPONSE TO WITNESS INTIMIDATION

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#### Mission

## [Insert local law, policy, mission, etc. here]

Justice requires searching for truth in an environment that respects the rights of all. Truth cannot be spoken in fear. The courthouse is supposed to be a place where wrongs will be redressed without fear or recrimination - an environment in which truth can be spoken. Witness intimidation strikes at the heart of justice, crippling the ability to function fairly, decently and with integrity. It cannot be tolerated.<sup>1</sup>

#### FORMS OF INTIMIDATION OUTSIDE THE COURTROOM<sup>2</sup>

Intimidation takes many forms in and out of courtrooms. The following is not an exhaustive list of forms of intimidation that might be directed against witnesses or their families. Forms of intimidation are limited only by the deviousness of persons seeking to intimidate.

- **1.** Actual or attempted physical violence or property damage.
- **2.** Explicit threats of physical violence or property damage.
- 3. Economic threats (as may be utilized in domestic violence cases to induce
- a victim not to pursue criminal prosecution of an abuser).
- **4.** Indirect or implicit threats:
  - Anonymous phone calls, internet postings, texts or other messages.
  - Publicly communicating the witness's cooperation (orally, in writing or by postings on the internet or social networks).
  - Defendant and/or his allies appear together, as a show of force, where the witness is present or is expected to be present.
  - Repeatedly driving past the location where the witness is present or

http://www.pccd.state.pa.us/portal/server.pt/community/publications reports/19702.

<sup>&</sup>lt;sup>1</sup> "Introduction," *Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges*, Pennsylvania Commission on Crime and Delinquency, 2011, page 3, available at <a href="http://www.pccd.state.pa.us/portal/server.pt/community/publications reports/19702">http://www.pccd.state.pa.us/portal/server.pt/community/publications reports/19702</a> (last visited October 15, 2012).

<sup>&</sup>lt;sup>2</sup> "Forms of Intimidation Outside the Courtroom," *Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges*, Pennsylvania Commission on Crime and Delinquency, 2011, page 9, accessed October 15, 2012,

expected to be present.

Even in the absence of specific conduct or threats, the prevalence of organized criminal activity and violence in the community creates fear on the part of the witness that may be reflected in the conduct and demeanor of the witness in the courthouse.

### FORMS OF INTIMIDATION IN AND NEAR THE COURTROOM

Other than at home, witnesses are most often intimidated in the courthouse. Key danger areas include courthouse entrances, hallways, waiting areas, refreshment areas and restrooms. Not only must witnesses endure a face-to-face encounter with the defendant, but they may also be apprehensive about contact with the defendant's family and friends.<sup>3</sup>

- 1. Explicitly communicated threats.
- **2**. Photographing or recording the face or voice of the witness.
- **3.** Defendant's allies in the hallway, as a show of force, sometimes wearing gang or similar attire.
- **4.** Threatening gestures, including but not limited to:
  - Pointing a finger as if it were a gun.
  - Holding hands up to simulate the photographing of the witness.
  - Smirks or gestures of disgust or disbelief directed toward the witness.
  - Prolonged staring at a witness.

Intimidation may take place by other means not specified on these lists. Court staff must be trained to recognize all forms of intimidation and to immediately report such conduct. <sup>4</sup>

## CREATING A SAFE, SECURE COURTHOUSE

The practices recommended may not be appropriate for every case. Some may be useful to <u>prevent</u> problems; others may be utilized to <u>terminate</u> inappropriate conduct.<sup>5</sup>

<sup>&</sup>lt;sup>3</sup> Kelly Dedel, *Witness Intimidation*, Office of Community Oriented Policing Services, July 2006, page 25, available at <a href="http://www.cops.usdoj.gov/files/ric/Publications/e07063407.pdf">http://www.cops.usdoj.gov/files/ric/Publications/e07063407.pdf</a> (last visited October 15, 2012).

<sup>&</sup>lt;sup>4</sup> "Forms of Intimidation In and Near the Courtroom," *Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges,* Pennsylvania Commission on Crime and Delinquency, 2011, page 13, accessed March 11, 2012, <a href="http://www.pccd.state.pa.us/portal/server.pt/community/publications-reports/19702">http://www.pccd.state.pa.us/portal/server.pt/community/publications-reports/19702</a>.

<sup>&</sup>lt;sup>5</sup> "Forms of Intimidation Outside the Courtroom," *Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges*, Pennsylvania Commission on Crime and

- 1. Ensure visibility of court officers. Observable court security reassures victims and witnesses, and puts defendants on notice that safety is a priority;6 occasional presence at lower-traffic areas of the courthouse (e.g., offices, law library, etc.) reassures staff7 and puts defendants on notice that there are no hiding places. Make court officers aware of hostilities towards service providers, such as domestic violence advocates, abuser treatment program staff, lawyers, judges and other court staff involved in domestic violence proceedings.8
- 2. Be alert to intimidating acts by defendants and spectators, including subtle acts of intimidation such as smirking, gestures of disgust or prolonged staring at witnesses, and to immediately report such conduct.
- Respond promptly to misconduct and immediately announce such behavior 3. will not be tolerated. This alone is often enough to stop misconduct.9
- 4. When witnesses tell court officers they are afraid or have experienced direct intimidation, officers can admonish the offender and his/her family and friends to caution them regarding their behavior and to explain the laws concerning witness intimidation and obstruction of justice:10
  - "Defendants must sit apart from and stay away from victims when there is a no-contact order in place."
  - "No communication is permitted between defendant and victim when a nocontact order is in place. This includes nonverbal communication, or any communication through third parties."11

Delinquency, 2011, page 9, accessed March 11, 2012.

http://www.pccd.state.pa.us/portal/server.pt/community/publications\_reports/19702.

http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf, (last visited October 16, 2012).

visited October 16, 2012).

<sup>&</sup>lt;sup>6</sup> "Courthouse Security," North Carolina Best Practices Guide for District Court Judges, North Carolina Administrative Office of the Courts, 2012, page 20, available at

<sup>&</sup>lt;sup>7</sup> Rhonda Martinson & Graham Barnes, *Improving the Justice System Response to Witness Intimidation* Pilot Project Report: Duluth, Minnesota 2011, AEquitas: The Prosecutor's Resource on Violence against Women, 2012, page 73, draft report awaiting publication.

<sup>&</sup>lt;sup>8</sup> "Courtroom Safety," North Carolina Best Practices Guide for District Court Judges, North Carolina Administrative Office of the Courts, 2012, page 18, available at http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf, (last

visited October 16, 2012).

<sup>&</sup>lt;sup>9</sup> "Creating a Safe and Secure Courtroom," Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges, Pennsylvania Commission on Crime and Delinquency, 2011, page 18, available at

http://www.pccd.state.pa.us/portal/server.pt/community/publications reports/19702, last visited October 16, 2012).

<sup>10</sup> Kelly Dedel, Witness Intimidation, Office of Community Oriented Policing Services, July 2006, page 29, available at http://www.cops.usdoi.gov/files/ric/Publications/e07063407.pdf (last visited October 15, 2012).

<sup>11 &</sup>quot;Courtroom Safety," North Carolina Best Practices Guide for District Court Judges, North Carolina Administrative Office of the Courts, 2012, page 18, available at http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf, (last

- "If you believe that intimidating a witness will stop the proceedings, or otherwise help the defendant, you are wrong."
- "Misbehaving spectators may be escorted out."
- "Criminal conduct will be referred to law enforcement agencies for arrest and prosecution."
- 5. Guide witnesses to safe waiting areas, away from any possible intimidators. 12 If the intimidator re-positions him/herself to watch the witness, consider taking actions which let the intimidator know he/she is being watched (watch the intimidator, make eye contact or strike up a conversation), as this may be enough to deter prolonged staring. 13
- 6. Instruct spectators to leave the area before or after jurors and witnesses are permitted to leave the courtroom. Family and friends of defendants should leave the area separately from family and friends of witnesses;<sup>14</sup> separate exits are optimal. Family members or friends should be directed to use the same exit as the person they are in court to support. Allow the
- to leave first; a defendant who leaves first might use this time as an opportunity to accost the victim in the parking lot, vandalize the victim's car, etc.<sup>15</sup>
- 7. Have an officer available to escort a victim or witness to his/her car when there are safety concerns based on the facts of the case or behavior exhibited in the courthouse.<sup>16</sup>
- 8. Even though persons waiting for court appearances are exposed to everyone else in the courthouse, a defendant facing trial could use photos or video to assist in later identifying persons present, or circulate photos or video in a scheme to publicize or harass family or friends of the victim.<sup>17</sup>

http://www.pccd.state.pa.us/portal/server.pt/community/publications reports/19702 (last visited October 16, 2012).

<sup>&</sup>lt;sup>12</sup> "Creating a Safe and Secure Courtroom," *Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges,* Pennsylvania Commission on Crime and Delinquency, 2011, page 17, available at

<sup>&</sup>lt;sup>13</sup> Rhonda Martinson & Graham Barnes, *Improving the Justice System Response to Witness Intimidation Pilot Project Report: Duluth, Minnesota 2011*, AEquitas: The Prosecutor's Resource on Violence against Women, 2012, page 72, draft report awaiting publication.

<sup>&</sup>lt;sup>14</sup> "Creating a Safe and Secure Courtroom," *Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges,* Pennsylvania Commission on Crime and Delinquency, 2011, page 18, available at

http://www.pccd.state.pa.us/portal/server.pt/community/publications\_reports/19702 (last visited October 16, 2012).

<sup>&</sup>lt;sup>15</sup> "Courtroom Safety," *North Carolina Best Practices Guide for District Court Judges,* North Carolina Administrative Office of the Courts, 2012, page 17, available at

http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf (last visited October 16, 2012).

<sup>&</sup>lt;sup>16</sup> "Courtroom Safety," *North Carolina Best Practices Guide for District Court Judges,* North Carolina Administrative Office of the Courts, 2012, page 18, available at

http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf, (last visited October 16, 2012).

<sup>&</sup>lt;sup>17</sup> Michael Kane, *Use of Video Surveillance In and Near Courtrooms to Reduce Victim and Witness Intimidation*, Pennsylvania Commission on Crime and Delinquency, page 5, available at

Taking photographs or video of individuals entering or leaving courtrooms should be prohibited. Cell phones, smart phones, digital cameras and recorders, notebooks and other devices that are improperly used should be seized. Seized devices should be stored together with a photocopy of the owner's identification so that the device may be returned at the completion of the day's proceedings.

- 9. In some cases, it may be necessary to document the identity of spectators. Intimidators feel emboldened by their perceived anonymity; this procedure prevents the intimidator from hiding behind anonymity.<sup>18</sup>
- 10. Encourage and cultivate relationships between court officers and community partners. Officers should be familiar with domestic violence advocates who regularly attend court.<sup>19</sup> Many victim assistance programs provide escort services to and from court; in addition, advocates often remain with witnesses throughout the day and accompany them into public areas of the courthouse.<sup>20</sup> Advocates are a source of information and can advise court officers of potentially volatile situations.<sup>21</sup> If advocates meet with victims in the courthouse, officers should know the location of these meetings to plan safety and quickly respond to volatile situations. Depending on the seriousness of a situation, advocates or other community partners might also need an escort.<sup>22</sup>
- 10. Urban criminal justice professionals have said more victims were intimidated in domestic violence cases than in gang or drug crime.<sup>23</sup> Utilize experience

http://www.courts.phila.gov/pdf/report/ri/Use-of-Video-Surveillance-In-and-Near-Courtrooms-to-Reduce-Victim-and-Witness-Intimidation.pdf (last visited October 16, 2012).

<sup>&</sup>lt;sup>18</sup> "Creating a Safe and Secure Courtroom," *Free to Tell the Truth - Preventing and Combatting Intimidation in Court: A Bench Book for Pennsylvania Judges,* Pennsylvania Commission on Crime and Delinquency, 2011, page 19, accessed March 11, 2012,

http://www.pccd.state.pa.us/portal/server.pt/community/publications reports/19702.

<sup>19 &</sup>quot;Courtroom Safety," North Carolina Best Practices Guide for District Court Judges, North Carolina Administrative Office of the Courts, 2012, page 18, available at

http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf, (last visited October 16, 2012).

<sup>&</sup>lt;sup>20</sup> Kelly Dedel, *Witness Intimidation*, Office of Community Oriented Policing Services, July 2006, page 26, available at <a href="http://www.cops.usdoj.gov/files/ric/Publications/e07063407.pdf">http://www.cops.usdoj.gov/files/ric/Publications/e07063407.pdf</a> (last visited October 15, 2012).

<sup>&</sup>lt;sup>21</sup> Court officers in St. Louis County, Minnesota felt they could prevent some intimidation if victims and witnesses would let them know ahead of time if they've been intimidated in the past or suspect they will be in court, even if the intimidation is subtle. Rhonda Martinson & Graham Barnes, *Improving the Justice System Response to Witness Intimidation Pilot Project Report: Duluth, Minnesota 2011*, AEquitas: The Prosecutor's Resource on Violence against Women, 2012, page 72, draft report awaiting publication.

<sup>&</sup>lt;sup>22</sup> "Courtroom Safety," *North Carolina Best Practices Guide for District Court Judges,* North Carolina Administrative Office of the Courts, 2012, page 18, available at

http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf (last visited October 16, 2012).

<sup>&</sup>lt;sup>23</sup>Kerry Healey, *Victim and Witness Intimidation: New Developments and Emerging Responses,* National Institute of Justice, October 1995, page 1, available at <a href="https://www.ncjrs.gov/pdffiles/witintim.pdf">https://www.ncjrs.gov/pdffiles/witintim.pdf</a> (last visited October 17, 2012).

and expertise of other court officers regularly present when domestic violence cases are scheduled, as they will often have a good idea of which cases require additional safety measures<sup>24</sup> or additional law enforcement support.<sup>25</sup>

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<sup>&</sup>lt;sup>24</sup> "Courtroom Safety," *North Carolina Best Practices Guide for District Court Judges,* North Carolina Administrative Office of the Courts, 2012, page 18, available at <a href="http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf">http://www.nccourts.org/Citizens/CPrograms/Victims/Documents/DVBestPracticesGuide.pdf</a> (last visited October 16, 2012).

<sup>&</sup>lt;sup>25</sup> Court officers in St. Louis County, Minnesota have worked with other law enforcement agencies when there was more than one potential intimidator to watch; each person was assigned someone to watch or a specific location to observe where intimidation might occur. Rhonda Martinson & Graham Barnes, *Improving the Justice System Response to Witness Intimidation Pilot Project Report: Duluth, Minnesota 2011*, AEquitas: The Prosecutor's Resource on Violence against Women, 2012, page 71, draft report awaiting publication.