Responding to Victim/Witness Intimidation:
Milwaukee’s Approach

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Criminal Intimidation

- Review intimidation in 3 systems:
  - Law enforcement/prosecution
  - Coordinated community response
  - Legislation
Our Focus: Law Enforcement

- Police investigation of crime
- Prosecution of crime

– Ask yourself: How are both impacted and can systems be developed to respond?
Traditional Criminal Investigations

- Methodologies:
  - Collect crime scene evidence
  - Gather witness statements
  - Consult with expert witnesses

→ Deliver to criminal justice system
→ Set for trial without other ongoing tracking
Traditional Prosecution Results

- 3 categories of criminal case witnesses

1. Law enforcement/experts
2. Citizen eye witness (unknown to D)
3. Citizen eye witness (known to D)
Prosecution Category 1

- Law enforcement/expert witnesses only
- Status offenses:
  - Firearms
  - Child pornography
- Approach:
  - Law Enforcement + time = high offender accountability (professional witness)
Prosecution Category 2

- Offender unknown to witness
- Citizen Witness offenses:
  - Thefts
  - Property crimes
- Approach:
  - Citizen witness + time => acceptable offender (unknown by offender) accountability
Prosecution Category 3

- Offender known to witness
- Eye Witness offenses:
  - Chronic abuse victims
  - Domestic Violence
  - Sexual Assault
- Approach:
  - Eye witness + time => lower offender
    (known offender) accountability
Prosecutions in Category 2 & 3

• Courts experience a **higher** probability of retaining ‘cooperative’ victims during expedited or **fast-tracked** cases.

• **Longer** a citizen witness case pended in court, **lower** the probability victim will remain cooperative.
Prosecution Results

• WHY?

Citizen Witness + Time > Offender accountability

Why is there a disparity in category 3?
Ask ourselves:

- What is happening to evidence (victims and witnesses) that give us this result?

- Do offenders contribute to this or are victims experiencing something else?
Contributing Factors

OFFENDER
THE MAFIA FAMILY TREE

family link
indirect link

Boss

Underboss

Consiglier

Capo

Capo

Capo

Soldiers

Soldiers

Soldiers

Associates
Previous System Approach

• Those who dictate system response:
  – Witness protection
  – Surveillance
  – Victim/witness education
  – Media
  – Legislative reform (RICO)
• Designed to intimidate = response
• Reality is ALL crimes with non-professional witnesses are subject to intimidation
Review

Category 1, 2 & 3
• 1: no civilian witness
• 2: civilian witness
• 3: civilian witness known to defendant

Category 3
• Offenders know their victims/witnesses intimately well
  – Sexual assault
  – Domestic violence
  – Child abuse
  – Elder abuse
Category 3: Domestic Violence/Sexual Assault

Contributing factors: Cycle of Violence

cycle of violence

- Tension building
- Honeymoon period
- Incident
- Bartering
Category 3: Domestic Violence/Sexual Assault

Contributing factors: Power & Control
Victims Explain…

• 1999 study in Milwaukee: 3 of every 10 victims subpoenaed for prosecution explained reasons for participating in criminal justice system:
  1. Safety – of self and/or children
  2. Closure to abuse (sense of justice)
  3. Support for offender (recanting)
  4. Respect for subpoena/system
  5. Offender’s ongoing behavior
Victims Explain…

• Offender’s ongoing behavior defined
• Victims complained of bombardments of
  – Insincere apologies for assault; guilt over children
  – Repeated demands not to cooperate in prosecution
  – Repeated requests for the to lie under oath in court or in affidavit
  – Repeated inducements including bribes of money, property, etc.
  – Threats to injure, etc.
2008-2011 King County (Seattle) Study of Jail Calls

- Qualitative study of 25 couples
- Examine interpersonal processes
- Couple’s construction of recantation
- Influential factors
  - Perpetrator’s appeals to V’s sympathy (descriptions of suffering mental/physical problems, intolerable jail conditions, life without her)
  - Minimization of abuse, images of life without each other
- Plan: redefine abuse, blame State for their separation, exchange instructions on what should be said or done
Danyall Simpson Case
Victims Explain…

• Examples regularly came to victims in forms of compelling evidence:
  – Letters from offenders
  – Telephone calls from custody facilities
  – Telephone calls through 3rd parties
  – Voicemail messages
  – Email communications
  – Gifts with promises/threats
Victims Explain…

• 1999: Milwaukee did not systematically educate victims of domestic violence about evidence:
  How to Recognize it
  How to Preserve it
  or How to Report it.

• Results were devastating…
• Evidence was being inadvertently destroyed
Lessons Learned

• We were not treating victims responsibly:
  – Victims destroyed powerful evidence and did not report threats and intimidation because significance not recognized
  ➔ *No one told them*
  – Systematic fail to educate/empower victims to identify evidence, how to preserve and report it
  ➔ *No one told them*
Impact

- System rewarded criminal behavior complete dismissals of prosecutions
- Victims placed in greater risk
- Victims lost faith in criminal justice system
- Abusers’ experience in system taught them to be more sophisticated (DV) offenders
Keith Baker Case
Law Enforcement

• Police for the behavior
• Systematically search/monitor
  – Jail call recordings
  – U.S. mail correspondence
  – Search warrants
  – Trap and trace or intercepts
Empowering & Educating

• Victims/Witnesses
• Community Partners
  – How to recognize it
  – How to preserve it
  – How to report it
Systematic Response

• Can we systematically respond to this issue?
• What can we change to improve offender accountability?

TIME
Factors

- Time: reality of criminal process

Cycle of Violence/Power & Control
JH: What you mean?

SW: I’m gonna hide up on the 7th floor in the bathroom.

JH: What do you mean?

SW: Because they’re gonna come and get me.

JH: No they’re not. They ain’t even ... Listen to what you say over the phone.

SW: They sent, they sent me a subpoena. They sent me a ...

JH: Yeah. They sent it. They didn’t hand it to you. They can’t do shit to you if you ain’t get it in your hand. Now listen to what I’m telling you. Even subpoenas can’t send you to jail girl. That shit don’t mean nothing. That’s just a scare tactic. And right now, I don’t need you to be scared baby.

SW: Uh, huh.

JH: Those people cannot do shit to you, why you not coming to court. They can’t do nothing to you. The hard part is over.

SW: Are you sure, because I don’t want to go to jail baby. I don’t want to go to jail.

JH: I’m telling you I’m positive. My friend, this guy I know in here right now, his girlfriend didn’t come to none of his court appearances and they dropped the case, they couldn’t do shit to him. Yeah they was mad, but so fuckin what about them being mad. She wanted her man back and she got him back. Don’t you?

SW: I want you back. I want you home. I’m not doing so good.

JH: Okay, quit crying baby.
New Methodology

• New approach on cases:
  – Systematically educate V/Ws about what is evidence
  – Systematically educate community about what is evidence
  – Systematically train law enforcement about receiving evidence

Evidence + time + new methods = increase offender accountability
Time Method Response

• Remember offender’s ongoing behavior
• Remember cycle factors
  – Crime: traditional investigation
  – Honeymoon period: apologies, confession
  – Isolation period: petition V/W to not testify
  – Escalation: bribes, threats, violence
  – Crime: *starts all over again*…
Peter Abeita Case
Systematic Education: CCR

- Victim education
- Community training
- Law Enforcement training
- Community advocate/other providers training
- Prosecutor training

- Significance of evidence
- Recognition of evidence
- How to preserve evidence
- How to report this evidence
Immediate Results

• Dramatic increase in evidence:
  – producing confessions to underlying prosecutions
  – identifying additional criminal activity
• Increase in number of offenders accepting responsibility in court
• Increase in number of victims participating in court process
Criminal Behavior

“I’m sorry. Please don’t come to court.”

*Intimidation of Victim or Witness*

“At trial, please say you’re crazy and fell and were drunk, and don’t say that I hit you.”

*Solicitation of Perjury*

“If you say I didn’t do it, I’ll give you __________

*Bribery of a Witness*
Wisconsin

• 940.44: Intimidation of Victims, misdemeanor
  (Class A – 9 months)
  – Knowingly and maliciously
  – Prevents or dissuades
  – Or who attempts
  – Making a report, causing a complaint, arresting

• 940.45: Intimidation of Victims, felony
  (Class G – 10 years)
  – Act accompanied by force or violence or attempted
  – Act accompanied by express or implied threat
  – Furtherance of any conspiracy
Wisconsin

942.41

• *Maliciously*: an intent to vex, annoy, or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice
Constitutional Implications

6th Amendment

“...in all criminal prosecutions the accused shall enjoy the right...to be confronted with the witness against him.”
Forfeiture by Wrongdoing

• Defendant forfeits right to confront his accuser when defendant’s wrongdoing causes victim’s unavailability

• FRE 804(b)(6): Hearsay exceptions

• Not excluded by hearsay rule if the declarant is unavailable as a witness:
  – Statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness
Constitutional Implications

• National standard for waiver at a hearing:

  “Preponderance of evidence”

- Filed charge of Intimidation
- Recording of attempt to dissuade V
- Letter soliciting perjury
- Voicemail offering bribe to victim/witness
- Third party testifies to solicitation to intimidate
- Conspiracy evidence reviewed by court
Best Practices – Forfeiture Document:

- Victim statements
  - Incident
  - Prior abuse
  - Prior threats
  - Current/past protection orders
  - Past medical treatment for abuse
  - Past cases dismissed?
- Victim behavior in/out of defendant presence

- Threats/Intimidation
  - Follow-up questions
  - Witnesses
- Any dependence on defendant
  - financial
  - medical
- Who did victim tell?
- Defendant’s actions
What Should You Document?

What Helps Build the Picture of Intimidation?

- Historical records of a pattern of abuse
- History of dismissed cases
- Stalking
- Past sexual assault
- Patterns of harassment
- Increased risk of lethality or dangerous assault
Responsibility

• Legislative solutions: state organizations, local community groups
• Develop better policing mechanisms
• Identify loopholes in criminal code
• Maintain modern criminal code responsive to creative intimidation
DV Chronic Offender Project

- Identify offenders
  - Focus on investigation & prosecution
- Identify victims
  - Coordinate victim services
- Identify locations
  - Community collaboration
MPD response

• Misdemeanor Want System
• DV Supplemental Form (DV Yellow)
• DV Homicide Review Commission
• DV Near-Fatal Review Commission (strangulation cases)
Questions

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