

SAFVIC ON THE SCENE

WITNESS TAMPERING

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5th Annual SAFVIC Instructor Summit

We would like to thank everyone who attended the 5th Annual SAFVIC Instructor Summit in Austin! We hope everyone had the opportunity to meet each other, exchange stories and techniques, and take an active role in the growth of SAFVIC.

The SAFVIC Team sincerely appreciates your dedication and hard work!

Jennifer, Brooke
& Nicole

The Problem

Witness tampering is the most common crime perpetrated by batterers, yet, is the least charged, prosecuted, and sentenced offense. Domestic violence offenders commit astonishing levels of witness tampering for which they are rarely held responsible. It is long past time for more law enforcement officers, prosecutors, courts and communities to get serious about stopping this flagrant, repeated, dangerous, and unlawful conduct. Based on my 30 years of experience handling domestic violence cases as an advocate, then prosecutor, and now clinical professor co-directing a Domestic Violence Clinic, I believe that batterers who continue abusive conduct *intend* to harm their victims in order to control the legal process. Regardless of their promises, most abusers have no intention of stopping behavior that produces the desired result of victim compliance. Batterers will continue to recidivate as long as the legal system permits them to do so.

Some batterers use technology to intimidate witnesses, such as those who have been charged with stalking for hiding surveillance equipment in their victim's homes and cars. The perpetrators' growing familiarity with the law also allows them to use the courts as a means of further harassment, often by repeatedly filing frivolous suits requesting change of custody, decreasing child support, or false criminal actions. For example, Sharlene Graham Lassiter has written a book, *I Have a Testimony*, in which she describes the physical abuse by her law professor husband in addition to his filing of six lawsuits against her. Several clients in our U.T. Domestic Violence Clinic have repeatedly lost jobs due to their batterers' relentless harassment, stalking and abuse in the workplace. Advocates, police, judges and prosecutors express much frustration about victims who either return to their batterers or do not leave them. Yet, scant attention is paid to the primary reason for victim noninvolvement; that of the batterer's witness tampering.

During both civil and criminal proceedings, bat-

terers often tenaciously persist with their abuse in whatever mode the police and courts permit. The good news is that when the community takes victim safety seriously and protective orders are routinely enforced, most batterers stop their illegal behavior. We must also be vigilant for those batterers who resort to stealthy means of witness tampering, including enlisting third parties to commit crimes,

and mixing threats with endearments, pleading for forgiveness, and apologizing. This may be confusing for victims and law enforcement, as the conduct does not initially seem to be criminal behavior, but it becomes unlawful if it results in the complainant being dissuaded from testifying at trial or obtaining a protective order. The full range of witness tampering includes the lesser forms of unlawful persuasion (e.g. bribery, threats, and harass-

ment) through those involving grievous physical harm and murder. All such conduct causing a victim not to testify should result in the batterer forfeiting the right to confront his accuser, as specified in *Crawford v Washington* and its progeny, *Davis v. Washington* and *Hammon v. Indiana*. Yet, abusers are rarely held responsible for such crimes precisely because their victims understand the likelihood of the threats being realized, based on experience. In *State v. Santiago*, Judge Jeffrey Atlas explains that victims accurately perceive the high likelihood of batterers carrying out their threats because in the past, abuse followed the threats. As a result, the intractable problem of witness tampering persists, and we must all step up our efforts to take back control of the criminal process from batterers.

The negative consequences of continuing to ignore witness tampering are at least ten-fold and include:

1. far more victims unable to testify in trials;
2. a sharp increase in the number of violent offenders going free;

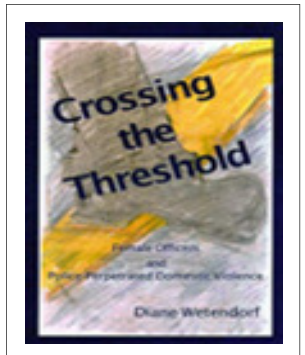
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FEATURED BOOK:

Crossing the Threshold examines how male police officers' institutional power filters down into their intimate relationships, and why the institution of policing has historically ignored or denied police-perpetrated violence against women. A brief look at the profession's historical treatment of women and minorities provides the background for this analysis of police-perpetrated domestic violence. Though the book focuses on female officers' experience of abuse at the hands of male officers and the institutional response to that abuse, the book is insightful and relevant reading for civilian victims, advocates, attorneys, police supervisors, administrators, chiefs and sheriffs.

Available for check-out in the SAFVIC Library.



CROSSING THE
THRESHOLD:
FEMALE OFFICERS &
POLICE-PERPETRATED
DOMESTIC VIOLENCE

BY: DIANE
WETENDORF

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from previous
newsletters are
available, as well
as other sexual
assault & family
violence related
books and videos.

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Instructor's home
page.

SAFVIC INSTRUCTOR OF THE YEAR

Our first recipient of the SAFVIC Instructor of the Year Award is Patt Scheckel Hollingsworth. With over 32 years of law enforcement experience, she began her career with the Arlington Police Department in 1974 and continues to serve as a reserve police officer. Patt is a graduate of the NCTCOG Regional Police Academy and started teaching as a guest instructor shortly after graduating in 1975. It is said that she has been teaching so long at the Regional Police Academy that she is now teaching the grandchildren of those she first taught, thus earning her the nickname "The Me-Maw of Training."

A close colleague describes her as "*one of the finest instructors I have ever had the pleasure of seeing in action. It does not matter whether it is for in-service or recruit officers, they all come away saying the same thing, she is an awesome instructor!*"

She has been a SAFVIC Instructor just shy of 5 years and has taught the SAFVIC 33 times to over 1,150 officers and recruits. Her SAFVIC evaluations reflect that she is a highly respected instructor and has a passion and talent for what she does. She is truly dedicated to making the SAFVIC program a success!

In recognition of her loyal service, dedication, and commitment to the SAFVIC Program, we would like to congratulate Patt Hollingsworth on receiving the first SAFVIC Instructor of the Year Award!!

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3. escalated rates of domestic violence as offenders avoid sanctions;
4. greater suffering by victims and their children as a result of unchecked recidivism;
5. increased costs for law enforcement and the courts in handling all phases from arrest through case disposition, particularly with repeat batterers;
6. greater law enforcement frustration as their crime scene efforts go for naught;
7. a decrease in public confidence in the legal system's ability to protect innocent victims;
8. an increase in the number of batterers as children grow up learning violence is an acceptable means to achieve one's ends;
9. higher costs for employers dealing with victim and offender issues relating to safety, retention, and productivity; and
10. general sabotage of the entire legal system as the batterer is able to control the process.

The perpetrators' motivations for witness tampering vary, but include wanting to achieve full control of their victims, obtain revenge for

perceived wrongs, prove they can get away with new crimes and deter testimony against them. Importantly, experts state that mutual battering is exceedingly rare; rather, abusive relationships are characterized by a relentless batterer and a chosen victim. A survivor's use of force in response to her abuser's on-going violence does not make her a batterer.

What Can Be Done

First, it is critical for law enforcement to carefully investigate domestic violence cases to determine who is the principal aggressor. Experienced police state that officers should examine the following factors in assessing probable cause for arrest:

1. the type and location of injuries (injury pattern evidence);
2. who has called for help in the past;
3. the testimony of witnesses;
4. what the crime scene indicates;
5. the size difference of the parties;
6. who has a protective order;

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7. who seems afraid of the other party; and
8. who tries to interfere with the police collecting evidence.

By considering the totality of the circumstances, an officer can more likely identify who is the true victim.

Second, it is still important for officers to document excited utterances of victims and witnesses from the crime scene. If officers do not collect this evidence at the time of the initial call, it is often lost forever and the prosecutor has no chance of being able to bring the case forward. Other critical evidence that law enforcement should ask about, collect or assist in locating includes:

- batterer's apologizing and threatening notes to the victim,
- child and neighbor witness statements for the current and previous incidents,
- blood and crime scene evidence,
- 911 calls from victim, offender, neighbor or anyone else,
- booking records,
- paramedic run sheets,
- batterer's statements to relatives and friends,
- photographs of injuries, the crime scene and traumatized children,
- eyewitness statements of the responding officers,
- videotapes of the crime scene,
- the officer's body diagram with the location of victim injuries and complaints of pain,
- batterer's cell and other phone records,
- recordings of batterer's calls to the victim from jail, and
- expert testimony explaining the victim's behavior (officers often make great expert witnesses!).

Third, law enforcement and all others in the community should encourage abuse victims to call 911 when they are in danger. This will not only bring help quickly, but also increase the chances that the prosecutor can use the 911 tape at trial, whether or not the victim testifies.

If officers turn a blind eye to witness tampering, they are effectively condoning the ongoing abuse and allowing the batterer to control the entire legal process, as well as terrorize victims. We can and must follow the example of our dedicated law enforcement officers who are stepping up their efforts to stop this scourge that is crippling our ability to protect victims and hold offenders accountable.

Bibliography

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Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 Colo. Law. 19 (1999) (listing fifty reasons why abused women cannot or do not leave).

Gary Dick, *Witnessing Marital Violence as Children: Men's Perceptions of Their Fathers*, 32 J. SOCIAL SERVICE RESEARCH 1, 3 (2006). (reviewing studies that have documented that "children exposed to family violence are typically more aggressive, destructive, non-compliant, and more antisocial than children in comparative groups").

Linda C. Neilson, *Assessing Mutual Partner-Abuse Claims in Child Custody and Access Cases*, 42 FAM. CT. REV. 411 (2004) (noting that batterers' claims of mutual abuse are typical in family violence cases, but most often false).

Stephanie L. Perin, *Employers May Have to Pay When Domestic Violence Goes to Work*, 18 REV. LITIG. 365 (1999) (explaining when employers can be held liable for not properly responding to victims and offenders in the workplace).

Darcelle D. White, Linda M. Kinczkowski, Pamela Speelman and Martha J. Olinjnyk, *Is Domestic Violence About to Spill Into Your Client's Workplace?* Mich. Bar J. 28, 29 (Oct. 2002) (citing that in 1990, the Bureau of National Affairs reported domestic violence cost American businesses 3 - 5 billion

witnesses in court cases involving domestic violence. The training will address the issues listed below and include **simulations and cases studies**. Participants will practice what they've learned and watch a sample direct and cross.

- Role of expert witnesses
- ABCs for expert witnesses
- The court environment
- Practical tips for effective testimony
- Establishing credentials of an expert witness
- Updates on challenging issues
- View from the bench
- Special issues in immigration cases
- Testifying as an expert witness
- Designing agency policies and guidelines
- Next steps for building capacity

A listing of the faculty and the tentative agenda are

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Sexual Assault Forensic Exam Requirements

In case you missed it, VAWA 2005 changed the certification with regard to sexual assault forensic exams. The new requirement applies to every state, territory and the District of Columbia that applies for money under the STOP Violence Against Women Formula Grants. Under the new requirement, victims must be able to receive a forensic exam and reimbursement for the cost of the exam *without* being required to participate in the criminal justice system or cooperate with law enforcement. Grantees have until January 5, 2009 to meet this new requirement. Presumably the long lead time is due to the fact that some states legislatures only meet every other year, and to enable each jurisdiction that is not already doing so to consider how to provide adequate funding to over the exams.

Taken directly from
Sexual Assault Report,
Volume 10 Number 3,
January/February
2007, Pages 33-48.

SAVE THE DATE...

Establishing Expertise as an Ethical Expert Witness Experts and Lawyers Collaborating to Help Victims

Join fellow **law enforcement officers**, attorneys, domestic violence service providers and professionals who are interested in being considered as expert witnesses in court cases involving domestic violence for a two-day conference in **Austin, Texas, August 2-3, 2007**.

Sarah M. Buel, JD, Noël Bridget Busch, PhD, and Toby Myers, EdD, lead the faculty which features presenters who have **substantial experience** as expert



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We're on the web @
www.safvic.org

We would like to extend a special thanks to our summer intern, Jenni Whitehouse, for her assistance with the SAFVIC program. She has been instrumental in assisting us achieve our goals. We wish her the best of luck in her future endeavors!!

Jennifer, Brooke & Nicole

FEATURED AGENCY:



Hays-Caldwell Women's Center is an advocacy agency that serves victims of family violence, sexual assault, and child abuse in Hays and Caldwell counties. The purpose of HCWC is to create an environment where violence and abuse are not tolerated, and to provide education, violence prevention services, and crisis intervention to victims of abuse.

HCWC was formed in 1978 by a group of citizens concerned with women's issues within the community. Since then, the agency has expanded to include a family violence shelter, family violence outreach, sexual assault and abuse services, and Roxanne's House, a children's advocacy center. HCWC is a unique service organization in that it provides an umbrella agency for victims of abuse. Services include 24-hour crisis response and intervention; shelter for survivors of family violence; advocacy and assistance for victims of family violence, sexual assault, and child abuse; as well as public education and awareness programs within the community.

HCWC works closely with law enforcement agencies, the legal system, and state agencies in order to provide support for victims of abuse. All law enforcement agencies are represented on appropriate task forces in both Hays and Caldwell counties. The agency meets once a month with the Hays-Caldwell Sexual Assault Task Force to collaborate on adult sexual assault cases. Roxanne's House also works directly with two multi-disciplinary teams each month to staff all open child abuse cases. These teams serve to ensure cooperation in our community's response to child abuse, so that the path through the workings of law enforcement, the legal system and state agencies run more smoothly. HCWC also works closely with the Caldwell County Family Violence Task Force to provide education and address issues affecting family violence victims. HCWC has also provided training programs and public education presentations to police and law enforcement agencies. A Chief of Police serves on the board of directors and other law enforcement officers served as board members. As an umbrella agency, we are always embracing new ways to provide such community resources to engage in collaborations and awareness against violence.

This article was provided by Emily Douglas, Volunteer and Public Education Coordinator.

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available online at
http://www.ncdsv.org/expertwitness_dv.html#August.

Continuing education credits are available for law enforcement, social workers and attorneys. Peace officers may submit hours from this class to their agency's training department for consideration towards licensing hours from the Texas Commission on Law Enforcement Standards and Education. This course has been approved by The University of Texas School of Social Work for 12.5 Social Work CEUs, including 5 hours Ethics; 12.5 contact hours, including 5 hours ethics. It has also been approved for Minimum Continuing Education credit by the State Bar of Texas Committee on MCLE in the amount of 12.0 hours, of which 0.0 credit hours will apply to legal ethics/professional responsibility credit.

Registration is limited to 75 participants to ensure a hands-on and interactive experience. The training is filling quickly. **The registration fee is \$225 by July 18, 2007.** After July 18, registration is \$250. The Office on Violence Against Women (OVW) has accepted this training as a training which may benefit recipients of OVW grant awards. For the specifics, visit our website.

The training will be conducted at The University of Texas School of Law. **The Doubletree Club Hotel Austin University Area is offering a special rate of \$99.00 for singles and doubles per night (plus 15%**

taxes). Reservations are due by **July 18, 2007.** To make your reservation, visit
http://www.ncdsv.org/expertwitness_dv.html#August.

To register for this great training opportunity, to download the registration form and for additional details, visit
http://www.ncdsv.org/expertwitness_dv.html#August.

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This article was provided by Debby Tucker, Executive Director and Christina Walsh, Communications Director of National Center on Domestic & Sexual Violence.