

NIWAP

CONFERENCE

Strengthening Community and Organizational Responses: Serving
Immigrant Victims of Domestic Violence, Sexual Assault, and Stalking

AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW

Police Officers as Witnesses in Domestic Violence Prosecutions and Family Court Litigation

Workshop 1A
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NIWAP

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INTRODUCTIONS



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INTRODUCTIONS



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THANK YOU TO OVW

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LEARNING OBJECTIVES

By the end of this workshop participants will be better able to:

- Effectively do report-writing as law enforcement officers
- Develop experts as witnesses
- Prepare witnesses for court
- Address recanting victims in court

EFFECTIVE REPORT- WRITING

Role of Law Enforcement in Preparing for Court

IF YOU DON'T WRITE IT DOWN, IT DIDN'T HAPPEN

Me: I don't need to write that down, I'll remember it

Also me: *Forgets it*



- Fundamentally, reports are not for other people
- Reports are for you – ***FUTURE YOU***, to help you remember details
- Reports **ALSO** help other people too



PAINT A PICTURE

- If you are writing a report that someone else might read:
 - You are painting a picture
 - If you leave out a detail, no one will know that it happened
 - If you leave out an event, no one will know that it happened
 - If you leave out a person, no one will know that person was there
- Paint a picture with words that tells me what happened

BASICS: WHAT EVERY REPORT SHOULD INCLUDE

- History of calls for service at the residence, domestic violence between the parties, previous and current protective orders, civil and custody issues
- Information from the parties themselves
- Witness information
- CPS contact or prior CPS issues
- Interpreters used and/or Language challenges and concerns

WHO IS THE PRIMARY PHYSICAL AGGRESSOR?

- Who was the first aggressor?
- Document the comparative height and weight of the parties
- Document the role and nature of weapons
- Document the proportional nature of injuries inflicted on each other

OBSERVE AND DOCUMENT THE CRIME SCENE

- Who called the police?
- Who wants you there – who wants you to leave?
- Who is offering to tell you the story first?
- Who is offering to be your interpreter?
- Presence (or absence) of fear
- Injuries offensive, defensive, and severity

EVALUATE AND DOCUMENT THE CRIME SCENE

- Who needs protecting?
- What is self defense?
 - Law Enforcement Authority v. Citizen Rights of Defense
 - Retaliation v. Self-Defense
- What are defensive injuries?
- Crime Scene – document living conditions, access to private quarters (sleeping quarters)

A REPORT SHOULD PORTRAY IT LIKE IT HAPPENED

- A thorough report will bring to life:
 - Emotional state of victim, defendant and kids
 - All physical injuries (or lack of) on both parties – always ask the question
 - Including Strangulation
 - Condition of crime scene
- A thorough report will document observations in a trauma-informed manner

LOCK THEM IN!!!

- All statements of defendants-- even those that are not full admissions/ confessions
 - Even if they are vague – ask the questions
 - Have them demonstrate
- Domestic Violence Forms are GREAT!!

EXAMPLES OF GOOD QUESTIONS TO DOCUMENT:

- Who is this?
- What is your relationship to this person?
- Is this the person that was involved in the incident we have been discussing tonight?



PHYSICAL EVIDENCE AND DOCUMENTS

- A thorough report will bring to life:
 - Emotional state of victim, defendant and kids
 - All physical injuries (or lack of) on both parties – always ask the question
 - Including Strangulation
 - Condition of crime scene

WITNESS INTERVIEWS

- You want LIVE WITNESSES to everything that happened:
 - Witness saw suspect
 - Witness saw suspect do bad thing
 - Witness remembers evidence
- YOU must document the witness' statements
 - ...And be *specific*

COMPLETE WITNESS INFORMATION

- Telling me that “witnesses at the scene” reported something to you is not helpful
- Telling me that “Steve Jones told me his workers noticed the defendant pouring gasoline on the house” is not helpful
- Providing the worker’s names and no contact information is not helpful

Rule: If I cannot bring a particular witness to court, that person might as well be dead.

INTERVIEWS

- Your interviews are crucial
- Prosecutor will not interview witness until Grand Jury or Trial
- Witnesses won't remember by the time trial arrives
- Your notes will be the only time most witnesses record what they remember

SUSPECT INTERVIEWS

- No Confession?
- So What?
- A lying suspect is as good as a confessing suspect – IF YOU GET DETAILS
 - Make them go for the big, detailed lies

LARGE GROUP DISCUSSION

THE BAD STUFF

Bad Habits That Can Sink A Good Report

VIOLATION #1: PRONOUNS

- Dave hates pronouns. Joe hates pronouns too. They don't like how they mix up who did what, especially when Joe isn't sure what Dave did, and he gets confused about who did what
- Once they got into a fight about it. Dave yelled at Joe, and he hit him so hard that he fell on the ground and hit his head
- Who got hurt?

VIOLATION #2: PASSIVE VOICE

- A call for service was made from 100 Main Street for a fight in progress. A car was dispatched to the scene
- It was reported that drugs had been sold to the family's daughter by a man who was seen standing on the corner
- The man was stopped by officers. He was searched and a bundle of heroin was found. It was field tested positive for heroin
- He was arrested and the heroin was placed into property

**WHO THE heck
did what??!?!?!?**

**Who is going to
testify at trial!?!?**



Large Group Discussion

- What steps can be taken to correct errors in a police report?

TIPS FOR GOOD (AND BAD) POLICE RELATIONSHIPS

Large Group Discussion

- What actions can you take to establish a positive relationship with law enforcement?

WANT TO HAVE A GOOD RELATIONSHIP?

- Read the Police Report
- Reach out early and speak with the officer
- Ask them what they think – their opinion might surprise you
- Send a Subpoena in enough time to give them notice and make sure it is served
- If a case is being moved, ask the officer if they have any avoid dates
- Rule #1 and the Final Rule: BE HONEST.

WANT TO HAVE A BAD RELATIONSHIP?

- Don't subpoena the officer until the last minute
- Don't return the officer's phone call or email
- Don't tell an officer when they will be needed
- Don't tell an officer why they will be needed
- Don't tell an officer that a case has been continued/settled
- Don't ask an officer whether they will be available on the new court date

PREPARING WITNESSES FOR COURT

What Lawyers, Witnesses, and Advocates
Should Let Witnesses Know

QUESTIONS FOR ANY WITNESS: LOGISTICS

- What time should I be there?
- What should I wear?
- How long will I be there?
- Is there a phone number to call to make sure I'm still needed?
- Is there a phone number to call if I have a problem and will be late/not there?
- Is this really going forward?

QUESTIONS FOR ANY WITNESS: RE: QUESTIONS

- What will you ask me?
- What will the other side's attorney ask?
- Who is going to testify before I do?
- What documents or things or previous testimony do you have? What does the other side have?
- May I rely on notes or my file during my testimony?

QUESTIONS FOR ANY WITNESS: PREPERATION

- Can you provide me with an outline of the questions you are going to ask ahead of time?
- May I have a copy of my previous testimony to review?
- If I would like to, may we meet ahead of time to prepare for my direct and cross-examination?

PREPARATION FOR ANY WITNESS

What Lawyers, Witnesses, And
Advocates **NEED** To Let Witnesses Know

RULE 1: DO NOT ARGUE

- Lawyers Argue
- You are a WITNESS
 - Lawyers are expected to lose their temper, argue, and get upset
 - You should not be emotional about your testimony – getting angry/upset/frustrated merely reduces confidence in your testimony
- It is NOT personal. Do not *make* it personal

RULE 2: LISTEN

- Lawyers Trick People
- You must answer the question, and only the question, but BE SURE of the question
- Don't fall for the “tender trap”
 - What is the word spelled:
 - S
 - H
 - O
 - P

WHAT DO YOU DO AT A GREEN LIGHT?

R U L E 3 : R E S P E C T

- Respect the Judge/Jury
 - Look at them when you talk to them
- Respect the Courtroom
 - Dress & Act Appropriately
- Respect the Litigants
 - Say “Yes Sir/Mam” – even to the other Lawyer

If you give respect, you will get respect

RULE 4: BE OBJECTIVE

- Lawyers Argue
- You are testifying to facts, not opinion
- Even if you are *defending* your opinion, you are explaining the FACT of what you believed, and the FACTS that made you believe it
- No Joking, No Commentary

RULE 5: HONESTY

- The **ONLY** thing that matters is the truth
- If you don't know, you don't know
- If you don't remember, you don't remember
- Never guess, never speculate, and never hedge the truth

The only real asset you have is your credibility

PREPARATION FOR ANY WITNESS

Tips That Lawyers, Witnesses, And
Advocates Can Share

TIP 1: CONTROL THE QUESTIONS

- Lawyers want to control your pace
 - In Cross Examination, the lawyer testifies, and you are just his pawns
- You can take all the time you need to answer, and may give a truthful answer
 - If the answer isn't "yes" or "no", you don't have to answer "yes" or "no"
 - If you need time to read a document, take it
 - ALWAYS pause before answering
- Ask to "rephrase the question" if need be

TIP 2: BREATHE!

- Believe it or not, many witnesses hold their breath when they testify
- Anxiety makes you hold your breath ... and holding your breath makes you anxious...and being anxious makes you...
 - Take
 - Your
 - Time

Tip 3: YOU ARE IN CONTROL

- Remember: This is a test, and you already know all the right answers
- They can't hurt you
- They can't tell you that you are wrong
- They can't tell you what to say

You are there because you know the truth

ADDRESSING RECANTING VICTIMS IN COURT

Legal And Practical Strategies

HEARSAY EXCEPTIONS– Rule 2:803

- Excited Utterances, Spontaneous Statements
 - Descriptive
 - Quotations
 - Note: Officers Should Not interrupt with Questions
 - Lower Threshold for Children's Statements
 - *Crawford* “Proof”

STATEMENTS OF EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION

- Statements describing presently existing state of mind, emotion, sensation, or physical conditions
 - Less rigid requirements than excited utterances
 - Statements may be made to anyone – no medical requirement
 - May refer to pain, current symptoms or any other physical sensation – but not the *cause*
 - It does not matter how long ago the injury happened if the pain or condition is current when the statement is made

ADDITIONAL BEST PRACTICES

- Statements about past/present symptoms, pain or sensations made to medical personnel
 - Permits medical personnel (could be LEO) to testify as to statements made about past/current conditions for the basis for the treatment
 - Rationale is that a patient making a statement recognizes that providing accurate info is essential to receiving appropriate treatment
- You might need a Medical Release Form

STATEMENTS BY THE DEFENDANT

- Don't forget Adoptive Admissions
 - Accused heard the statements
 - Understood the statements implicated him/her in a crime
 - Fair opportunity to deny or object
 - Circumstances would naturally call for a reply
- May Need to be Before 5th Amendment implications

EXPERT WITNESSES

Developing Law Enforcement As Experts

WHO IS AN EXPERT? RULE 2:702(a)

- Special skill set or degree of knowledge on a particular field or subject beyond that of people of common intelligence and ordinary experience
 - E.g., interpretation expertise
- The opinion has value in assisting the trier of fact in understanding the evidence or determining a fact in issue

CHOOSING AN EXPERT

- What is this person's purpose?
- What do you want to elicit from the witness?
- What do you want the person qualified as an expert in?

VICTIM SPECIFIC VS. GENERAL TESTIMONY

- Specific – answers questions about case being tried. Usually qualified to conduct forensic evaluating and testing. They may conduct interview of witness, review documents the attorney has about case, or administer psychological tests to a battered person
- “You just testified to the definition and symptomology of PTSD. In your expert opinion, did the victim meet the diagnostic criteria for PTSD?”

WHY USE AN EXPERT?

- DV can be a complex phenomenon not easily understood
- Facts in DV cases sometimes defy common sense understanding
- The general public may believe harmful myths about DV

EXPERT QUALIFICATIONS: WHAT FACTORS MATTER?

- Experience
- Knowledge
- Knowledge of relevant science and studies
- Research
- Controversies or opposing views

EXPERT QUALIFICATIONS: WHAT FACTORS MATTER? Part II

- Skills
- Specialized training
- Coursework
- Workshops
- Understanding of IPV within context of culture , i.e., how they affect

EXPERT QUALIFICATIONS: WHAT FACTORS MATTER? Part III

- Areas of expertise
- “Common Victim Behaviors in Domestic Violence Cases”
- “Domestic Violence”
- “Cycle of Violence”
- Never Stipulate to qualifications

POTENTIAL TOPICS OF EXPERT TESTIMONY

- In general:
- Myths about domestic violence
- The Cycle of Violence
- Power and Control
 - General facts about prevalence, dynamics, consequences of DV
- DV statistics
- The process of recantation
- Studies/Literature about domestic violence
- Why victims stay
- Common behaviors in DV cases
- Explaining the cultural context of the behavior

PERMISSIBLE TESTIMONY: INFORMATION THAT IS NOT COMMON KNOWLEDGE

- Example: “Based on my training and experience, many victims of domestic violence don’t call the police because they fear retaliation from their batterers.”
- BUT NOT: “Based on my training and experience, a green traffic light signals someone can proceed through the intersection.”

PREPARING YOUR EXPERT

- Schedule meetings
- Review the CV
- Prepare questions
- Review permissible vs. impermissible testimony
- Anticipate cross examination questions

VICTIM SPECIFIC VS. GENERAL TESTIMONY

- General – talk about concepts that are relevant to the case
- “Based on your professional experience can you give some common reasons why someone might not leave an abusive relationship?”

QUESTIONS?

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Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
 - Web Library: www.niwaplibrary.wcl.american.edu
- Materials for this Workshop:
 - <https://niwaplibrary.wcl.american.edu/BostonPoliceAsWitnesses>
- Contact NIWAP to provide training for your jurisdiction