



## THE HIGHLY TRAINED BATTERER: PREVENTION, INVESTIGATION AND PROSECUTION OF OFFICER-INVOLVED DOMESTIC VIOLENCE<sup>1</sup>

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*"[W]hen you train someone to be a cop, anyone in this country, you train them to challenge when confronted. You train them to interrogate when suspicious. You train them to [use] fighting skills that no one else has. You train them how to use weapons. You train them how to deal with conflict. You teach them all these skills, and then you add all of that to someone who is violent, you've got a lethal combination on your hands..."<sup>3</sup>*

— Mark Wynn, former Nashville Police Lieutenant  
Nationally recognized expert and trainer on domestic violence

Effective police response is a crucial element in any effort to prevent and respond to acts of domestic violence. All over the country and around the world, police departments and other governmental and non-governmental agencies invest time, funding, and expertise to train law enforcement officers in best practices that will help to reduce the incidence and lethality of domestic violence—practices that will protect victims while holding offenders accountable. Law enforcement has stepped up to the challenges of responding to domestic violence, and has made tremendous progress from the days when these crimes were considered private family matters. Today, law enforce-

ment in the United States, taken as a whole, has committed to refining its procedures and practices to maximize victim safety and offender accountability. Responding officers document evidence to support evidence-based prosecution; they assist victims in obtaining protective orders and services that will help them survive and escape the abuse; and they arrest offenders based upon probable cause and predominant-aggressor analysis.

There is no group in our society, however, that is immune from domestic violence. When the perpetrator of domestic

violence is a police officer, unique dynamics and legal considerations come into play. These factors often increase the danger to victims of officer-involved domestic violence and make the investigation and prosecution of such cases especially challenging.

The prevalence of officer-involved domestic violence is unknown. Domestic violence in general is under-reported, and most official crime statistics do not identify the offender's employment. Domestic violence in law-enforcement families is believed to occur with at least the same frequency as in the general population.<sup>4</sup> Two studies from the 1980s<sup>5</sup> suggest the rate in police families may be significantly higher. One survey of 728 officers from two East Coast departments found that 40 percent of the officers reported having "gotten out of control and behaved violently against their spouse or children" during the previous six months.<sup>6</sup> In the second study, researchers asked 385 male officers from several agencies in the Southwest whether, in the past year, they had pushed, grabbed, shoved, slapped, kicked, bitten, hit, thrown things, choked, strangled, beaten up, or threatened to use or used a gun or knife against their spouses. Twenty-eight percent of those officers admitted having engaged in some form of such conduct within the previous year.<sup>7</sup>

This STRATEGIES article will discuss the dynamics and tactics commonly encountered in officer-involved domestic violence; emphasize the importance of departmental policies and protocols for prevention of, and response to, violence in the law enforcement family; explain the need for a coordinated, yet "firewalled" internal investigation that will not compromise the criminal prosecution of the offender; and suggest strategies for investigation and prosecution of officer-involved domestic violence.

## **ABUSE DYNAMICS AND TACTICS**

Domestic violence is more than an isolated act of physical force against an intimate partner. It is frequently defined in terms of the abusive exercise of power and control by one partner in a relationship over the other.<sup>8</sup> Abusers who are law enforcement officers have unique opportunities to assert that power and control in their intimate relationships by misusing their training, skills, experience, and knowledge, as well as the power and authority inherent in their position.

The position of a police officer in our society is one of authority, and officers often have a great deal of discretion (within lawful limits) on the job in terms of how that authority is exercised. Officers are carefully trained to use escalating degrees of verbal and non-verbal responses and ultimately, in appropriate situations, to use escalating degrees of physical force. Officers who carry that authoritarian character and demeanor into their homes may also expect their intimate partners, children, and other family members to comply with their demands. Family members who argue, resist, or ignore them may be seen as a direct challenge to that authority. For an officer who is an abuser, those challenges may be met with verbal and emotional abuse or physical violence. Guns and other weapons, as well as handcuffs and other police equipment, are readily available in the home. The victims know this—and should it be forgotten, a weapon can easily be produced and used, either as a threat or to inflict actual injury on the victim.

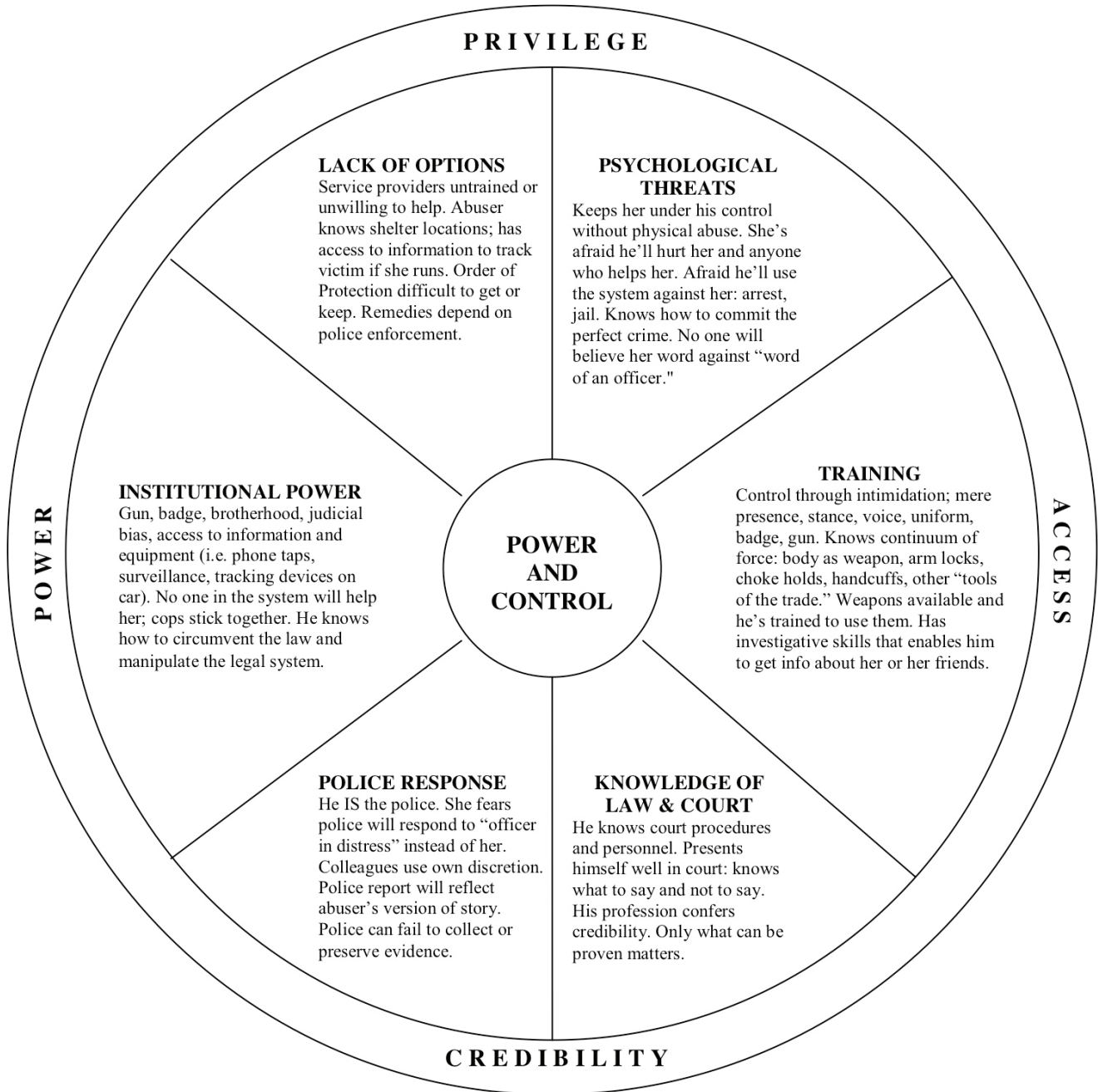
Police officers are trained to carry themselves in a manner that projects authority. While that is a useful skill on the job to elicit compliance with lawful demands, in an abusive relationship it can inspire in the victim fear of what will happen if the abuser's demands are not met. An authoritarian "look" or bodily posture, invasion of the victim's personal space, or merely placing a hand on the victim can effectively convey a threat.

As part of the authority given to them by virtue of their position in law enforcement, police officers enjoy a perception of enhanced credibility in the eyes of many citizens. They have sworn to uphold the law, and absent reason to believe the officer is lying, there is almost a presumption on the part of many people that an officer is telling the truth. An abuser can readily exploit this perception of credibility, telling the victim that no one will believe the victim's story over that of the abuser. An abusive officer who believes that the victim may be about to report the violence will often make it a point to complain to fellow officers or to a supervisor about the victim's "erratic" behavior, or about the victim's "mental health problems" or "substance abuse problem," in a pre-emptive effort to reduce the victim's credibility if the abuse is reported.

Officers are trained in proper interrogation skills, as well. This is important for questioning suspects at a crime scene

# Police Power and Control Wheel

## Tactics of Power and Control in Police-Perpetrated Domestic Violence



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Adapted from Domestic Abuse Intervention Project, Duluth MN

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or in the interrogation room. Officers who are abusers may relentlessly interrogate and cross-examine their victims about the victim's activities, or about their friends and family. Skilled interrogators employ a variety of psychological techniques to get the information they seek. An abuser can use these skills to extract information from a victim, to keep the victim off-balance and unsure of what is in the victim's best interest, and to convince the victim to submit to the abuser's wishes.

In addition to interrogation skills, well-trained police officers have a variety of other investigative tools and techniques at their disposal. They know how to access sensitive data to locate suspects or witnesses, how to request a check of a license tag, how to talk to witnesses in a way that will elicit important information, and often know the secret location of the local shelter for battered women. These techniques and knowledge can be used to stalk the victim, intimidate the victim or the victim's family and friends, or locate the victim wherever s/he flees for safety.

Police officers are also trained to "have each other's backs"—to protect and support fellow officers when they are in trouble while in the field. Victims are acutely aware of this solidarity, and fear its implications if they call 911 or otherwise report an act of abuse. Responding officers—even those from other police agencies—may be perceived as siding with the abuser or as more concerned about the abuser's career than the victim's safety. If uniformed officers show up *en masse* to support a defendant in court, such a display is likely to intimidate the victim even if that was not the intention.

An abusive officer's law enforcement training and skills thus present the victim with formidable obstacles in reporting the abuse, seeking safety, or participating in the criminal justice process. All victims of domestic violence face obstacles throughout the process, but the training and skill set possessed by police officers greatly enhances the danger to the victim of police-perpetrated domestic violence and increases the victim's difficulty in seeking safety and justice. Moreover, in addition to the complications inherent in protecting oneself from a highly-trained batterer, the stakes involved in obtaining a criminal conviction for police-perpetrated domestic violence are high. Conviction of even a minor crime of domestic violence is likely to result in the

end of the abuser's career as a police officer.<sup>9</sup> This potential consequence makes the victim's situation even more precarious, as the loss of career (and possibly a pension) makes the abuser more desperate to avoid it and may cause financial distress for the victim and the family.

## PREVENTION THROUGH TRAINING AND SUPERVISION

Psychological screening and background investigations have long been part of the recruitment/hiring process for police departments. Historically, departments have screened applicants to "weed out" individuals who are psychologically unsuited to the demands of the job or who pose a potential threat to the public or the department because of their aggression, dishonesty, substance abuse problems, or other undesirable traits. Candidates likely to engage in acts of violence against their intimate partners are equally poor risks. Preventing officer-involved domestic violence therefore begins with the candidate selection process, where careful evaluation, probing interview questions, and thorough background checks may uncover attitudes or historical information suggesting that the individual poses an unacceptable risk.<sup>10</sup>

It is equally important that police officers and supervisors be trained to recognize signs that an officer may be involved, or at risk of being involved, in domestic violence,<sup>11</sup> that effective interventions be made available to the officer and to the officer's family, and that on-the-scene responses be conducted professionally and with an awareness of the unique needs of the victim of officer-involved domestic violence.

The importance of screening would-be police officers, and of taking action in response to behavior indicative of potential domestic violence, was highlighted by a 2003 murder-suicide involving Tacoma, Washington, Police Chief David Brame and his wife, Crystal Brame.<sup>12</sup> David Brame, who was in the midst of divorce proceedings that included allegations of domestic violence, shot his wife to death in a parking lot, in front of their two young children, before turning the gun on himself. Subsequent investigation revealed that David Brame's psychological evaluations at the time he was hired as a young recruit were questionable, that his behavior at work was increasingly erratic in the months leading up to the murder (involving colleagues and

subordinates in his divorce issues; becoming increasingly inattentive to duties),<sup>13</sup> and that he had been appointed police chief despite a prior allegation that he had sexually assaulted a woman he had dated.<sup>14</sup> The Brame case catapulted the problem of officer-involved domestic violence, an issue previously receiving scant media attention, into the national spotlight. Although the International Association of Chiefs of Police promulgated its model policy on Domestic Violence by Police Officers (hereinafter “IACP policy”)<sup>15</sup> in 1999, well before the Brame murder, many jurisdictions began to consider with a greater sense of urgency what can and should be done to prevent similar tragedies.

Along with adopting specific protocols for incident response to officer-involved domestic violence,<sup>16</sup> many departments are realizing the importance of:

- Screening new hires for signs of potential abuse
- Changing the departmental culture so that domestic violence within its ranks would be viewed as unacceptable, unprofessional behavior
- Encouraging officers to alert supervisors to signs of potential or impending acts of domestic violence in the behavior of fellow officers
- Training supervisors in appropriate, effective ways of responding to such reports
- Reaching out to the families of officers to provide resources and information about available assistance for officers and their families and about the procedures that will be followed in the event that domestic violence comes to the attention of the department.

Incidents of domestic violence within the law enforcement community not only result in potential civil liability, personal injury, and loss of life, but are also damaging to officer morale and to public confidence in the department. The Brame tragedy resulted in several costly lawsuits for the department and public officials.<sup>17</sup> Preventing domestic violence within its ranks is, therefore, of great benefit to police departments as a whole.

The culture and tone of a department is a reflection of its leadership. Without a strong culture of disapproval of do-

mestic violence, and without support and encouragement for officers to report signs that a fellow officer may be engaging in such acts at home, victims suffer increased isolation and danger when violence is reported to law enforcement. Many police chiefs, sheriffs, and other departmental leaders have established a culture of zero tolerance for domestic violence within their departments. They have done this by providing effective interventions for officers at risk for abusive conduct, by requiring officers to disclose their knowledge of such acts and encouraging them to report “red flag” behavior on the part of fellow officers, and by providing support and assistance to families of officers so they will feel more confident that a report will be taken seriously and with their safety in mind. It is important that these efforts be publicized, as a way to increase public confidence and the safety of survivors.

One promising resource for preventing domestic violence in law enforcement families is a toolkit developed by Florida State University with funding from the Verizon Foundation. The National Toolkit on Prevention of Officer-Involved Domestic Violence (hereinafter “Toolkit”), which can be accessed at <http://nationaltoolkit.csw.fsu.edu>, was developed in cooperation with law enforcement leaders from a number of agencies around the country.<sup>18</sup> The Toolkit provides self-paced online training modules for officers and supervisors on the prevention of officer-involved domestic violence.<sup>19</sup> Over 15,000 officers have taken the training in 2014, including those from large departments in urban areas and from small departments, some of which have only a handful of sworn officers.<sup>20</sup> The Toolkit also provides videos, links to national and state/local resources for technical assistance, links to state and model protocols for officer-involved domestic violence, and confidential self-assessment tools for officers on a variety of issues that may contribute to violence (including post-traumatic stress disorder, alcohol and substance abuse, and attitudes and beliefs about domestic violence). The Toolkit incorporates many of the principles and practices recommended in the IACP policy.<sup>21</sup>

The Toolkit’s training modules<sup>22</sup> are notable for explaining: the dynamics of officer-involved domestic violence, pointing out that effective law enforcement tactics can be misused in the family setting; the challenges faced by all victims of domestic violence and the special obstacles facing victims

of officer-perpetrated domestic violence; the effects of domestic violence on children and on the credibility of law enforcement in the community; recommended on-the-scene procedures when responding to officer-involved domestic violence; and appropriate response when both the offender and the victim are officers (*e.g.*, conducting predominant aggressor analysis and notifying both departments). The module for officers<sup>23</sup> further suggests appropriate action to take when a fellow officer is believed to be involved in a violent intimate relationship and provides clear and compelling reasons for an officer to report another's troubling behavior. The module for officers concludes with a video message reinforcing the values that will protect the families of law enforcement officers.<sup>24</sup>

The Toolkit's training module for supervisors<sup>25</sup> begins with a self-assessment on "readiness to lead," to encourage reflection on the supervisor's own attitudes and beliefs about domestic violence. The module stresses the importance of leadership by example and the responsibility of supervisors in setting the tone and culture of their department. Noting that the law enforcement community has traditionally honored the "brotherhood" of officers, the Toolkit suggests extending those same values of honor and protection to the families of fellow officers. The Toolkit provides concrete suggestions about how other traditional law enforcement values can be re-framed as they are instilled and reinforced. For example, "loyalty" can be recast this way: "Respect your agency, your job, and your colleagues. **Remain loyal to your family** and your department's families by keeping them safe. Report all concerns of domestic violence to a superior, and get help for yourself if you need it."<sup>26</sup> "Solidarity" as a value can be re-framed to include supporting an officer who has been courageous enough to report a known act of domestic violence—a report that may save the lives of another officer's family.<sup>27</sup>

The module for supervisors also presents guidance for screening and hiring decisions, ways to provide support for the families of officers, links to legal resources on the federal firearms prohibitions (and exceptions) for domestic violence offenders, links for assistance in developing a departmental protocol for officer-involved domestic violence incidents, and suggestions for reaching out to spouses or intimate partners of officers to be sure they are aware of policies and available assistance.

When information is brought to the attention of a supervisor indicating possible warning signs of domestic violence, or at the request of the officer's family, the IACP policy provides that such reports should be properly documented, that the officer be counseled and offered "non-punitive avenues of assistance."<sup>28</sup> In its Discussion Paper, the IACP also suggests that in some cases, the department may appropriately employ an "administrative order of protection," which is essentially an order that an officer refrain from certain conduct toward a specific individual as a condition of continued employment.<sup>29</sup> Violation of such an order can result in a simpler process for termination than might be possible in the absence of such an order, and it is not dependent upon the request of a victim.<sup>30</sup>

Training and prevention efforts cannot possibly prevent every act of domestic violence on the part of law enforcement officers, but implementation of training and resources may reduce the number and severity of incidents, increase the likelihood of prompt intervention that will enhance victim safety, and promote respect for law enforcement in the community that the department serves.

## INCIDENT RESPONSE

Policies and protocols for response to officer-involved domestic violence can be promulgated at the state, local, or departmental level. The IACP's policy on Domestic Violence by Police Officers<sup>31</sup> is a model protocol that can be adopted and adapted to suit the needs of almost any department. In addition to the prevention protocols discussed in the previous section, the IACP policy prescribes specific procedures to be followed for initial response to officer-involved domestic violence.<sup>32</sup>

To begin with, the IACP policy provides that any report or admission of domestic violence on the part of a police officer is to be treated as a report of a crime and is to be investigated as such.<sup>33</sup> The policy requires 911 operators and dispatchers to relay through communications the fact that a reported crime of domestic violence involves a police officer, and to immediately notify on-duty supervisors.<sup>34</sup> Any officer-involved crime of domestic violence potentially involves a weapon—at the very least, it can be presumed that a firearm is most likely present at the scene. This information is, of course, critical to the safety of the responding offi-

cers, as well as the safety of the victim and any other family members who may be present. The responding department is to dispatch to the scene a supervisor, of higher rank than the officer-perpetrator, to assume command at the scene.<sup>35</sup> The department employing the suspected officer-perpetrator must be immediately notified, as well.<sup>36</sup> The IACP policy calls for memoranda of understanding (MOUs) to be executed among neighboring police departments to facilitate timely notification to the involved officer's own department.<sup>37</sup>

The IACP policy requires responding officers to follow the same procedures as those prescribed for domestic violence calls involving civilians, including meticulous documentation of evidence at the scene.<sup>38</sup> The perpetrator must be arrested or a warrant issued where there is probable cause, but dual arrests are to be avoided.<sup>39</sup> Where no arrest or warrant is issued, the reasons for that decision must be documented.<sup>40</sup> Medical assistance must be secured for anyone injured.<sup>41</sup> Safety of children must be assured, and any children must be interviewed out of the hearing of the parties.<sup>42</sup> The duty weapon of an arrested officer must be removed, as well as personal firearms where the victim so requests or the law permits.<sup>43</sup> The ranking superior officer must provide the victim with safety information, victim compensation information, access to an advocate, assistance in obtaining a protective order, and an offer of confidential transportation to a safe location.<sup>44</sup> That superior officer is also responsible for explaining departmental policies and procedures to the victim.<sup>45</sup> Where the perpetrator has left the scene and there is probable cause, an arrest warrant is to be obtained immediately and a higher-ranking officer must assist in serving the warrant, seizing firearms as with an on-the-scene arrest.<sup>46</sup> Where the victim has left the scene, investigators are to make every reasonable effort to locate the victim and complete the investigation.<sup>47</sup> Incident reports, once completed, must be provided to the victim upon request and without cost.<sup>48</sup> The goal of these procedures is to ensure maximum safety to the victim, as well as the integrity of the investigation and appropriate transparency.

## CRIMINAL AND ADMINISTRATIVE INVESTIGATION

Officer-involved domestic violence implicates not only the criminal justice process, but also the administrative disciplinary process. The IACP policy provides that even where

there is no probable cause for arrest, an internal administrative investigation should be commenced.<sup>49</sup> That investigation should be conducted either by the department's internal affairs unit, or where there is no such unit, by the chief or departmental head, bringing in outside investigative assistance where appropriate and necessary.<sup>50</sup> Where the internal investigation shows that an officer has committed an act of domestic violence, the department's zero-tolerance policy requires that proceedings for termination be commenced.<sup>51</sup>

A lethality risk/danger assessment should be conducted as soon as possible, in cooperation with a victim advocate for safety planning.<sup>52</sup> Although firearms greatly heighten the risk, removal of firearms does not eliminate the danger to the victim. An advocate should work with the victim to create a safety plan that can be adjusted to meet the needs of the victim as the investigation and proceedings unfold. Safety plans must account for the unique challenges faced by victims of an abusive police officer.<sup>53</sup>

Administrative proceedings must be kept carefully separate from the criminal investigation, but do not need to await the results of the criminal justice proceedings. The accused officer's rights and responsibilities in administrative disciplinary proceedings are usually governed by departmental policy, employment law, and union contractual provisions. An accused officer is sometimes required, by regulation or departmental policy, to provide a truthful statement regarding the incident. Because failure to give a truthful statement can, itself, result in discipline, any statement given under those conditions cannot be used against the officer in any related criminal proceedings, nor may the prosecution in the criminal case use evidence derived from such a compelled statement.<sup>54</sup> It is critical, therefore, that any administratively compelled statement, as well as any evidence derived from such a statement, be kept from investigators and prosecutors involved in the criminal investigation and prosecution.

The same is not true with regard to use of evidence from the criminal proceedings in connection with the administrative disciplinary proceedings—evidence in the criminal case can (and generally should) be readily accessible to Internal Affairs. To ensure the maximum use of available evidence, departments sometimes seek to put the disciplinary proceedings on "hold" until the criminal case has been resolved. Often, however, criminal proceedings move

slowly, and in the meantime, the department is faced with the dilemma of continuing to pay a suspended officer (depending on departmental policy and union contractual provisions), or finding a suitable interim assignment for an officer who is unable to carry a weapon. The department may be perceived as “dragging its feet” by failing to conclude the disciplinary process in timely fashion. As with all cases, delayed administrative proceedings may impair the availability of evidence. The victim, in domestic violence cases, may be under extreme pressure while the fate of the abuser’s career as a police officer hangs in the balance. Delay thus may increase the danger to the victim, and will almost certainly create further emotional stress. Whether the disciplinary hearing itself is conducted during or after the criminal proceedings, however, a prompt investigation is essential.

It is crucial that all investigators of officer-involved domestic violence—whether in the criminal or administrative context—be trained in proper interviewing techniques for victims of trauma, that they understand the dynamics involved in abusive relationships (particularly those unique to officer-involved domestic violence), that they keep the victim’s safety at the forefront of their efforts, and that they build and maintain the victim’s trust by keeping the victim informed of the progress of the investigation and by providing the victim with support and resources throughout the process.<sup>55</sup> Victims of police-perpetrated domestic violence will be alert for any hint that investigators may be more concerned with protecting the abuser or with avoiding embarrassment to the department than they are with the victim’s safety or with holding the abuser accountable. All investigators should employ the same meticulous investigation techniques that are helpful in all evidence-based prosecutions of domestic violence.

The IACP policy calls for a single member of command staff to be the point of contact responsible for keeping the victim informed of all actions taken by the department (suspension/reinstatement, weapon removal/restoration, etc.) and the progress of the investigation.<sup>56</sup> Administrative actions may have a significant impact on the victim’s safety, and it is important that notifications be made as soon as practicable.

During the course of the investigation, it may come to light that other officers committed crimes or violated depart-

mental policy by failing to report their knowledge of an incident of domestic violence, interfering in the investigation of the subject officer, or acting to manipulate or intimidate the victim or other witnesses. Such officers should similarly be subject to criminal charges and/or administrative discipline, up to and including termination where appropriate.<sup>57</sup>

## PROSECUTION/TRIAL STRATEGIES<sup>58</sup>

Prosecution of an officer-involved domestic violence offense presents many of the same challenges as any domestic violence case. Some of the issues are amplified, however, because of the nature of the case, and some issues are unique because of the defendant’s status as a police officer.

Victim safety is always of paramount concern. The certain loss of employment that accompanies a criminal conviction can greatly increase the danger to the victim, as the defendant may be desperate to avoid that consequence. Safety planning should be revisited throughout the pretrial period as events warrant.

The prosecutor, and any investigator assisting the prosecutor in the pre-trial phase, should meet with the victim as early as possible to explain the pretrial process, answer any questions, and gain the victim’s confidence and trust. The prosecutor should take this opportunity, as well, to educate the victim about witness intimidation and manipulation and to find out whether such acts have been occurring and to consider the appropriate response. These kinds of conversations, had early in the process, and repeated periodically during the pretrial period, can increase the likelihood that the victim will remain engaged throughout the criminal justice process. It must be remembered, too, that loss of the defendant’s employment means potential economic insecurity for the victim and the family, and that fear alone may make the victim reluctant to participate in the process. Because the time between arrest and trial presents multiple opportunities for witness intimidation and manipulation, lengthy delays and postponements should be avoided.

While victim participation can be encouraged, the prosecutor nevertheless must prepare to go forward without the victim’s testimony if necessary. This requires the prosecutor to carefully review the available evidence and to make requests for whatever follow-up investigation may be



appropriate. It is particularly important to identify or obtain nontestimonial hearsay statements that may be admissible under an exception to the hearsay rule, to assemble corroborating evidence, to consider preserving the victim's testimony by way of a preliminary hearing or deposition with a full and fair opportunity for cross-examination, and to identify evidence that will support a motion to admit the victim's prior statements under the doctrine of forfeiture by wrongdoing. Presenting expert testimony on victim behavior in response to battering can assist the jury in understanding a victim's reluctance to leave the abuser or to participate in criminal justice proceedings and can put into context a victim's recantation or minimization of the abuse. An expert familiar with the dynamics of officer-involved domestic violence can be particularly helpful.<sup>59</sup>

If the officer's personal firearms have not already been seized or turned over for safekeeping, such action should be a condition of bail or pretrial release. A no-contact bail condition is also advisable unless the victim wishes to have contact and the defendant is not believed to pose a serious threat. The victim should be carefully questioned to ensure that such a request for contact is not the product of intimidation.

Defense counsel (and victims) may argue strenuously for a diversionary disposition in hopes of preserving the officer's career. There should be a strong presumption against such disposition, particularly if the act involves any actual or threatened physical violence or stalking. For all of the reasons discussed in the first part of this article, the dynamics and consequences of officer-involved domestic violence demand that such acts be deterred in the strongest possible terms. Generally, this need for deterrence and the interests of the community outweigh the benefits of diversionary disposition. The prosecutor should similarly hesitate before entering into a plea agreement to dismiss charges that would bar the defendant from possessing a firearm under federal or state law.

The indictment or other charging instrument should charge all appropriate offenses. If the defendant has engaged in witness intimidation or official misconduct (*e.g.*, misuse of police equipment or resources to commit the offense), those charges should be included in the charging instrument. Likewise, if the offenses were committed in the presence of a child, available offenses such as endangering the welfare of a child, or domestic abuse in the presence of

a child, should not be overlooked. Any charges that would qualify as a "misdemeanor crime of domestic violence" for purposes of the federal firearms prohibition pursuant to 18 U.S.C. § 922(g)(9) should be carefully worded so that the essential elements are properly alleged.<sup>60</sup>

It is not unusual for allies of the defendant to show up at court proceedings in full uniform, either out of a desire to support the accused officer or in an effort to intimidate the victim (which is a likely consequence, regardless of the intent of the officers who appear<sup>61</sup>). The prosecutor may wish to discuss with the police chief or other departmental head the possibility of issuing a departmental order that officers who have no official business in connection with the case receive official permission before attending any proceedings, and, if granted permission for good cause, that they appear only in civilian attire and refrain from any communication or contact with the victim.

Upon receiving the case, the prosecutor should be sure the assigned investigator understands that no information regarding any administrative proceedings should be disclosed to anyone connected with the criminal investigation or prosecution. It is appropriate, however, to request that the prosecution be kept apprised of any important developments in the administrative process, such as the status of the officer's employment or assignment, a decision to postpone the disciplinary proceedings until the conclusion of the criminal case, a final decision on discipline, or administrative proceedings against other officers for interference with the investigation.

Cases involving police officer defendants often attract a great deal of media interest. The prosecutor should carefully keep in mind ethical restrictions on information released to the media, while also respecting the public interests served by timely and accurate release of information that is permitted. The victim's safety and privacy, as well as the defendant's right to a fair trial, must be scrupulously protected throughout the proceedings.

The *voir dire* process can help to educate the jury about the dynamics of domestic violence, as well as help to eliminate potential jurors who may be batterers or who have victim-blaming attitudes. In cases involving police officer defendants, it is also important to identify and eliminate jurors who would have difficulty accepting the notion

that police officers can be abusers or may lie. It may also be worthwhile to explore the feelings of prospective jurors about firearms—particularly their feelings about laws that prohibit domestic violence offenders from possessing guns. The prosecutor may also want to ask about the ability of jurors to put aside their concerns about what punishment or consequences might be imposed as a result of a guilty verdict. Some jurors may feel that the loss of an officer's career is somehow unfair or excessive punishment.<sup>62</sup>

The time during trial has been identified as the second-most-dangerous time for victims,<sup>63</sup> who may be subjected to intense pressure, intimidation, and manipulation in a last-ditch effort to dissuade them from testifying. Safety efforts at this juncture should be double-checked and perhaps increased. Victims should be escorted to and from the courthouse, and should have a secure waiting area and an advocate for support while they wait to testify. The prosecutor should discuss in advance with the trial judge any necessary measures to increase the victim's safety. The defendant and the defendant's allies in the courtroom may attempt to intimidate the victim during testimony by staring, glaring, or gesturing. With the trial court's cooperation, the victim can be instructed about what to do if that occurs—turn to the judge and say, "I need to speak with the court in private." The judge can then excuse the jury and the victim can inform the court, the prosecutor, and defense counsel of what is going on so the judge can address the issue outside the presence of the jury. If the victim testifies and recants, minimizes the defendant's actions, or testifies on behalf of the defendant, the prosecutor should use a "soft-cross" technique that elicits helpful or corroborating information, helps to explain the victim's behavior, and gently exposes inconsistencies.

In the event of a guilty verdict, the prosecutor should move to revoke bail if a custodial sentence is likely to be imposed. Even if bail is continued, however, the court should remind the defendant that all bail conditions, including no-contact provisions and any weapons restrictions, continue in effect. An advocate should assist the victim with any necessary modifications to the safety plan.

The prosecutor should immediately notify the employing department of the trial result and ask for an update on any disciplinary proceedings. If the jurisdiction has a requirement of forfeiture of public office associated with the

conviction, the prosecutor should prepare any necessary paperwork for the court prior to sentencing.

If a probationary sentence is recommended, either after a trial or as part of a plea agreement, the prosecutor should request that the court impose appropriate conditions of supervision, such as no-contact conditions, successful completion of a batterers' intervention program, substance abuse evaluation and treatment if necessary, and mental health evaluation and treatment if indicated. It is good practice to ensure that the court indicates, on the judgment of conviction, any offenses that come within the definition of "misdemeanor crime of domestic violence" for purposes of the federal firearms prohibition.<sup>64</sup>

## CONCLUSION

Officer-involved domestic violence poses unique dangers for the victim and threatens the mission and morale of the department. Departmental leaders, officers, advocates, investigators, and prosecutors must work together to prevent domestic violence within the ranks of the department, to provide effective interventions, and to provide swift, sure, and effective response to incidents in a way that will maximize victim safety and offender accountability, and promote public confidence in the department's integrity. Policies and protocols, carefully considered and effectively implemented, can reshape departmental culture to promote zero tolerance for domestic violence in the law enforcement family. Evidence-based prosecution strategies can help to ensure that offenders are held accountable, whether or not the victim participates in the process. These practices can help to fulfill the promise of law enforcement to protect and serve.

## ENDNOTES

- 1 This article focuses on police as perpetrators of domestic violence. Law enforcement officers, of course, may be victims of domestic violence as well—and often at the hands of an intimate partner who is also an officer. Such victims face unique threats and obstacles arising from their own status as police officers. Those challenges will be discussed in a forthcoming publication.
- 2 Teresa M. Garvey is an Attorney Advisor with AEquitas: The Prosecutors' Resource on Violence Against Women.
- 3 *How to Combat Officer-Involved Domestic Violence*, FRONTLINE (Nov. 23, 2013), [HTTP://WWW.PBS.ORG/WGBH/PAGES/Frontline/Criminal-Justice/Death-in-St-Augustine/How-to-Combat-Officer-Involved-Domestic-Violence](http://www.pbs.org/WGBH/PAGES/Frontline/Criminal-Justice/Death-in-St-Augustine/How-to-Combat-Officer-Involved-Domestic-Violence).
- 4 INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP), DISCUSSION PAPER ON IACP'S POLICY ON DOMESTIC VIOLENCE BY POLICE OFFICERS: A PRODUCT OF THE IACP POLICE RESPONSE TO VIOLENCE AGAINST WOMEN PROJECT 2 (2003), <http://www.theiacp.org/portals/0/pdfs/PoliceDomesticViolencePaper2003.pdf> [hereinafter IACP Discussion Paper]. According to data collected in the National Crime Victimization Survey, in 2010, females aged 12 and over in the general population of the United States were victims of intimate partner violence at a rate of 5.9 per 1,000, with rates of 9.7, 12.1, and 9.6 per 1,000 in the age groups of 18-24, 25-34, and 35-49, respectively. BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE, 1993-2010 2 (Nov. 2012), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.
- 5 These two studies appear to provide the only data available on the prevalence of domestic violence in law enforcement families.
- 6 *On the front lines: Police stress and family well-being: Hearing before the Select Committee on Children, Youth, and Families House of Representatives*, 102nd Cong. 32-48 (1991) (statement of Leonor Boulton Johnson, Associate Professor of Family Studies, Department of Family Resources, Arizona State University), <http://files.eric.ed.gov/fulltext/ED338997.pdf>. Interestingly, when the 479 spouses who were also surveyed were asked whether they or their children had ever been "physically abused" by the officer spouse, only ten percent stated they had been so abused, and ten percent stated their children had. The researcher attributed this as possibly being due to the "less direct" nature of the question posed to the officers, where "behav[ing] violently" might have included "verbal or physical threats," as well as actual physical abuse. *Id.* at 42.
- 7 P. H. Neidig, H.E. Russell & A. F. Seng, *Interspousal aggression in law enforcement families: A preliminary investigation*. 15(1) POLICE STUDIES 30-38 (1992).
- 8 "We define domestic violence as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone." *Domestic Violence*, THE UNITED STATES DEPARTMENT OF JUSTICE, <http://www.ovw.usdoj.gov/domviolence.htm> (last visited Dec. 12, 2014).
- 9 Federal law prohibits possession of firearms by any person convicted of a "misdemeanor crime of domestic violence." 18 U.S.C. § 922(g)(9). Federal law also prohibits possession of a firearm by a person who is subject to a qualifying domestic violence protective order, 18 U.S.C. § 922(g)(8). The protective order prohibition exempts duty weapons while the officer is on duty, 18 U.S.C. § 925(a)(1), although the order itself may prohibit possession of all firearms, including duty weapons. There is no law-enforcement exception in the federal statute for convictions, however. A qualifying conviction results in a prohibition on possession of *all* firearms, which means the officer cannot carry a weapon for any purpose, on duty or off.
- 10 IACP DISCUSSION PAPER, *supra* note 4, at 6.
- 11 Identified warning signs include excessive tardiness/absence, complaints of excessive force or disrespect on the job, alcohol or drug abuse, aggressive behavior toward others, disparaging remarks about an intimate partner, behavior indicating stalking or control of an intimate partner, inappropriate treatment of animals, and excessive on- or off-duty injuries. INTERNATIONAL ASSOCIATION OF THE CHIEFS OF POLICE, DOMESTIC VIOLENCE BY POLICE OFFICERS: A POLICY OF THE IACP POLICE RESPONSE TO VIOLENCE AGAINST WOMEN PROJECT (2003), IV(B)(5), <http://www.theiacp.org/portals/0/pdfs/PoliceDomesticViolencePolicy2003.pdf> [hereinafter IACP Policy].
- 12 The Tacoma News Tribune has compiled a comprehensive history of events leading up to the crime and its aftermath. Sean Robinson, *10 Years Later: Looking Back at Former Tacoma Police Chief David Brame*, THE NEWS TRIBUNE (Apr. 21, 2013), <http://www.thenewstribune.com/david-brame>.
- 13 Sean Robinson, *Inside David Brame's Police Department*, THE NEWS TRIBUNE (Sept. 15, 2003), <http://www.thenewstribune.com/2003/09/15/24476/inside-david-brames-police-department.html>; Sean Robinson, *David Brame's Life, Career Crumble When Wife Seeks a Way Out*, THE NEWS TRIBUNE (Sept. 15, 2003), <http://www.thenewstribune.com/2003/09/15/30849/david-brames-life-career-crumble.html>.
- 14 The rape allegation was "not sustained" following an Internal Affairs investigation; however, the allegation was known to the appointing authorities. Sean Robinson, *Judge Tosses Suit on Alleged Rape by Brame*, THE NEWS TRIBUNE (Mar. 21, 2006), <http://www.thenewstribune.com/2006/03/21/367686/judge-tosses-suit-on-alleged-rape.html>; *Timeline: A Look Back at the Life of David Brame*, THE NEWS TRIBUNE (Oct. 18, 2004), <http://www.thenewstribune.com/2004/10/18/24480/timeline-a-look-back-at-the-life.html>.
- 15 IACP POLICY, *supra*, 11.
- 16 See Incident Response, *infra*.
- 17 *Id.*
- 18 *The National Prevention Toolkit on Officer-Involved Domestic Violence*, THE FLORIDA STATE UNIVERSITY, <http://nationaltoolkit.csw.fsu.edu/about/> (last visited Dec. 12, 2014).
- 19 The author expresses appreciation to Karen Oehme, J.D., Director of the Florida State University Institute for Family Studies, College of Social Work, for providing access to the training modules.
- 20 Email from Karen Oehme, J.D., Director of the Florida State University Institute for Family Studies, College of Social Work, to Teresa Garvey, Attorney Advisor, AEquitas: The Prosecutors' Resource on Violence Against Women (Oct. 23, 2014, 11:07:00 EST)(on file with author).
- 21 IACP POLICY, *supra* note 11. This policy is currently undergoing a process of revision and update. Highlights of the revision, when it is completed, will be discussed in a forthcoming *Strategies in Brief*.
- 22 For access to the Toolkit, see "Go to Training" at *The National Prevention Toolkit on Officer-Involved Domestic Violence*, THE FLORIDA STATE UNIVERSITY, <http://nationaltoolkit.csw.fsu.edu> (last visited Dec. 12, 2014) [hereinafter *The Toolkit*](log-in required).
- 23 *Id.* (Training Module One).
- 24 Institute for Family Violence Studies, The Florida State University, *Officer to Officer*, YouTube, <https://www.youtube.com/watch?v=3hRMildMpHE&list=UUmCq1Gjx7WEsXRxoZeUji5A> (last visited Dec. 12, 2014).
- 25 THE TOOLKIT, *supra* note 22 (Training Module Two).
- 26 THE TOOLKIT, *supra* note 22 (Training Module Two, slide 19).
- 27 *Id.*
- 28 IACP POLICY, *supra* note 11, IV(B)(4), (5).

- 29 IACP DISCUSSION PAPER, *supra* note 4, at 9.
- 30 *Id.*
- 3 IACP POLICY, *supra* note 11.
- 32 IACP POLICY, *supra* note 11, IV(C).
- 33 IACP POLICY, *supra* note 11, IV(B)(4)(d), (C)(1).
- 34 IACP POLICY, *supra* note 11, IV(C)(2).
- 35 IACP POLICY, *supra* note 11, IV(C)(4). Where the perpetrator is a police chief or other departmental leader, the policy calls for the prosecutor and the overseeing authority (e.g., the mayor) to be notified. IACP POLICY, *supra* note 11, IV (C)(5)(b).
- 36 IACP POLICY, *supra* note 11, IV(C)(4)(m).
- 37 IACP POLICY, *supra* note 11, IV(B)(4)(a).
- 38 IACP POLICY, *supra* note 11, IV(C)(3), (4).
- 39 IACP POLICY, *supra* note 11, IV(C)(3)(b)(v), (4)(d), (4)(e), (4)(g). Although the policy states that the perpetrator “shall” be arrested where probable cause exists, the policy also states that dual arrests are to be avoided, and that “an arrest of the dominant aggressor is [to be] made in accordance with state law. IACP POLICY, *supra* note 21, IV(C)(4)(g). Further, if no arrest is made, the on-scene supervisor is to explain the decision in a written report. IACP POLICY, *supra* note 11, IV(C)(4)(m). It thus appears that despite the language suggesting arrest is mandatory, the policy actually advocates a pro-arrest policy. Some of the significant effects of mandatory or pro-arrest policies are discussed in J. DAVID HIRSCHL & D. J. DAWSON, NATIONAL INSTITUTE OF JUSTICE, VIOLENCE AGAINST WOMEN: SYNTHESIS OF RESEARCH FOR LAW ENFORCEMENT OFFICIALS (2003), <https://www.ncjrs.gov/pdffiles1/nij/grants/198372.pdf>.
- 40 IACP POLICY, *supra* note 11, IV(C)(4)(m).
- 41 IACP POLICY, *supra* note 11, IV(C)(3)(b)(i).
- 42 IACP POLICY, *supra* note 11, IV(C)(4)(c).
- 43 IACP POLICY, *supra* note 11, IV(C)(4)(h), (4)(i), 4(j)
- 44 IACP POLICY, *supra* note 11, IV(C)(4)(k).
- 45 *Id.*
- 46 IACP POLICY, *supra* note 11, IV(C)(6)(c).
- 47 IACP POLICY, *supra* note 11, IV(C)(4)(f).
- 48 IACP POLICY, *supra* note 11, IV(C)(1)(d).
- 49 IACP POLICY, *supra* note 11, IV(E)(1)(a).
- 50 IACP POLICY, *supra* note 11, IV(E)(1).
- 51 IACP POLICY, *supra* note 11, IV(E)(1)(h).
- 52 IACP POLICY, *supra* note 11, IV(C)(6)(e), IV(D).
- 53 For suggestions for such a safety plan, see Diane Wetendorf, *Annotated Safety Plan for OVID Survivors*, DIANE WETENDORF, INC., [www.abusepower.info/Tool\\_AnnotatedSafety.htm](http://www.abusepower.info/Tool_AnnotatedSafety.htm) (last visited Dec. 12, 2014).
- 54 See *Garrity v. New Jersey*, 385 U.S. 493 (1967) (administratively compelled statements made by officers during internal affairs investigation cannot be used against officers in subsequent criminal trial); *Kastigar v. United States*, 406 U.S. 441, 460 (1972) (“Once a defendant demonstrates that he has testified, under a ... grant of immunity, to matters related [to the subject of the current prosecution], the ... authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence ... This burden of proof ... imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.”). Although *Kastigar* did not involve an administratively compelled statement, the Supreme Court clarified, in *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977), that use immunity applied to such statements.
- 55 See Webinar Recording by Viktoria Kristiansson & Olga Trujillo, *Integrating a Trauma-Informed Response*, <http://www.aequitasresource.org/trainingDetail.cfm?id=112> (recorded Sept. 16, 2014).
- 56 IACP POLICY, *supra* note 11, IV(D)(6)(e).
- 57 IACP POLICY, *supra* note 11, IV(E)(1)(c).
- 58 Because witness intimidation is a prominent feature in cases of officer-involved domestic violence, many of the recommended prosecution strategies mirror those suggested for any case involving intimidation. For further discussion of these strategies, see TERESA GARVEY, *WITNESS INTIMIDATION: MEETING THE CHALLENGE* (2014), available at [www.aequitasresource.org/library.cfm](http://www.aequitasresource.org/library.cfm), and AEQUITAS: THE PROSECUTORS’ RESOURCE ON VIOLENCE AGAINST WOMEN, THE PROSECUTORS’ RESOURCE ON WITNESS INTIMIDATION (2014), available at [www.aequitasresource.org/library.cfm](http://www.aequitasresource.org/library.cfm).
- 59 See JENNIFER G. LONG, NAT’L DISTRICT ATTORNEYS ASSOC’N, INTRODUCING EXPERT TESTIMONY TO EXPLAIN VICTIM BEHAVIOR IN SEXUAL AND DOMESTIC VIOLENCE PROSECUTIONS (Aug. 2007), [http://www.ndaa.org/pdf/pub\\_introducing\\_expert\\_testimony.pdf](http://www.ndaa.org/pdf/pub_introducing_expert_testimony.pdf).
- 60 Teresa Garvey, *Disarming the Batterer: United States v. Castleman*, 23 STRATEGIES IN BRIEF 3-4 (Sept. 2014), available at [www.aequitasresource.org/library.cfm](http://www.aequitasresource.org/library.cfm).
- 61 During AEQUITAS’s initiative on Improving the Justice System Response to Witness Intimidation, advocates at the San Diego pilot site reported that victims of military personnel felt intimidated when their abusers appeared for court proceedings in their military uniforms. GARVEY, *supra* note 58, at 18 & n.33.
- 62 There are several ways in which the potential loss of police career might be relevant in a particular case. It might be the motive for witness intimidation, it might help to explain why a victim has recanted, or it might be offered by the defendant to explain why he did not commit the acts that have been charged (and, potentially, as a bid for sympathy). The admissibility of the potential civil or administrative consequences of a conviction is something that should perhaps be the subject of a motion *in limine* prior to trial.
- 63 KERRY MURPHY HEALEY, NAT’L INST. OF JUSTICE, RESEARCH AND ACTION, VICTIM AND WITNESS INTIMIDATION: NEW DEVELOPMENTS AND EMERGING RESPONSES 5 (Oct. 1995), <https://www.ncjrs.gov/pdffiles/witintim.pdf>
- 64 GARVEY, *supra* note 60 at 4.

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