

EVERY VICTIM, EVERY WITNESS:

12 Safety Considerations for the Juvenile and Family Court System

JOHN F. MUFFLER, M.S.

NCJFCJ FACULTY AND

CHIEF INSPECTOR (RET.), UNITED STATES MARSHALS SERVICE

The health and well-being of each child, victim, and witness is paramount to the administration of justice. The affected come to our attention stemming from various abuses. Many times the abuse that brings the victim to our attention is not the first time, just the latest; sometimes the latest being the last straw. This already fragile human being teeters at an emotional abyss of confusion, helplessness, rage, guilt, and fear. While in such a state of despair it is our duty to provide them, and those responsible for their well-being and testimony, safe harbor and proper care.

Day-to-day victim-witness safety at any level of the criminal justice system is notably different from the iconic federal witness protection program. From drug kingpins to stone-cold killers, I protected these people, gave them safe harbor, a new identity, and a place to live. During testimony they would receive a protective detail not unlike what you would see around a U.S. Supreme Court Justice—dark suited guardians in ballistic vests, sunglasses and ear pieces, perhaps shuttled around in an unmarked vehicle. Procedures like this are put in place to ensure the safety of the witness. Their testimony a keystone in high-profile criminal matters with the goal of eradicating a societal monster, a continuing criminal enterprise.

But thousands of victims and witnesses take the stand each day across the country completely unprotected, frightened, alone, and intimidated. They drive or take mass transit themselves from the very homes and neighborhoods in which the trauma was experienced and return afterwards even more vulnerable. In many ways, they are their own protectors against a very personal monster, their abuser.

“The barriers to safety - fear, kids, money, family, past, future, hope, religion, love and doubt - may seem insurmountable to a victim, because they feel alone in an uphill battle,” according to Lynn Fairweather, MSW, President of Presage Consulting and Training, LLC, and an expert in domestic violence and threat assessment. She further adds, “But with the help of the justice system and the support of their community, thousands of victims and their children find freedom each year. Never doubt that even the smallest act of compassion can save a life.”

One of the most important steps in handling the traumatized is allowing their voice to be heard. It may help lessen their victimization and also protect their community. For example, domestic violence is treated by some institutions, and let’s face it even

some victim's families, as "something that happens in private," meaning to overlook it. This type of violence is a public health issue as well. The impact of domestic violence on communities can also be seen in new research related to mass casualty attacks. In 2017 alone, one-third of the 28 mass violence attackers had a domestic violence history, according to a new United States Secret Service Study on the subject.

The greatest predictor of future violence is past violence. And a conviction of domestic violence stands alone at the apex of predicting future violent crime. Period. The Center for Disease Control reports that over half of the women killed in America from 2003-2014 were related to intimate partner violence. In 93 percent of these cases a former or current romantic partner was the killer.

A goal of the criminal justice system is prosecution and that may hinge solely on testimony. That may also be the victim's goal, but their more immediate need often is to simply stop the abuse. Law enforcement, health care providers, and the court systems handling of such cases from the outset is vital. Having solid and reliable evidence and testimony is but one step in the healing process and a first step towards victim and community safety.

In recognition of the upcoming 20th Anniversary of the NCJFCJ publication *Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice* (commonly referred to as the Greenbook), you will notice some Greenbook practice recommendations with these recommendations. As many of you know, the Greenbook helps guide courts, child welfare, and domestic violence agencies on how they can work together to more effectively serve families experiencing violence and achieve safety.

The following practices, as applicable to their role, can and should be employed by advocates, counsel, court security, law enforcement, child welfare and domestic violence service providers, judges and staff, as well as the victim or witness themselves. As emphasized in the *Greenbook*, coordination between judicial, child welfare, and domestic violence workers can help prevent victim re-traumatization and help communities respond more effectively to keep victims and children safer.

1. JUDICIAL LEADERSHIP

The NCJFCJ is the expert when it comes to training and education on judicial leadership. As an example, Principle XV, Recommendation 53 of the Greenbook states "The juvenile court should take a leadership role within the court system and with court-serving agencies to ensure cooperation among all parts of the juvenile court system, identify needed resources to serve families experiencing domestic violence, and develop strategies to obtain these resources." As with all court matters the judge becomes the focal point for all. As the ship's captain so-to-speak, giving a verbal warning before each proceeding about intimidation, cellphone/camera use, etc., can set the right tone. In a recent class on active threat mitigation techniques one judge mentioned she reminded a particular plaintiff, who was getting agitated toward a witness, of the positive things in his life, from a stable job to family support, both positive inhibitors. These are important aspects of behavior to recognize and act upon before it gets too late.

2. THE DIGNITY DOMINO

Conveying empathy, learning de-escalation techniques and treating subjects, to include the defendant, with respect will "ensure the 'dignity domino' remains upright," according to Ted Calhoun and Stephen Weston's book, *Threat Assessment and Management Strategies-Identifying the Hunters and Howlers*. As recommended in the *Greenbook* in Principle IV, child protection services, domestic violence agencies, and juvenile courts should treat all people who come

before them with respect and dignity. That domino is the last one in a line of inhibitors, once toppled the potential for violence greatly increases. Loss of dignity, perceived or real, is a common attribution to workplace violence, school shootings, and judicial attacks, as well as in domestic violence situations.

3. COURTROOM LAYOUT

To enhance safety and security within the courtroom authorities should divide the gallery in half placing opposing parties on either side. This will limit the chance of an intermixing of negative reactions. Keeping the first row or two empty or placing counsel assistants, court personnel, law enforcement, and/or vetted members of the press here will provide a limited barrier between the well of the court and family members who have experienced violence. While not foolproof, it allows for the slightest of distance and time to react in order to defend oneself. The Greenbook recommends with respect to cases involving domestic violence “all participants in the court system must understand the dynamics of this violence.” “They need to know what security precautions to take in and around the courthouse.”

4. OTHER ROOM LAYOUTS

For in-camera hearings, while not encouraged, the same ideas apply to the courtroom, the difference here is the small size of the setting—proximity matters in successful attacks. Putting opposing parties in such a location increases risk, and precautions should be made to secure any potential weapon (pen, scissors, etc.). The victim-witness should be nearer to an exit and as far from the suspect as possible. Citing an emerging body of science that is available to interviewers especially that sets the conditions for a successful outcome, Mark Fallon says, “The configuration of this room may be designed for safety but it can be counterproductive to the victim-witness during the investigative interview.” Mark Fallon is a retired Naval Criminal Investigative Service Deputy Assistant Director and an international expert on

interviewing techniques. The success of the case and safety of the traumatized can hinge on this aspect. Provide a private and secure room for the victim-witness during court proceedings. This will add to their safety and mental well-being, decreasing the opportunity to be re-victimized by family and abuser, during a highly stressful time.

5. SEPARATION ORDERS

Those defendants and victim-witnesses that are in custody in the same case need to be separated, through court orders. This can be challenging for the criminal justice system with a lack of jails, holding facilities, bed space, and guard services. But precautions should be made to avoid the ease of intimidation that occurs when in the same institution or, as I have seen, on the same transport to court. I had the privilege to conduct a nationwide court security assessment in El Salvador related to gang violence towards judges and the judicial system, interviewing their Supreme Court, Attorney General and local judges. One simple observation and recommendation I made was to separate rival MS-13 and 18th Street drug gang members, when possible, from court the same day. With some coordination amongst judges, counsel, and the court administrator they were able to effectuate this change.

6. ACCESS CONTROL

This is a simple way of enhancing overall facility security and directly influences victim-witness welfare. Keeping parties separated within court facilities will decrease the chance of an emotional, and possibly violent, encounter. This can be done by employing three basic tenets of building circulation: public, restricted, and secure. If these are not already built in to the design of the courthouse they can be created, especially in older facilities, using passive (requesting ID to enter the building, stanchions, signs) and active barriers (security personnel, barricades, locked doorways). The public should only have access to certain space, like hallways, bathrooms, and lobbies.

Restricted access is for court personnel only and victim-witnesses, their advocates and counsel. Secure access is strictly for prisoner, security, and judicial movement, but concessions can and should be made for the victim-witness too.

7. VIDEO CONFERENCING

One of the best ways to avoid a physical confrontation is to not be present in the same room. This would not limit a perpetrator, who knows the victim's fears best, from being able to intimidate but it can go a long way in diminishing the control an abuser has over a victim. In 2011, I was called to assess all safety and security for the Indonesian court system, specifically in preparation for the Bali bombing trial of Umar Patek, the bomb-maker known as the Demolition Man. After learning the cultural allowances and legal differences, one of the recommendations, especially after reading victim-impact statements from survivors of this terrorist attack, was to separate the two via video. This was an extremely high-stakes international terrorism case and there was real fear for victim and defendant safety, not to mention the entire legal process.

8. ADVOCATES AS A RESOURCE

These trained professionals help assist the victim-witness whether offering emotional support, handling court paperwork, contacting social services, creating safety plans, or acting as a go-between in bridging those insurmountable barriers mentioned earlier. Advocates can also act as eyes and ears, looking out for safety and security vulnerabilities at and near the court and be a liaison in coordinating with security personnel.

9. ACTIVE LISTENING

“An investigator's job is to obtain accurate and reliable information, whether it be from a victim, witness or suspect. The interview itself is a dynamic, interactive process and the ability to lucidly recall and draw upon memories, of oftentimes traumatic events,

can be effected by the actions of the interviewer, setting and conditions of the environment the person is interviewed in and even other events and/or interactions on the way to the interview,” says Fallon. “Successful interviewers know this process is not about questioning, but listening,” he states.

10. MANDATORY TRAVEL MOVEMENT AWARENESS

A key aspect of providing any at-risk individual protection is being less predictable traveling from one location to another. Stagger departure and arrival times to/from home, court/hearing/other known locations. This includes arriving/leaving court at the same time each day. Advocates should work with security in coordinating different entry and exit points, mixing in different times coming and going, and changing parking locations. The more predictable the pattern the greater likelihood of being re-victimized and putting the case in jeopardy. (Since most judges are their own protectors too this tip is always recommended for them.) In the courtroom, with the premise that there are security officers in place, it is best to move the victim-witness into a safe location, and away from the abuser and their supporters, first. Those present for either side can then be dismissed one side at a time. The idea is to minimize a clash of emotions in a public space.

11. CODE WORDS

Whether in a courtroom or in private, family code words are valuable when there is an early indication of something out of place, that something wrong could possibly happen. An agreed upon code word or phrase allows court personnel and families to take action and decide what to do and where to go. Moving off the X, or the bullseye, being first and foremost.

12. EMERGENCY APPS

Free web and mobile-based apps in which a simple covert touch of a phone icon will automatically dial your emergency contact list, then 911, can open your Wi-Fi and GPS and stream real-time to responding officers, is life-saving. Friends, family, and advocates should be programmed into that contact list. In life and death situations time is of the essence. The simplicity of this technology cuts out the delay of dialing and identifying oneself and can make all the difference. Also a great safety tool for judges and in a school environment.

Aequitas, the Latin term for justice, fairness, and equity is a cornerstone of our democracy and thus must be protected for all parties. From advocates to judges and all who are touched by the hand of violence along the way, the legal system balances on those who care, those who make decisions impartially and without fear or favor. I hope this article helps in your day-to-day work within the juvenile and family court system. You matter.

About the author:

John F. Muffler, U.S. Marshals Chief Inspector (Ret.), was the Administrator of the National Center for Judicial Security, a national program that researched, trained and assessed security measures and countermeasures for the global judicial community. A member of the NCJFCJ faculty, his professional affiliations include the International Association of Chiefs of Police, National Sheriffs' Association, and The Association of Threat Assessment Professionals, to name a few; he serves on the advisory board for Blue HELP and has done so in the past for the National Center for State Courts. Accepted into the Department of State's Fulbright Specialist Program, he has lectured globally on judicial security and threat management strategies. He has authored publications for the legal, homeland security, and law enforcement communities; he has a master's degree from St. Joseph's University and is an alum of the Naval Postgraduate School's Executive Leaders Program. As Principal of Aequitas Global Security Solutions, LLC, he takes pride in assessing, educating and inspiring all on safety and security and has volunteered services for victims and families of violence.



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