Forfeiture by Wrongdoing

Outline for Utah Prosecution Council Fall 2014

I. Forfeiture by Wrongdoing (FBW): the Concept

A. FBW and the 6th Amendment

1. Sixth Amendment guarantees a defendant a right to confront and cross-examine any witness who is giving testimony against the defendant
2. Constitutional rights can, however, by waived
    a. Fifth amendment waiver by means of *Miranda* advisement
    b. Waiver of right to counsel by going *pro se*
    c. Waiver of rights under a plea agreement
3. Utah makes a distinction between waiver of a right and forfeiting a right (State v. Poole, 2010 UT 25, 232 P.3d 519 (Utah 2010) – footnote 1)

B. History of Doctrine of Forfeiture by Wrongdoing

1. Forfeiture by wrongdoing is a longstanding exception to a defendant's Sixth Amendment right of confrontation. (Garvey, Teresa. *"Witness Intimidation: Meeting the Challenge " Aequitas ©2013* p. 69)
2. According to New Jersey Supreme Court, no court that has considered it has rejected it (Id,)
3. The common-law forfeiture rule was aimed at removing the otherwise powerful incentive for defendants to intimidate, bribe, and kill the witnesses against them—in other words, it is grounded in "the ability of courts to protect the integrity of their proceedings." *Davis, supra*, at 834, 126 S.Ct. 2266. (*Giles v. California,* 128 S.Ct. 2678. 2691 (2008)
4. "This Court first addressed forfeiture in *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1879), where, after hearing testimony that suggested the defendant had kept his wife away from home so that she could not be subpoenaed to testify, the trial court permitted the Government to introduce testimony of the defendant's wife from the defendant's prior trial. See *id.*, at 148–150.
    a. On appeal, the Court held that admission of the statements did not violate the right of the defendant to confront witnesses at trial, because when a witness is absent by the defendant's "wrongful procurement," the defendant "is in no condition to assert that his constitutional rights have been violated" if "their evidence is supplied in some lawful way." *Id.*, at 158.
    b. *Reynolds* invoked broad forfeiture principles to explain its holding.

c. The decision stated, for example, that "[t]he Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts," *ibid.*, and that the wrongful-procurement rule "has its foundation" in the principle that no one should be permitted to take advantage of his wrong, and is "the outgrowth of a maxim based on the principles of common honesty," *id.*, at 159." (*Giles* at 2686)

5. Federal Rule of Evidence on FBW: (*Giles* v. 2687)
   a. Adopted in 1997.
   b. We have described this as a rule "which codifies the forfeiture doctrine." *Davis v. Washington*, 547 U.S. 813, 833, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006).
   c. Rule 804(b)(6): Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability are *not* **excluded by the rule against hearsay**. A statement offered against a party that wrongfully caused--or acquiesced in wrongfully causing--the declarant's unavailability as a witness, and did so intending that result.

C. *Giles v. California:* Supreme Court standard for proving elements of forfeiture

1. The Amendment contemplates that a witness who makes testimonial statements admitted against a defendant will ordinarily be present at trial for cross-examination, and that if the witness is unavailable, his prior testimony will be introduced only if the defendant had a prior opportunity to cross-examine him. Crawford, 541 U. S., at 68.
2. There are two (2) exceptions to this rule:
   a. Dying declaration
   b. Forfeiture by wrongdoing
3. Common-law courts allowed the introduction of statements by an absent witness who was "detained" or "kept away" by "means or procurement" of the defendant. (*Giles* at 2683)
4. The doctrine has roots in the 1666 decision in Lord Morley's Case, at which judges concluded that a witness's having been "detained by the means or procurement of the prisoner," provided a basis to read testimony previously given at a coroner's inquest. (*Giles* at 2683)
5. To meet this standard, must show that defendant has schemed to bring about the absence from trial that he "contrived." (*Giles* at 2684)
6. "An 1858 treatise made the purpose requirement more explicit still, stating that the forfeiture rule applied when a witness "had been kept out of the way by the prisoner, or by some one on the prisoner's behalf, *in order to prevent him from giving evidence against him*." E. Powell, The Practice of the Law of Evidence 166 (1858) (emphasis added). The wrongful-procurement exception was invoked in a manner consistent with this

definition. We are aware of no case in which the exception was invoked although the defendant had not engaged in conduct designed to prevent a witness from testifying, such as offering a bribe." (*Giles* at 2684)

7. "The manner in which the rule was applied makes plain that unconfronted testimony would *not* be admitted without a showing that the defendant intended to prevent a witness from testifying. In cases where the evidence suggested that the defendant had caused a person to be absent, but had not done so to prevent the person from testifying—as in the typical murder case involving accusatorial statements by the victim—the testimony was excluded unless it was confronted or *362 fell within the dying-declarations exception. Prosecutors do not appear to have even *argued* that the judge could admit the unconfronted statements because the defendant committed the murder for which he was on trial." (*Giles* at 2684)

II. Admitting Evidence Under the Doctrine

A. Question 1: Is your witness *unavailable?*

1. Prosecutor will have to show that the witness is "unavailable," which will require proving State made reasonable efforts to produce the witness in court. (Garvey, "Meeting the Challenge" p. 55)
2. Unavailability defined:
    a. Federal Rule 804(a): Criteria for Being Unavailable
    (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
    (2) refuses to testify about the subject matter despite a court order to do so;
    (3) testifies to not remembering the subject matter;
    (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
    (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6);
    b. Does recantation fall into this category?

B. Question 2: Is there wrongdoing?

1. Significantly, wrongful acts include not only crimes, such as murder, assault, threats, and other forms of intimidation, but also declarations of love, or promises to marry or to change, when they are intended as inducements for the victim not to testify.119 (Garvey, "Meeting the Challenge,", p. 69)
    a. Promise to do something the victim wants

b. Promises to do something that the victim doesn't want if victim doesn't comply
    a. Promises to marry?
    b. Promises to *not* get a protective order against victim
    c. Threats to kill, cut off support

2. There need not be a pending case at the time of the wrongful act for the forfeiture doctrine to apply.
    a. Wrongdoing can occur prior to crime in question
        a. "I will kill you if you ever come to court."
        b. "If you ever tell, I will hurt your sister"
        c. Gang cases: not snitching is part of the code

3. Example of wrongdoing: Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify. (*Giles* at 2693)

C. Question 3: Did the **defendant, or someone acting at his behest**, engage in the wrongdoing?
    1. You must show that it was the defendant / associates who engaged in the conduct
    2. Look to "family" relationship between defendant and ultimate message "deliverer"
    3. Common places to look for acquiescing:
        a. Family / friends / gang members
        b. Jail mail, social media, song lyrics, any means of gang communication
    4. Legal standard?
        a. Remember *Zargoza:* defendant aware of wife's threats against the victim on his behalf

D. Question 4: Did the Defendant act with the intention that the witness be unavailable?
    1. Every commentator we are aware of has concluded the requirement of intent "means that the exception applies only if the defendant has in mind the particular purpose of making the witness unavailable (*Giles)*
    2. Think about relationship history to show intent
    3. What does gang life require of other members / associates?

III. Forfeiture by Wrongdoing: Utah Law

A. Rule of Evidence:
    1. Utah does not have a specific rule on Forfeitureby Wrongdoing
    2. Utah's definition of unavailable: declarant is unavailable if declarant
        a. is exempted from testifying about the subject matter of the declarant's statement because the court rules that a **privilege applies;**

b. **refuses to testify** about the subject matter despite a court order to do so;
c. testifies to **not remembering** the subject matter;
d. **cannot be present** or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
e. is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance.
f. But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

B. Caselaw

1.*State v. Garrido*, 2103 UT App 245 (Utah App. 2013)

a. Facts:
   i. Defendant assaulted his girlfriend and she repeatedly refused to testify against her after he violated the pre-trial no contact order.
   ii. She told prosecutor "she didn't want to be looking over her shoulder for the rest of her life"
   iii. When victim did appear at 3rd preliminary hearing setting, she claimed loss of memory or her testimony contradicted original statements. *Defense attorney elected not to cross-examine her*
   iv. Victim had been extremely uncooperative and had attempted to avoid service multiple times.
   v. Trial court made preliminary ruling that if victim failed to appear at trial, it would admit her prior testimony from the preliminary hearing and her statements to the prosecutor, which were overheard by the paralegal
   vi. Victim did not appear for trial.
   vii. Trial court found that she was unavailable.
   viii. As her testimony was about to be read into evidence, the victim came into court and shouted that she refused to testify and then she fled.
   ix. Victim's preliminary hearing testimony was read into the record.
b. Legal Issues:

i. Did trial court make adequate findings to support a determination that Victim was unavailable?

ii. Were Defendant's Sixth Amendment rights subsequently violated when Victim's preliminary hearing testimony was admitted?

iii. Were the Defendant's 6th Amendment rights violated by admission of the victim's statements to the prosecutor, overheard by the paralegal?

c. Findings

i. Unavailability:

a. We conclude that Victim was unavailable.

b. Victim persistently refused to testify prior to trial, was resistant to service, and was absent when called.

c. The trial court made a finding that Victim was unavailable and asked that a stand-in witness come forward to read Victim's preliminary hearing testimony.

d. Although Victim then suddenly appeared, she did so only to shout from the gallery that she would not be testifying. A bailiff went after her when she then fled the courtroom, but she had already disappeared.

e. The trial court's statement—"I'm not going to continue with this charade. We're just going to take her testimony as it's written."—appears to be a simple affirmation of its prior, formal ruling of unavailability.

f. But even if it was not, the "clear, uncontroverted" facts support a determination that she was not available to testify. See Stonehocker v. Stonehocker, 2008 UT App 11, ¶ 16, 176 P.3d 476

g. Victim was absent for all but a brief moment of the trial, during which she refused to take the stand and then fled.

h. **It was, therefore, not error for the court to determine Victim was unavailable because she "refus[ed] to testify" and was "absent from the hearing," and on that basis to admit her preliminary hearing testimony into evidence.**

ii. Prior Opportunity to Cross

a. "[i]t is the opportunity to cross-examine that is guaranteed by the state and federal constitutions, not whether that opportunity is exercised." State

v. Nelson, 725 P.2d 1353, 1357 (Utah 1986) (emphasis added). While "[d]efense counsel may have elected to forego cross-examination[,] . that does not mean that the opportunity was not available." Id.

b. Defendant's trial counsel was given three different opportunities to cross-examine Victim at the preliminary hearing but declined to do so—almost certainly because the testimony elicited by the prosecution from Victim was favorable to Defendant as she recanted many of her previous allegations against him and claimed to have forgotten about the relevant incidents. See State v. King, 2010 UT App 396, ¶ 49, 248 P.3d 989 ("[A]ttorneys may opt to forego cross-examination of witnesses for valid strategic reasons."); State v. Strain, 885 P.2d 810, 815–16 (Utah Ct.App.1994) (holding counsel's decision to forego cross-examination of witness was "within the range of legitimate trial strategies" because testimony was favorable to the defendant and further probing "would not only be fruitless but also potentially harmful").

c. Indeed, in an exchange with Defendant's counsel at trial, the court stated, "[Y]ou chose not to cross-examine [Victim at the preliminary hearing] because [her testimony] was favorable to your client," and trial counsel responded, "On that, on those issues, yes."

d. We conclude that it was the opportunity to cross-examine Victim, not the actual undertaking of cross-examination, that satisfied the requirements of Crawford.

e. While Defendant has assailed trial counsel's refusal to cross-examine Victim at the preliminary hearing, we determine that it was a logical and routine choice, made to avoid to avoid the possibility of disturbing favorable testimony.

f. **Defendant's Sixth Amendment rights were not violated when the preliminary hearing testimony was admitted because Defendant was provided the requisite opportunity for cross-examination at that stage of the proceedings.**

iii. Admission of statements to paralegal

a. The trial court admitted the statements over Defendant's objections under the state-of-mind exception found in rule 803 of the Utah Rules of Evidence.
b. "[N]ontestimonial hearsay can be admitted under generally accepted exceptions to the hearsay rule without running afoul of the Sixth Amendment." Salt Lake City v. Williams, 2005 UT App 493, ¶ 14, 128 P.3d 47. "The focus of the Confrontation Clause is on witnesses who bear testimony against the accused." Id. ¶ 15.
c. Here, Victim's statements were not accusatory nor did they amount to bearing witness against Defendant.
d. The statements repeated by the paralegal were simply declarations of Victim's intention not to testify, with reference to her fear of Defendant as a reason for not doing so.
e. The paralegal's statements were not erroneously admitted and did not violate Defendant's rights, nor was a limiting instruction related to the statements required.

2. *State v. Poole*, 2010 UT 25, 232 P.3d 519 (Utah 2010)
   a. Facts:
      i. Mr. Poole began sexually abusing his daughter, C.P. from the time she was 5 or 6 until she was 16 years old. An anonymous tip led the state's Division of Child and Family Services to launch an investigation into the abuse in late 2005. During a recorded interview in February 2006, C.P. confirmed and provided details of the sexual abuse to a DCFS social worker and a Cache County Sheriff's detective
      ii. Within days of Mr. Poole's arrest, Mrs. Poole moved the family to Idaho and sought independent legal representation for C.P. Mrs. Poole's actions caused the prosecutors to fear that C.P. would not appear at Mr. Poole's trial.
      iii. District court allowed prosecutors to depose C.P. in order to preserve testimony from a potentially unavailable witness. C.P. appeared at the deposition but refused to answer the prosecution's questions. Indeed, C.P.'s only response to the state's questioning was to nod in affirmance that she was unwilling to testify. Mr. Poole's defense attorney declined to ask C.P. any questions on the basis that the state had failed to elicit any testimony from C.P. on direct examination.

iv. Approximately two months later, prosecutors again attempted to take C.P.'s testimony. At a pretrial motion hearing on the subject of whether Mr. Poole forfeited his right to confront C.P. through his wrongful conduct that rendered her unavailable at trial, C.P. was again called as a witness and placed under oath. C.P. stated her name and address and then refused to answer any other questions posed by the prosecution. Once again, Mr. Poole's defense attorney declined to question C.P.

v. State moved to admit out of court statements under theory of FBW

vi. District court determined that the state has the burden of proving forfeiture by wrongdoing by a preponderance of the evidence, and with the exception of privileges, the Utah Rules of Evidence do not apply to the decision on forfeiture by wrongdoing because the district court's decision is a preliminary issue of fact.

vii. Applying these standards to the allegations of wrongdoing by Mr. Poole, the district court found Mr. Poole had forfeited his right to confront C.P. through wrongful conduct. Specifically, the district court found Mr. Poole "worked in conjunction with his wife" to "pressure," "manipulate[ ]," and "threaten [ ]" C.P. into refusing to testify.

viii. "All of this can be laid at the defendant's feet. He caused the result that C.P. is now refusing to testify, and he should not benefit from this manipulation of a witness."

ix. Legal posture: defendant had entered a conditional guilty plea. Now wanted to contest whether the court's FBW ruling was correct. Court had determined that witness was *unavailable* but this never came to be tested since the defendant pleaded.

x. Court overturned the plea because Court's decision about unavailability was premature.

b. Legal Issues:

i. Does the Utah Constitution provides greater protections to criminal defendants than its federal counterpart? (Utah Constitution could provide more protection to criminal defendants by limiting the influence the forfeiture-by-wrongdoing doctrine has on the confrontation clause. See State v. DeBooy, 2000 UT 32, ¶ 12, 996 P.2d 546).

ii. Can a defendant can benefit from wrongfully causing a witness's absence at his criminal trial?

iii. What burden of proof must the state meet to show a defendant has forfeited the right to confrontation through misconduct?
iv. What type of evidence may the district court consider in analyzing the defendant's wrongful conduct?

c. Findings:
i. **Utah law recognizes that a defendant may forgo the right to confrontation through conduct designed to make a witness unavailable at trial so long as the state can prove the defendant acted with the intent to accomplish that end**.
ii. Forfeiture by wrongdoing acts to eliminate these constitutionally guaranteed protections because of the defendant's affirmative acts
iii. Forfeiture by wrongdoing can be viewed as a limitation on the protection guaranteed by the constitution because the right to confront one's accuser no longer applies when the defendant has acted to cause a witness to be unavailable
iv. Under the federal constitution, the protections of the confrontation clause cease to apply to a defendant who "(1) causes a potential witness's unavailability (2) by a wrongful act (3) undertaken with the intention of preventing the potential witness from testifying." United States v. Houlihan, 92 F.3d 1271, 1280 (1st Cir.1996); see also Doan v. Carter, 548 F.3d 449, 458 (6th Cir.2008
v. Under Utah Law, Criminal Defendants Forfeit Their Right to Confront Their Accusers After Committing a Wrongful Act that Renders the Witness Unavailable When the Defendant Acted with the Intent of Making the Witness Unavailable at Trial
vi. Under federal law, the forfeiture test is articulated through a three-element test that requires the state to show (1) the witness is unavailable at trial, (2) the witness's unavailability was caused by a wrongful act of the defendant, and (3) the defendant's act was done with an intent to make the witness unavailable. Houlihan, 92 F.3d at 1280; see Giles, 128 S.Ct. at 2682-83; Doan, 548 F.3d at 458. This test strikes an appropriate balance between protecting the integrity of the criminal process and dissuading defendants from tampering with witnesses, and the right of the defendant to cross-examine witnesses guaranteed by article I, section 12 of the Utah Constitution.
vii. The appropriate standard in determining whether the elements of forfeiture have been met is *preponderance of evidence.*

viii. A trial court may not consider hearsay evidence in evaluating the admission of out-of-court statements on the basis of forfeiture by wrongdoing

ix. Defendants forfeit their right to confront the witnesses against them only after the state has shown (1) the witness is unavailable at trial, (2) the witness's unavailability was caused by the defendant's wrongful acts, and (3) the defendant's wrongful acts were intended or designed to make the witness unavailable.

x. Generally, courts applying this test will be required to analyze each element independently.

xi. Given our ultimate holding that a decision on C.P.'s availability at Mr. Poole's trial was premature prior to the time of trial itself, we do not need to analyze the latter two elements of the test

xii. Forfeiture only applies when the state has shown that the witness, whose out-of-court statements are at issue, is unavailable at the defendant's criminal trial.

xiii. It is more difficult to evaluate the availability of a witness who has indicated unwillingness to testify prior to trial (As opposed to a witness who is dead). Such a witness could conceivably have a change of heart and opt to testify despite earlier pronouncements to the contrary.

xiv. Indeed, any wrongful acts by the defendant are immaterial as far as the confrontation clause is concerned until it is shown that the witness is in fact unavailable at the criminal trial.

xv. Courts do not demand that a witness who refuses to testify be placed before the jury prior to an evaluation of the witness's availability.

xvi. Witness unavailability ought to be considered as part of the overall forfeiture analysis, which generally is done through an evidentiary hearing held outside the presence of the jury.

xvii. To hold otherwise would run contrary to the policy-based reasoning underlying the forfeiture doctrine; if the prosecution were to be required to present the witness at trial, the defendant could arguably benefit from the impression left with the jury by a victim or witness who refuses to answer the prosecutor's questions. Defendants should not be permitted to benefit in this way from their wrongful actions.

3. *State v. Zaragoza*, 2012 UT App 268, 287 P.3d 510 (Utah Ct. App. 2012)
    a. Facts:

i. Defendant's charges arise from a dispute between Defendant and his wife, Ms. Zaragoza (Wife), at a motel where the couple was staying with a friend and Wife's eight-year-old daughter.
ii. Wife contacted the police, who photographed the motel room and Wife's injuries.
iii. Wife gave two witness statements to the police.
iv. Defendant contacted the victim, after his arrest, 276 times by phone, all in violation of a No Contact Order.
v. Before trial, Wife invoked her state constitutional spousal testimonial privilege, stating that she would not testify against Defendant.
vi. The State moved to admit Wife's witness statements under the forfeiture-by-wrongdoing doctrine arguing that Defendant forfeited any confrontation challenges to the admission of Wife's out-of-court statements when he procured her unavailability.
vii. The trial court held an evidentiary hearing and granted the State's motion
viii. At trial, the State presented Wife's witness statements describing what had happened in the motel

b. Legal Issues: Admission of victim's statements under FBW
i. Defendant argues that the trial court erred when it admitted Wife's out-of-court statements utilizing the forfeiture-by-wrongdoing doctrine.
ii. Defendant asserts that his conduct in this case is not the type of conduct that justifies forfeiture of his confrontation clause rights.

c. Findings:
i. Forfeiture by wrongdoing forecloses the defendant's constitutional right to be confronted with the witnesses against him when the defendant's affirmative acts caused the witness to be unavailable. See State v. Poole, 2010 UT 25, ¶ 10, 232 P.3d 519.
ii. The trial court's "decision to admit testimony that may implicate the confrontation clause is a question of law reviewed for correctness." Id.
iii. There was more than a preponderance of the evidence to show that "this defendant engaged in witness tampering to attempt to induce someone from withholding testimony, change somebody's testimony, influence the testimony that may be given at trial."
iv. Defendant caused Wife's unavailability by the wrongful act of contacting Wife by phone 276 times in violation of a no-contact order

IV. Practical Issues with Forfeiture by Wrongdoing

A. How reliable are the statements I am seeking to admit?
    1. Method of assuring reliability
        a. Is it recorded?
            a. How was the statement documented?
            b. Can it be authenticated?
            c. What indicia of reliability exist?
        b. Source of statement
            a. Is the person reporting the contents, circumstances, etc. reliable?
            b. Does the reporter have any bias, motive or interest?
            c. What is the likelihood that they are an accurate historian?
    2. Remember that the hearsay rules apply to a hearing on FBW
B. What is the burden of proof for proving Forfeiture?
    1. Utah standard is preponderance of the evidence
    2. Timeliness of the motion matters
        a. Seek preliminary ruling
        b. Continue with efforts to produce witness to demonstrate good faith to the court
C. How can I work with the notion of prior opportunity to cross / admissible hearsay evidence?
    1. Create / ensure opportunities to cross-examine by the defense
        a. Preliminary hearing
        i. Bond review hearings
        ii. Taking a deposition when witness is cooperative
    2. Object to defense requests to waive a hearing at which testimony will be given.
    3. Agree to "reasonably brief continuances to permit the defense to prepare to cross-examine the witness."
    1. Be cautious when objecting to defense cross-examination, lest it be argue d that there wasn't a full opportunity to cross-examine.
    !

V. Back-up Plans: When Forfeiture is Tenuous

A. Produce the witness
    1. Even if they won't tell the truth, production for cross means that *Crawford* goes away
    2. Work to produce the witness *before* witness becomes uncooperative
B. Find other non-testimonial hearsay
    1. Common exceptions
        a. Statements for diagnosis and medical treatment
        b. Dying declaration
        c. Present sense impressions

d. Excited utterances

2. Sources of non-testimonial hearsay

a. Remember the *Michigan v.* Bryant standard

b. Anyone who is a non-LEO

c. Statements made without expectation of further use in Court

C. Remember non-hearsay as well

1. Crawford only applies to hearsay

2. What isn't hearsay?

a. Questions

b. Any statement not offered for the truth of the matter

c. Statements of identity

d. Inconsistent statements / past recollection recorded

e. Allegation that witness recently fabricated statements

f. Statement offered against opposing party

D. Consider additional charges

1. Against people who tampered with your witnesses

2. Against the defendant

3. Legislative action: tampering with a witness becomes a felony equivalent to the highest charge on which tampering occurred.

Resources:

Giles v. California, 128 S.Ct. 2678 (2008)*:* http://www.supremecourt.gov/opinions/07pdf/07-6053.pdf

National District Attorney's Association: *The Crawford Outline (contact NDAA for access: 703-549-9222)*

Garvey, Teresa*. "Witness Intimidation: Meeting the Challenge " Aequitas ©2013*

Davis, Kevin. "*Witness Harassment has gone digital, and the justice system is playing catch-up*." ABA Journal.Com. August 1, 2013