U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

National Institute of Justice

Research in Action

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October 1995

Highlights

Prosecutors in some jurisdictions report an increase in victim and witness intimidation: some prosecutors have estimated intimidation as a factor in 75 to 100 percent of the violent crimes committed in some gang-dominated neighborhoods. This Research in Action summarizes recent developments in gang- and drug-related intimidation of victims and witnesses, current responses to the problem by police and prosecutors, and emerging models and strategies for its prevention and suppression.

The nature of intimidation

- Gang- and drug-related intimidation may be case-specific or communitywide. The wholesale intimidation of neighborhoods can be as harmful to witness cooperation as an explicit threat made against an individual. Each case-specific act of violence against victims or witnesses promotes the communitywide perception that any cooperation with the criminal justice system is dangerous.

- Factors that contribute to the reluctance of witnesses to step forward include fear, strong community ties, or a deepseated distrust of law enforcement. Community members may also consider gang and drug crimes as outside the scope of their concern or responsibility.

- Factors that increase the likeli-

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Victim and Witness Intimidation:

New Developments and Emerging Responses

by Kerry Murphy Healey

Intimidation of victims and witnesses undermines the functioning of the justice system by denying critical evidence to police and prosecutors. This long-standing problem also erodes confidence in the government's ability to protect citizens. Victim and witness intimidation has usually been associated with organized crime and domestic violence cases. But this form of intimidation is developing new characteristics as its occurrence increases in urban drug- and gang-related violent crime.

Intimidation can be characterized as:

- Case-specific—threats or violence intended to dissuade a victim or witness from testifying in a specific case.

- Communitywide—acts by gangs or drug-selling groups intended to foster a general atmosphere of fear and noncooperation within a neighborhood or community.

The wholesale intimidation of neighborhoods by gangs or drug-selling groups can be as harmful to witness cooperation as an explicit threat against an individual. Communitywide and case-specific intimidation may operate separately or in tandem. However, each case-specific act of violence against victims or witnesses by gangs or drug-selling groups promotes the communitywide perception that any cooperation with the criminal justice system is dangerous.

This Research in Action is based on structured interviews with 32 criminal justice professionals from 20 urban jurisdictions, including prosecutors; victim services directors; Federal, State, and local law enforcement officers; judges; and scholars.[1] Also included are the insights offered by a working group of 20 criminal justice professionals, who met in September 1994 to exchange information on emerging responses to the problem of victim and witness intimidation. The preliminary findings of this National Institute of Justice-sponsored project indicate many recent developments in the nature of witness and victim intimidation and a wide range of existing and emerging strategies to address the problem.

Characteristics of victim and witness intimidation

Most interview respondents estimated that more victims were murdered and otherwise intimidated in domestic violence cases in their jurisdictions each year than in gang or drug crime-related intimidation attempts. Respondents and working group

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hood of intimidation include the violent nature of the initial crime, a previous personal connection to the defendant, geographic proximity to the defendant, and membership in a culturally vulnerable group.

Police and prosecutor approaches

- Traditional approaches to the problem of victim and witness intimidation include warnings to the defendant concerning obstruction of justice laws, high bail, aggressive prosecution of reported intimidation attempts, and, in extreme cases, threatened individuals' entry in the Federal witness security program.

- Some innovative interventions to gang- and drug-related intimidation include emergency relocation and support for threatened witnesses, innovative courtroom security measures, interagency cooperation to move threatened witnesses who reside in public housing to new areas, secure segregation of intimidated victims and witnesses in correctional facilities, and community outreach and collaboration among criminal justice, social service, and community groups.

- Emerging strategies also emphasize intimidation prevention and control through community outreach based on community policing and prosecution approaches and enhanced communication among law enforcement, prosecutors, and the judiciary.

Target audience: Prosecutors; law enforcement officials; criminal justice researchers in the fields of prosecution, community policing, and criminal gangs; judges; and providers of victim services.

members agreed that intimidation in domestic violence cases is different in nature from gang-related intimidation because of the close relationship between domestic partners and the near universality of intimidation in domestic violence cases. However, respondents agreed that intimidation associated with gang- and drug-related violent crime was escalating, while intimidation linked to domestic violence was continuing at a steady rate.

The extent of the problem. A number of prosecutors linked the increase in violent victim and witness intimidation to the advent of gang-controlled crack sales in the mid- to late-1980's. As crack sales grew, some urban prosecutors noted an upturn in gang- and drug-related homicides.[2] Several prosecutors estimated that today victim and witness intimidation is suspected in up to 75-100 percent of the violent crimes committed in some gang-dominated neighborhoods.[3]

The 1992 National Crime Victimization Survey suggests that in neighborhoods not plagued by gangs and drug sales, fear and intimidation play a much less significant part in the failure to cooperate with police and prosecutors.[4] The discrepancy between the perception of urban police and prosecutors and the findings of the National Crime Victimization Survey is important: victim and witness intimidation is *endemic* in neighborhoods infested with gang activity and drug sales and virtually *invisible* to people outside those neighborhoods. The majority of citizens outside gang-dominated neighborhoods learn about victim and witness intimidation only through the media.

Victim and witness intimidation resists quantitative analysis, but some data are emerging that give a clearer picture of the problem. A decade ago, commentators noted that only unsuccessful intimidation attempts ever came to the attention of police or prosecutors.[5] Today, prosecutors report that extremely violent intimidation attempts—which are almost always successful—are coming to their attention with increasing frequency. These extremely violent intimidation attempts are often gang- and drug-related.

A recent national assessment of gang prosecution sponsored by NIJ provides important new data supporting anecdotal estimates of the prevalence of victim and witness intimidation offered by police administrators and prosecutors.[6] According to this assessment, 51 percent of prosecutors in large jurisdictions and 43 percent in small jurisdictions said that the *intimidation of victims and witnesses* was a major problem, while an additional 30 percent of prosecutors in large jurisdictions and 25 percent in small jurisdictions labeled intimidation a moderate problem.

Causes of individuals' reluctance to be witnesses. Examples of mass intimidation given by police and prosecutors (see "No One Is Willing to Testify") suggest that fear is only one factor contributing to the reluctance of witnesses to step forward; strong community ties and a deep-seated distrust of law enforcement may also be strong deterrents to cooperation. The communities in which many of these gangs operate are often worlds unto themselves—places where people live, attend school, and work, all within a radius of only a few blocks—from which they rarely venture out. More importantly, victims and witnesses usually know the gang members and defendants against whom they are asked to testify; typically, victims and witnesses are the children of the gang member's friends or relatives, members of the same church, classmates, or neighbors. Furthermore, the community may regard many of the

Crimes for which witnesses are sought as private business matters among gang members or drug dealers, not crimes against the community.

Both case-specific and communitywide fear of retaliation are fed by the growth of powerful prison gangs whose members return quickly to the community because of brief sentences or are able from behind bars to arrange for friends or family members to threaten any potential witnesses. Due to the uninterrupted connections between incarcerated and neighborhood gang members, victims and witnesses no longer feel that imprisonment of the defendant pending trial or after conviction can ensure their safety in the community. The knowledge that gangs have easy access to members of the community deters many witnesses at once. Prosecutors noted that the mere fact that a crime is gang- related is often sufficient to prevent an entire neighborhood from cooperating. Communitywide intimidation was the most frustrating type of intimidation for prosecutors and police because, even if no actionable threat is ever made, witnesses and victims are still deterred from testifying. Prosecutors and police emphasize that the general atmosphere of intimidation and violence common to drug- and gang-dominated neighborhoods—including frequent personal exposure to drive-by shootings, armed robberies, and drug sales—is itself sufficiently intimidating to dissuade many witnesses from testifying.

Targets of victim and witness intimidation. No typical victim of intimidation exists, but interview respondents and working group participants pointed to four factors that increase the chance that a victim or witness will be intimidated:

- The violent nature of the initial crime.
- A previous personal connection to the defendant.
- Geographic proximity to the defendant.
- Cultural vulnerability—that is, membership in an easily victimized group, such as the elderly, children, or recent or illegal immigrants.

Residents of gang-dominated neighborhoods are likely to fall into more than one of these categories, greatly increasing their exposure to intimidation.

Most nonviolent crimes (such as drug sales or use, burglaries, or white collar crimes) rarely involve victim and witness intimidation. By contrast, victims and witnesses in violent crime cases (such as rape, murder, and gang assaults), where more severe penalties may be imposed, are at higher risk of experiencing intimidation.

In general, victims and witnesses who have no previous relationship and share no community ties with the defendant or suspect are better insulated from intimidation. Victims and witnesses who have been—and stay—relocated and are able to keep their home and work addresses secret are also generally immune to intimidation. Prosecutors and police considered it extremely rare for a defendant or associate to leave his or her own community or socioeconomic milieu to intimidate a victim or witness in another jurisdiction.

Given these characteristics of victim and witness intimidation, prosecutors who handle primarily nonviolent or white collar crimes may be largely unaffected by victim and witness intimidation, even in jurisdictions in which intimidation is rampant in isolated neighborhoods. But prosecutors who

No One Is Willing to Testify

Prosecutors and homicide investigators are now faced with crimes in which there are numerous known witnesses—and in many cases known perpetrators—but no one is willing to testify.

- A drug-related shooting occurs at a softball game; three players are killed in full view of the spectators, but no cooperative witnesses can be found.
- Drug-selling gangs regularly commandeer public housing buildings or complexes—removing legitimate tenants from their apartments, threatening or bribing management, and terrorizing the elderly. According to a homicide detective in the San Francisco Bay area, the victimized tenants do not resist or report the takeovers, because gang members tell them "you can be dead" in the time it would take the police to respond.
- Such bold attempts at communitywide intimidation are not limited to the largest jurisdictions. A similar drug-related takeover of a public housing complex was reported by housing police in a jurisdiction with a population of only 600,000.

Law enforcement officers in the District of Columbia estimated that for each of the approximately 500 homicides reported in 1993, there were 4 to 5 intended victims who were shot, but survived, and another 15 to 25 intended victims who were shot at, but not hit.[7] If one considers that each of these victims and intended victims is linked to families and neighbors, it is possible to envision how entire communities can be silenced quickly by gang intimidation.

specialize in gangs, homicide, violent felonies, domestic violence, and child abuse often confront issues related to victim and witness intimidation on a daily basis.

Types of victim and witness intimidation

Intimidation of an individual or a community may involve many of the same tactics, including physical violence, explicit or implicit threats of physical violence, property damage, and courtroom intimidation. Attempts by gangs or drug dealers to promote community-wide noncooperation may include the execution, assault, or public humiliation of victims or witnesses (or their families) suspected of cooperation, and random public acts of extreme brutality intended to terrify potential witnesses.

Explicit threats of physical violence. Prosecutors and police reported a high incidence of threatened physical violence either against victims or witnesses or their families. These respondents stated that threats of violence were much more common than actual violence but were often just as effective in deterring cooperation because, in gang- and drug-dominated communities, such threats are credible. Prosecutors said that threats against the victim's or witness's mother, children, wife, or partner were particularly effective forms of intimidation.

Physical violence. While some incidents of physical violence were reported by respondents in all 20 jurisdictions, physical violence was reported to be much more common in some jurisdictions than others. In addition, estimates of the frequency of physical violence varied even within the same jurisdiction, depending on the responsibilities of the individual interviewed. Prosecutors and police in eight urban jurisdictions reported that violent acts of intimidation—including homicides, drive-by shootings, knee-cappings, and beatings—occur on a daily or weekly basis.

Indirect intimidation. A third common form of intimidation, reported in almost every jurisdiction, involved indirect intimidation, such as gang members parked outside the victim's or witness's house, nuisance phone calls, or vague verbal warnings by the defendant or his or her associates.

Property damage. Only slightly less common than the three types of intimidation described above was intimidation involving the destruction of property. Property destruction can involve drive-by shootings into a victim's or witness's house, fire bombing of cars, burning houses, or hurling bricks through the window of a car or home.

Courtroom intimidation. Another common form of intimidation involved threatening looks or gestures directed by the defendant to the witness in the courtroom during the preliminary hearing or trial. Court-packing by members of a gang can be a particularly effective form of intimidation. Gang members demonstrate solidarity with the defendant—and make clear their readiness and ability to harm the witness—by wearing black (symbolizing death) or using threatening hand signals. Because the judge and prosecutors may not understand the meaning of the gestures or other nonverbal threats, they may overlook these explicit attempts to intimidate the witness. In other cases, the judge is aware of what the gang members are doing but feels that ejecting the individuals from the courtroom would violate the defendants' constitutional right to a public trial.

Other forms of intimidation. Less common forms of intimidation that prosecutors and police reported include economic threats (in domestic violence or fraud cases) and threats concerning the custody of children, deportation, and the withholding of drugs from an addicted victim or witness or from addicted members of the person's family.

Primary actors in victim and witness intimidation

Interviews with prosecutors, police officers, and working group members pointed to the types of individuals who most commonly intimidate victims and witnesses: the defendant, his or her family, gang members (where the crime is gang-related), and non-gang friends and associates of the defendant.

Other types of individuals reported to be involved in intimidation included neighbors who condone or profit from the illegal activity of the defendant (such as drug sales), inmates in the same correctional facility as an incarcerated victim or witness, and, infrequently, defense attorneys hired by gang members.

Some prosecutors expressed concerns about witness information that was given to defendants, including, in some instances, confidential court papers. In many jurisdictions, prisoners have unmonitored access to phones, and their correspondence is not screened, making it easy for even incarcerated defendants or offenders to arrange intimidation attempts using improperly obtained information. Some gangs are said to hire attorneys to represent incarcerated witnesses who may be in custody as a result of the crime in question or on another unrelated charge. The gangs hire these lawyers without the witness's knowledge or consent in an effort to control the witness's testimony.

There was no consensus among the individuals interviewed about which of the four principal types of intimidators was most frequently involved in victim and witness intimidation. They did agree that, in smaller jurisdictions and domestic violence cases, the intimidator was most likely to be the defendant. However, if victim and witness intimidation is known to be aggressively prosecuted in a given jurisdiction, then the primary actors often become the gang, family, or friends of the defendant.

In general, defendants having a sophisticated understanding of the criminal justice system are much less willing to engage in any direct intimidation attempts. This is particularly true where the defendant is in custody prior to trial. One prosecutor in Washington, D.C. reported success in discovering victim and witness intimidation by executing search warrants in prison when defendants were arranging an intimidation scheme through written correspondence with family or gang members on the outside.

In gang cases, intimidation is rarely carried out by the defendant himself; other gang members take on this responsibility. Gangs may be ruthless in their self-protection: sometimes the incarcerated gang member himself may be seen as a potential threat to the gang and targeted for intimidation or execution.

Traditional police and prosecutor strategies

Prosecutors observed that when offenders discover that intimidation enables them to avoid conviction and incarceration (see "Timing of Intimidation"), intimidation attempts increase and become more violent. However, victim and witness intimidation does not seem to hamper successful prosecution if a reluctant but cooperative witness can be offered security by prosecutors, police, or victim services workers. Nevertheless, interview respondents were able to identify very few comprehensive witness security programs; most jurisdictions that confront the problem have only *ad hoc* arrangements to provide security for victims and witnesses threatened by gangs and drug sellers. As a result, both prosecutors and police voiced frustration that a growing number of serious cases, including shootings and homicides, are not being presented for prosecution at all due to widespread gang- and drug-related intimidation. Traditional approaches to the problem of victim and witness intimidation include:

- Warnings by the prosecutor and the defense counsel to the defendant concerning obstruction of justice laws.
- High bail.
- Aggressive prosecution of reported intimidation attempts.
- Entry of threatened individuals in the Federal witness security program—typically in extreme cases involving organized crime (see "Federal Efforts to Combat Intimidation").

The strict requirements for entry to the Federal witness security program, the high cost of providing lifelong services to witnesses and their families, and the personal sacrifices involved in participating in the program have led a number of prosecutors and police to seek shorter-term, less demanding, and more economical approaches to local witness security.

Timing of Intimidation

Prosecutors and police agreed that, in general, the most dangerous time for a victim or witness is between arrest and trial. The long trial delays experienced in most jurisdictions allow ample opportunity for intimidation. The second most dangerous period for victims and witnesses is during the trial itself. Very few intimidation attempts are made at the scene of the crime (although violent crime is in itself intimidating) or at the time of arrest. However, in cases involving communitywide intimidation, intimidation begins the moment the victim or witness is aware that the crime is gang- or drug-related.

A traditional approach to the intimidation experienced by victims of domestic violence is the use of civil restraining orders and the provision of limited counselling and other services. However, only three jurisdictions relied solely on these types of interventions to combat gang- and drug-related victim and witness intimidation. The other 17 jurisdictions made at least some use of nontraditional responses discussed in the section "Innovative approaches," page 6.

The role of victim services programs

Almost all jurisdictions provided some support services for victims and witnesses through the prosecutor's office or another local government agency. Most of these programs were founded in the 1970's and 1980's in response to increased concern for victims' rights, the *Federal Victim and Witness Protection Act of 1982*, American Bar Association recommendations regarding victim services, and the *Federal*

Federal Efforts to Combat Intimidation

In the late 1960's, the U.S. Department of Justice recognized that victim and witness intimidation had become a serious impediment to obtaining testimony in organized crime cases.[8] In response, Congress enacted the *Organized Crime Control Act of 1970*, laying the basis for the Federal witness security program that operates today under the *Witness Security Reform Act of 1984*. In 1982, the *Victim and Witness Protection Act* expanded Federal laws regarding witness security and victim services by establishing significant penalties for witness tampering, intimidation, and harassment; providing for civil restraining orders; authorizing restitution for crime victims; and outlining Federal guidelines for the fair treatment of victims and witnesses.[9]

The Federal Witness Security Program currently provides comprehensive protective services—including new identities, relocation, employment assistance, and protective custody (for incarcerated witnesses)—to witnesses in Federal cases involving organized crime, racketeering, drug trafficking, and other serious felonies, as well as to some State-level witnesses in similar types of cases.

Victims of Crime Act of 1984 (VOCA). These initiatives, taken together, prompted a number of States to adopt victims' "Bill of Rights" legislation, which, in many States, mandated the provision of specific services to victims and, in some cases, provided for limited compensation for medical expenses and other damages resulting from the crime.[10] The degree of protection and services these programs offer to victims and witnesses varies widely from State to State, and even among prosecutor offices within the same State.

Currently, victim services programs or units in prosecutor offices provide a logical base for the extension of services to victims of gang-related intimidation. As a result, prosecutors often turn to victim services staff for assistance. However, few programs are currently organized or funded to coordinate the temporary relocation, financial support, job and welfare services, and community outreach programs needed by these victims and witnesses. The result is that most victim services programs lack the resources to address victim and witness intimidation, especially communitywide intimidation.

In a majority of jurisdictions, victim services programs provide assistance to victims of domestic violence, rape, and violent crime, and, to a lesser degree, to survivors of homicides. It is in relation to serving the victims of violent crime and homicide survivors that victim services agencies have become exposed to the increasing problem of gang and drug crime-related intimidation.

A few programs have begun using VOCA funds, State victim aid funds, private grant monies, and additional funding from local government sources to piece together services to assist prosecutors in retaining intimidated witnesses and combat communitywide intimidation (see "Family Bereavement Center").

Other programs provide additional services to gang-intimidated victims and witnesses without additional funding. In such cases little institutional support may exist for these programs' work, and the existence of the services may depend on one person's continued involvement. For example, one victim services director reported spending weekends caring voluntarily for the child of one witness—a drug abuser—and wearing a beeper so that she was constantly in touch with her other clients.

More typical, however, were the concerns expressed by overworked advocates in one large urban jurisdiction that many more intimidated victims and witnesses were in need of protection than could be helped and that limited funding prevented any outreach efforts to reassure intimidated communities. In particular, the advocates cited a need for outreach and intimidation protection for the Asian community, the elderly, and illegal immigrants.

Innovative approaches

In the absence of programs or protocols to guide the protection of victims and witnesses from gang-related intimidation, prosecutors and law enforcement have taken five principal *ad hoc* steps to provide protection in violent crime and gang-related cases:

- Emergency relocation and support.
- Longer-term relocation, sometimes involving interagency cooperation to move threatened witnesses or victims in public housing to new areas.
- Pretrial and courtroom security measures.
- Protective custody for victims and witnesses who are in prison.
- Community outreach.

Emergency relocation and support. While funding for housing and food for intimidated victims and witnesses is scarce, most prosecutors have access to some money for emergency and longer-term relocation, if the intimidation is sufficiently severe and the witness's testimony is essential to winning the case. Some prosecution offices were much more sophisticated and organized about these efforts than others. Several jurisdictions relied on the fact that victims and witnesses with jobs or strong family support systems could often be placed with relatives or friends, or moved out of State for short periods at limited cost to the prosecutor. By contrast, one prosecutor uses a highly organized emergency and longer-term relocation program administered by the victim services unit, with the prosecutor's office bearing only administrative costs of the program and State and Federal agencies paying $600,000 in annual relocation costs.

Emergency relocation needs are most frequently met by housing intimidated witnesses and their families in secure hotels or motels. Witnesses are often registered under false names, and payment is not made directly by the prosecutor's office or other easily identifiable government agencies. Because the cost of this sort of emergency relocation accumulates rapidly, prosecutors reported using hotels and motels only in the most serious cases, where immediate relocation was essential.

Longer-term relocation. In many cases, a longer-term, more independent relocation is needed following emergency relocation. Prosecutors and police reported working closely with the local public housing authorities to:

- Relocate victims and witnesses swiftly from one public housing development into another.
- Place witnesses from public housing in private, subsidized housing.
- Qualify poorly housed witnesses for some form of housing assistance.

In each of these instances, police and prosecutors sought housing that was a safe distance from the threat; in some cases, housing resources in other cities, counties, or States were used.

Some respondents had worked with the U.S. Department of Housing and Urban Development (HUD) to secure Section 8 certification for intimidated victims and witnesses. Section 8 certification qualifies low-income families to receive vouchers to subsidize private housing costs, in lieu of placement in public housing. Police and prosecutors considered placement in subsidized private housing to be more secure in some cases than the relocation of intimidated victims and witnesses within the public housing system, because gang members and drug dealers are usually reluctant to enter the types of middle-class neighborhoods in which Section 8 units are typically located. Although some jurisdictions are able to take advantage of these outside resources, many jurisdictions rely exclusively on the prosecutor's office for funding emergency and longer-term relocation, and others are unaware of any State or Federal funding for witness protection and relocation.

In addition to housing and some financial support (such as a food allowance, money for transportation, or anything else essential for the witness and his or her family), emergency and longer-term relocation usually involves some level of heightened police protection. None of the jurisdictions contacted was able to fund constant police protection for an intimidated victim or witness, but most reported that they had some arrangement with law enforcement for checking on the victim or witness several times a day or for providing the victim or witness with a beeper or special contact number to ensure rapid police response. Prosecutors and police administrators emphasized that if the relocation is genuinely confidential, there should be no need for additional police protection; it is only when the new address of the victim or witness is disclosed that there is any danger.

Differing opinions on relocation. Different jurisdictions appeared to have different needs in terms of witness relocation. In some jurisdictions prosecutors emphasized that entrenched, national gangs made it essential to provide witnesses with permanent relocation services. However, many prosecutors noted that the lives of gang members were so insular that simply moving a victim or witness to another building or housing complex in the same neighborhood would often provide sufficient protection (see "D.C. Emphasis on Short-Term Relocation").

By contrast, prosecutors in Los Angeles emphasized that anything less than a permanent, long-term witness relocation program would be irresponsible in their jurisdiction. Los Angeles pros-

Family Bereavement Center

The Family Bereavement Center in Baltimore, supported by a VOCA grant, provides victim assistance and counselling for family members of homicide victims, many of whom are residents of neighborhoods dominated by local gangs and out-of-State drug dealers. Graduates of the program have recently organized a civic group to combat violence in their communities. The Family Bereavement Center and programs like it address witness security by fostering trust and communication between victimized community residents and the prosecutor's office, thereby decreasing the impact of communitywide intimidation.

ecutors gave numerous examples of witnesses who were killed after leaving witness security programs and returning to their old neighborhoods.

Thus, when designing a relocation program for intimidated witnesses, prosecutors considered the type of gang threat faced by witnesses. Permanent relocation—although always preferable—may not be essential in jurisdictions where gangs are loosely organized, small, and poorly established. However, in jurisdictions where gangs are entrenched in communities—areas where several generations may have participated in gang activity, or where national, highly organized gangs dominate—permanent relocation of threatened witnesses is essential to ensure safety.

D.C. Emphasis on Short-Term Relocation

Prosecutors, police administrators, and victim service professionals in Washington, D.C., emphasized that short-term relocation—a few days to a year—has been adequate to protect most intimidated victims and witnesses, due to the small size and loose organization of most gangs or "crews" in their jurisdiction. In their experience, long-term relocation, like that provided by the Federal witness security program, is not necessary in most local intimidation cases. They estimated that in most of their cases relocation for between 4 months and 1 year was enough to carry the victim or witness past the critical stages of trial preparation and testimony. In the District of Columbia, witnesses have been able to return to their communities without retribution after the conclusion of a trial.

Police and prosecutors in Washington, D.C., noted practical advantages to short-term relocation. Victims and witnesses are rarely willing to sever all ties with their community, abandon jobs, and never again see old friends and relatives. When asked to make these sacrifices, many witnesses may not help the prosecutor because:

- They decided that cooperation is too onerous.

- They agree initially to relocate but then endanger themselves by recontacting friends or relatives from their old community. As one prosecutor observed, "people want to be safe in their own homes, not have to move."

Los Angeles prosecutors point out that permanent relocation is not a long-term commitment by the prosecutor or police to support witnesses financially, but rather an agreement to establish them in a secure environment where they are expected to provide for their own support. Of course, should a further threat to the witness arise, the police or prosecutor has a responsibility to re-establish the person in a safe location.

Judicial policies that assign a high priority to the expeditious resolution of cases involving intimidated victims and witnesses can further reduce the cost of providing all types of emergency and longer-term relocation.

Pretrial and courtroom security measures. Prosecutors and police described an array of small safety measures that have been undertaken to decrease victim and witness intimidation in and around the courtroom:

- Provision of a separate waiting area for victims and witnesses—a relatively common practice. In some jurisdictions, however, the witness waiting area and the defendant and public waiting areas are separate but not secure—simply a room or area set apart.

- Safe transportation to and from court. One victim services advocate noted that her clients were afraid to use public transportation when traveling to the courthouse. In extreme cases, the witness may attend court under guard.

- Use of metal detectors and covered windows to protect victims and witnesses.

- Video cameras taping people coming into the courtroom to discourage gang attendance at trials. Gang members who are on probation want to avoid documentary evidence of their association with known gang members—typically a violation of probation conditions that could land them in jail.

Another innovative courtroom approach was the formation of community support groups for victims and witnesses who wished to testify. The support group attends the trial so that the witness sees friendly as well as threatening faces in the audience. A variation on this approach was to interview and bring in large numbers of witnesses from a community to testify—one prosecutor brought 100 grand jury witnesses into the courtroom in a case against drug gangs operating in a housing project. Despite the amount of work involved for the police and prosecutors, this approach had the dual advantage of providing increased security for the witnesses and building community solidarity. Following another approach, a police inspector reported scheduling the annual visit to court of a uniformed police cadet class to coincide with a trial in which witnesses had already been intimidated by a strong gang presence in the courtroom.

Several jurisdictions expressed interest in finding legal ways to shield the victims' or witnesses' identities and addresses up to or throughout their appearance in court. To prevent would-be intimidators from figuring out who the key witnesses were, some prosecutors tried to reinterview key witnesses in the company of large numbers of less important or even uncooperative witnesses. One jurisdiction used remote testimony on closed circuit television to interview witnesses. Some prosecutors found videotaped grand jury testimony and audiotaped witness statements to be particularly useful for discouraging witnesses on the stand from altering their testimony once their identities were about to become known.

Protective custody for victims and witnesses in prison.[11] While witnesses in government cases constitute only a small part of the Federal and local prison population, prosecutors considered protective custody a valuable tool for assisting incarcerated victims and witnesses. The cooperation of incarcerated witnesses is often essential in gang- and drug-related cases. One prosecutor favored the use of incarcerated witnesses in gang trials rather than witnesses at liberty because it rendered useless—and therefore minimized—gang efforts to intimidate members of the community who were innocent of any criminal offense. Most prosecutors tried either to arrange some form of protective custody for incarcerated witnesses or to transfer them to a facility where the defendant was not housed. Prosecutors also arranged for witnesses to be transported to court separately from the defendant. In New York City, however, a gang prosecutor noted that procedures used to place inmates in protective custody, or separate one inmate from another, may draw attention to the fact that inmates are witnesses and, therefore, endanger them more than if they were allowed to maintain anonymity in the general prison population.

Community outreach. Prosecutors had attempted to collaborate with a broad range of law enforcement, social service, and community groups in their efforts to combat victim and witness intimidation. Jurisdictions had undertaken cooperative efforts with local housing authorities, the U.S. Department of Housing and Urban Development (HUD), the Federal Bureau of Investigation (FBI), various U.S. Attorney Offices, the Federal Bureau of Prisons, jails in neighboring counties, shelters, domestic violence groups, the Travellers AID Society, the YMCA, rape crisis groups, and homicide survivor groups.

Several prosecutors had begun limited community outreach efforts, including public speaking engagements aimed at educating teachers, guidance counselors, community groups, and elderly Asian immigrants about victim and witness intimidation. One prosecutor had appeared on a Spanish-language radio station to discuss cases in which his office was seeking witnesses.

Emerging models and strategies

A few jurisdictions have begun to build on the traditional practices, victim services, and *ad hoc* strategies described above to construct comprehensive programs for the security of victims and witnesses. These programs formalize relationships between the prosecutor's office and law enforcement agencies, community groups, and social service agencies. In addition, the programs specify procedures for determining which victims and witnesses will receive a given level of security and services, and what the funding source for these services will be. Comprehensive strategies also emphasize intimidation *prevention*, through community policing and community outreach, education, and empowerment.

Key elements of witness security and assistance[12] build on many of the areas discussed earlier, such as basic victim services, access to emergency and long-term relocation, and community outreach. Not only do they build on existing strategies, but they call for protocols for interagency cooperation and enhanced legislation. A special emphasis is placed on intimidation prevention and control through cooperation among law enforcement, prosecutors, and the judiciary.

The following efforts at developing a comprehensive plan are at an early stage of development and have not been evaluated; the next pages highlight the major aspects of emerging strategies for witness security and assistance.

Protocols for interagency cooperation. Current witness protection programs emphasize the value of formalized, cooperative relationships among the prosecutor's office, local enforcement agencies, social service agencies (especially those concerned with housing and public assistance), the FBI, Federal agencies such as HUD, and local counselling groups and shelters. The specific agencies with which agreements are needed may vary from jurisdiction to jurisdiction, but the agreements should identify the services to be provided, the agencies that will bear the cost, and the allowable expenses or services. The agreements should be used to speed and coordinate emergency services to victims and witnesses, and to place a broader array of resources at the disposal of the prosecutor.

Enhanced basic victim services. All prosecutors recognized the value of basic victim services (such as providing emergency short-term relocation assistance) for allaying many of the nonspecific fears of victims and witnesses. Ideally services available to all witnesses who need them should include the following:

- Emergency and longer-term counselling.
- Assistance with victim compensation, where appropriate.
- Information concerning the criminal justice system.
- Notification concerning important trial dates and the outcome of trials.
- A specific contact person who can assist the victim or witness with intimidation concerns throughout the trial and relocation.
- A 24-hour emergency contact number.

One additional service recommended by working group participants was the funding of secure debriefing rooms, remote from police stations and prosecutor offices, for victims and witnesses who were not participating in temporary relocation. Participants had used hotel rooms and even boats as secure locations to interview intimidated victims and witnesses.

Increased access to emergency and longer-term relocation. Another need that prosecutors recognized was the ability to provide additional methods for swift, emergency, and longer-term security for intimidated victims and witnesses. Some jurisdictions reported needing to relocate witnesses only a few times a year, but others needed to move victims and witnesses daily. An effective emergency and longer-term relocation program would provide a secure residence, transportation to the new site, some food money if needed, counselling, speedy access to social services, and enhanced police protection. A long-term program might also assist witnesses in finding employment. The prosecutor's office should not be considered under any obligation to provide services beyond those in the security agreement, except where a renewed or continued threat requires additional assistance. All prosecutors funding relocation of witnesses emphasized the need to have a clear agreement concerning what services are to be provided and a limit to the length of time that the government is responsible for funding living expenses and other witness needs.

Enhanced legislation. A recent ordinance in the District of Columbia that increased penalties for obstruction of justice was considered essential to better victim and witness security in that jurisdiction. Many prosecutors and police across the country suggested that setting higher penalties for intimidation, requiring that penalties be served consecutively, and exacting higher bail and tighter bond restrictions would be useful. Another concern of prosecutors and police was the legal barriers inhibiting the exchange of information among criminal justice agencies concerning the records and gang affiliations of minors. Although no consensus was reached concerning the best approach to this difficult privacy issue, study participants agreed that, as gangs used younger and younger children to facilitate drug sales and even executions, some method of tracking juvenile gang offenders was essential.

Community empowerment. In another approach to empowering communities, prosecutors and police educate tenant and community groups about civil remedies they can use to regain control of their neighborhoods, and they provide contacts with *pro bono* legal workers who might assist with the injunctive relief process. Prosecutors and police have also assisted some tenant groups to establish "gate checks" at housing projects with gang and drug problems. By providing an added measure of security, the gate check volunteers have been expected to "keep the good tenants in" and discourage admission to outside gang members who had no family or contacts in the building.

Community awareness. Almost every respondent emphasized the need for better public relations for victim and witness security and assistance efforts. Many respondents believed that, despite the seriousness of the victim and witnesses intimidation problem, public perceptions of the dangers involved in testifying were exaggerated. For this reason, both prosecutors and victim services counselors felt that once a workable model for victim and witness protection was in place, it would be critical to take the program to gang-dominated communities and inform law-abiding residents of the services and safeguards available to them. Police and prosecutors from all parts of the country emphasized the need for special public relations efforts (combined with community outreach) to give Asian and illegal immigrant communities information about the American criminal justice system and about immigration law. It is important, however, that police and prosecutors not promise a level of safety that they are not absolutely sure they can provide. In some jurisdictions, injured victims and witnesses, or the families of murdered victims and witnesses, have successfully brought civil lawsuits against prosecutors and police, alleging that witnesses were inadequately warned about the danger of testifying. Large damages have been awarded in some cases.[13]

Intimidation prevention and control

Prosecutors, law enforcement, and the judiciary have critical roles to play in any program to prevent victim and witness intimidation. Law enforcement officers are better positioned than prosecutors to foresee and prevent intimidation at the street level. Law enforcement officers can inform prosecutors about repeat offenders and potential intimidators, alert prosecutors to potential witnesses who are being intimidated, and reduce gang income and intimidation by disrupting gang operations with intensive policing tactics. In one small jurisdiction, community police officers found it effective to visit the families of potential intimidators and explain the laws concerning obstruction of justice. In another community where intimidation was severe, police officers were able to reassure tenants in gang-dominated housing projects by establishing field precincts in empty apartments or store fronts, or by bringing in a mobile precinct, in order to decrease response time. In one jurisdiction where a comprehensive witness security program was being established by the prosecutor's office, police reported approximately 200 violent, gang- and drug-related crimes that had not been presented to the prosecutor due to witness intimidation. With better communication between police and prosecutors, these witnesses might have been persuaded to enter the new witness security program and testify.

Community outreach. Community outreach is critical to establishing cooperative relationships with potential witnesses and preventing intimidation. Both prosecutors and police need to find ways to build confidence in gang-dominated communities that witness security is available (see "Community Policing and Community-Based Prosecution"). A number of outreach strategies were considered promising:

- Community policing.
- Assigning prosecutors to specific communities or police units.
- Vertical prosecution of cases involving gangs or victim intimidation (i.e., one prosecutor or team of prosecutors assumes responsibility for a case from start to finish).
- Aggressive gang suppression.
- Matching the cultural knowledge and linguistic skills of law enforcement and outreach personnel to that of the neighborhoods they serve.

Finding outreach personnel who can communicate with intimidated victims and witnesses in their own language is especially important in the case of recent immigrants and non-English speaking residents, who may not be aware of their rights and the services available to them.

Cooperation with the judiciary. In jurisdictions where the judiciary takes threats against victims and witnesses seriously, prosecutors were much more confident in their ability to deter intimidation and secure witness testimony. Prosecutors and police suggested that gang-related victim and witness intimidation could be reduced in court when judges were knowledgeable about gang characteristics and were willing to exclude members who wore identifying colors or made threatening hand signs. In some jurisdictions, additional judicial resources were made available to expedite cases where victim and witness intimidation had become a factor. Prompt disposition of cases involving victim and witness intimidation not only reduces the opportunity for intimidation before and

Community Policing and Community-Based Prosecution

One of the most important elements of intimidation prevention is community policing, and when possible, community-based prosecution. The advantages of community policing and prosecution are many:

- Prosecutors and police are able to build long-term relationships with citizen and tenant groups, and these contacts are likely to lead to witness cooperation.
- A consistent police and prosecutor presence helps to build a greater sense of trust and accountability between the community and the criminal justice system.
- Community prosecutors and police are more likely to see links between related cases and to detect new crime trends before they have the opportunity to develop fully.
- Community prosecutors and police are better attuned to the needs of victims and witnesses from their jurisdictions, and can work with victim services representatives to design programs that respond to local concerns.

during trial, but also conserves witness protection resources, allowing more victims and witnesses to benefit from short-term relocation or security services.

Additional considerations

In establishing a comprehensive witness security and assistance program, participants in this project offered specific ideas that could be considered in planning and implementing such a strategy:

- **Find a highly qualified leader.** An effective witness security and assistance program needs an energetic, dedicated leader knowledgeable about legal issues, the local gang problem, victim rights, and the needs of concerned intimidated communities. Effective leaders can be found in any agency, and the program can be housed with the leader in the police department, in the prosecutor's office, or with existing victim services programs.

- **Have the program protocols endorsed by public officials at the highest level.** In order to secure the greatest possible cooperation from public and private agencies, the mission of the witness security program and the protocols for interagency cooperation should be presented to the highest ranking local officials for their public endorsement and support. These officials may include the mayor, the city council or other governing body, the administrative judge, the district attorney, the police commissioner or chief, the heads of local social services and public housing, the superintendent of schools, church leaders in the target communities, and any other community leaders whose cooperation may be important.

- **Design a manual to meet the needs of prosecutors, police, and victim services workers.** Once cooperative agreements and procedures are developed to implement a new witness security plan, it is important that the information be made available in a simple, clear format for every individual and group that may need to use the program. Sample court or administrative papers could be provided to prosecutors seeking funding authorization for protective services; resource and contact lists should be easily accessible.

- **Build an evaluation design into any new program.** While the effectiveness of victim and witness intimidation prevention efforts is not easily assessed by traditional quantitative research methods, it is essential to identify what measures may be meaningful barometers of program impact. Some working group participants suggested that surveys of attitudes in gang-dominated communities might be used as a measure of program success. Other approaches may be to monitor prosecutor and police perceptions of the problem and to ask participants in the witness security program to comment on the program's effectiveness. Whatever tools are used, evaluative data are critical to securing continued or increased funding and to determining how the program needs to be improved.

- **Make use of established gang suppression techniques.** Gang-related victim and witness intimidation cannot be addressed effectively in isolation from the larger issue of gang suppression. Police and prosecutors who specialize in gang crimes offered the following suggestions for dealing with gangs:

- **Become familiar with the most current literature on gangs and gang suppression.**[14]

- **Make technology an ally.** Gang prosecutors recommended the use of gang-tracking software and the computerized identification of bullets involved in gang incidents, so that crimes using the same guns may be linked, even when those crimes may have occurred outside the boundaries of a given neighborhood or community policing district.[15]

- **Target top gang members and repeat offenders for aggressive prosecution.** Gang prosecutors suggested that the aggressive prosecution of all crimes committed by top gang members and by repeat offenders linked with gangs helped to disrupt gang activity in intimidated neighborhoods.

- **Maximize the number of defendants indicted in each gang case.** Prosecutors in one of the toughest urban jurisdictions advised that indicting large numbers of defendants in each gang case benefits the community by disrupting gang activity and drug sales on the street. Community-wide intimidation is reduced because more indicted or incarcerated, gang-affiliated witnesses are available to testify, in lieu of potentially vulnerable community residents.

- **Focus on truancy reduction as a means of controlling juvenile gang participation.** Gang specialists noted the connection between truancy and gang involvement in some neighborhoods. Active law enforcement support for truancy reduction programs may reduce intimidation.

- **Seek long-term, renewable funding sources to support witness protection programs.** Individuals contacted for this project advised that short-term or nonrenewable funding had closed a number of promising criminal justice initiatives in their jurisdictions. Where adequate funding is not available from local sources, working group participants suggested exploring possibilities for funding from local or Federal drug-related asset forfeiture programs; contacting the local FBI office for loans of equipment or other resources; cooperating with Federal agencies, such as HUD and the U.S. Marshal's Service; establishing cooperative agreements with local agencies and programs; and applying for free technical assistance from agencies such as the National Victim Center (NVC) in Arlington, Virginia (703) 276-2880.

Gang-related victim and witness intimidation is a serious, growing concern for prosecutors, judges, police, and victim services workers, but, as this study has demonstrated, innovative and proactive interventions are beginning to emerge.

Notes

1. Because none of the recently-established practices discussed by the interview respondents and working group members has been formally evaluated, these practices are offered only as examples of current practice. Once these practices have been in operation for a longer period, further study can determine their effectiveness. The following 20 jurisdictions were contacted for this project. The number of individuals interviewed in each jurisdiction (either in person or by phone) is indicated in parentheses: Baltimore City, Maryland (1); Borough of Manhattan, New York (1); Borough of Queens, New York (4); Bridgeport, Connecticut (1); Brockton, Massachusetts (1); Charlotte, North Carolina (1); Chicago, Illinois (3); Cleveland, Ohio (1); Dade County, Florida (1); Detroit, Michigan (1); Houston, Texas (2); Kansas City, Missouri (2); Los Angeles, California (2); Missoula, Montana (1); Montgomery County, Maryland (1); Oakland, California (1); Pittsburgh, Pennsylvania (1); Portland, Oregon (1); San Francisco, California (1); and the District of Columbia (5).

2. Some research findings support the perceived connection between gang activity and certain violent crimes, such as murder and aggravated assault in specific neighborhoods. See *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders: Program Summary.* Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, June 1994, p. 31.

3. Although there is no recent research to substantiate these estimates, a 1990 study by the Victim Services Agency in New York City concluded that 36 percent of victims and witnesses studied in the Bronx Criminal Court in 1988 had been threatened; 57 percent of those who had not been threatened feared reprisals; and 71 percent of all respondents said that they would feel threatened if the defendants were out on bail. Davis, Robert C., et al. Victim/Witness Intimidation in the Bronx Courts: How Common Is It, and What Are Its Consequences? Unpublished monograph, Victim Services Agency, June 1990.

4. The National Crime Victimization Survey reports that the percent of victims of violent crimes who cite "fear of reprisal" as the main factor in failing to report crimes is small—3.8 percent for violent crimes involving a stranger and 5.6 percent for violent crimes involving non-strangers. However, the survey does not include data on homicide witnesses. *Criminal Victimization in the United States, 1992.* Bureau of Justice Statistics, U.S. Department of Justice, March 1994.

5. Stark, James and Howard W. Goldstein, *The Rights of Crime Victims.* New York: Bantam and American Civil Liberties Union, 1985.

6. Johnson, Claire, Barbara Webster, and Edward Connors, "Prosecuting Gangs: A National Assessment," Research in Brief, National Institute of Justice, U.S. Department of Justice, February 1995. The study surveyed a total of 192 prosecutors, 80 percent of whom said that gangs were a problem in their jurisdiction although the definition of gang varied from State to State. Other related findings include: 94 percent of local gangs in large jurisdictions and 84 percent of gangs in small jurisdictions committed violent crimes and trafficked in drugs.

7. For related data, see *Handgun Crime Victims, Special Report.* Bureau of Justice Statistics, U.S. Department of Justice, July 1990.

8. Statement of Gerald Shur, Senior Associate Director, Office of Enforcement Operations, Criminal Division, before the Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, U.S. House of Representatives, concerning witness intimidation, August 4, 1994.

9. The problem of victim and witness intimidation was also highlighted by the American Bar Association and the Victim Services Agency, New York City, in the early 1980s. See, Ameri-

can Bar Association, Criminal Justice Section. *Reducing Victim/Witness Intimidation: A Package*. Washington, D.C.: American Bar Association, 1982; and, Connick, Elizabeth and Robert Davis, "Examining the problem of witness intimidation." *Judicature*, 66, 439-447, 1983.

10. Stark and Goldstein, *The Rights of Crime Victims*.

11. A 1991 study of protective custody in adult correctional facilities found that 5.6 percent of all U.S. prison inmates were in some form of protective custody. Henderson, James D. *Protective Custody Management in Adult Correctional Facilities*. Washington, D.C.: National Institute of Corrections, 1991.

12. The term "security and assistance" is preferable to "protection" because the phrase "witness protection" suggests a higher level of financial maintenance and policy commitment than is possible in most jurisdictions. Furthermore, the term "protection" may create unrealistic expectations on the part of victims and witnesses, opening the door to claims of civil liability against police departments, prosecutor offices, or the city or county, should such efforts fail to protect the victim or witness adequately.

13. While litigation is not common nationally, cases were reported in Los Angeles, California; Washington, D.C.; and Florida. See *Carpenter* v. *City of Los Angeles*, 230 Cal. App. 3rd 923, 1991, where the court awarded 1.2 million dollars to a witness who was not warned that the defendant in a robbery case had contracted to have him killed. The witness, Carpenter, was subsequently wounded by the defendant, and the police officer who had failed to warn Carpenter was fatally shot by the defendant following his own testimony in the case. See also *Wallace* v. *City of Los Angeles*, 12 CAL APP 4th 1315, 1993, which established a duty to protect a witness enlisted to testify, even if the case is later declined, and awarded the plaintiff $750,000 in damages.

14. Working group participants recommended the California District Attorneys Association's *Gang Resource Guide*, available by calling (916) 443-2017; studies by Irving Spergel and Ron Chance; and publications available through the National Criminal Justice Reference Service (NCJRS), Rockville, Maryland, (800) 851-3420. For a discussion of gang suppression techniques, see Ehrensaft, Kenneth, *Prosecutors Model*, unpublished monograph prepared for the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 1993.

15. Gang prosecutors recommended the use of gang member tracking soft ware, the "Gang Tracking System," developed by and available from the Los Angeles County Sheriff's Department by calling (310) 603-3106.

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This report was supported by Research Applications contract #OJP–94–C–007 from the National Institute of Justice to Abt Associates Inc. Findings and conclusions of the research reported here are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, Bureau of Justice Statistics, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

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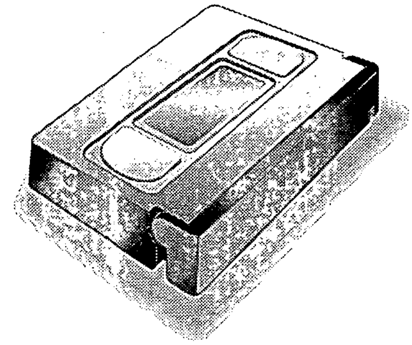

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