

SNI

JUDICIAL COUNCIL OF CALIFORNIA



REPORT TO THE JUDICIAL COUNCIL

ADMINISTRATIVE TREATMENT

TRIAL PROCEDURES

PREPARED BY

NATIONAL CENTER FOR STATE COURTS

WESTERN REGIONAL OFFICE

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NATIONAL CENTER FOR STATE COURTS
WESTERN REGIONAL OFFICE

A REPORT TO THE
CALIFORNIA JUDICIAL COUNCIL
ON WITNESS TREATMENT
IN CRIMINAL PROCEEDINGS

NCJRS

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April 28, 1978

WOULD YOU BE A WITNESS?

I never realized how poorly witnesses are treated until I served as one myself.

A California judge

Today in a felony trial, on counsel's motion, a witness' shoes were ordered removed and left in the court as evidence. The witness left the court barefooted.

A California prosecutor

Actually, there is much more we should be doing for witnesses.

A second California judge

I witnessed a felony a year ago. I've been interviewed by an investigator for the defense who promised to send me the notes of the interview but never did. I've been subpoenaed twice to a preliminary hearing and both times it was continued. Both times I called beforehand and was assured I would be needed. The deputy handling the case keeps changing and so do the witnesses being called. It has cost me six hours and five dollars so far. My wife says I should forget it because if the defendant is found guilty, the court will probably just "slap his wrists."

A weary California witness

How can you guide and legislate courtesy to witnesses?

A third California judge

This is one of three documents submitted to the Judicial Council to complete the project. They are:

- . A Report to the California Judicial Council on Ways to Improve Trial Jury Selection and Management (Executive Summary)
- . A Report to the California Judicial Council on Ways to Improve Trial Jury Selection and Management
- . A Report to the California Judicial Council on Witness Treatment in Criminal Proceedings

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Also, we extend our appreciation to the California District Attorneys Association and California Public Defenders Association who previewed and commented upon this report.

Our Advisory Committee consisting of John Kazubowski, Clerk and Executive Officer of Santa Clara County Superior Court; the Hon. Lucian Vandegrift, Judge, Butte County Superior Court; the Hon. Theodore Krumm, Judge, San Bernardino County Municipal Court; Betty Middlecamp, Jury Commissioner, San Luis Obispo County; Bill O'Malley, District Attorney, Contra Costa County; John Pace, Assistant Public Defender, Alameda County, and Bill Pierce, Assistant Jury Commissioner, San Diego County, provided encouragement and guidance throughout the project.

The views and suggestions expressed herein are solely those of the National Center for State Courts and do not necessarily represent the opinions of the Judicial Council of California nor of the members of the Advisory Committee.

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INTRODUCTION

PURPOSE AND SCOPE

Until recently little attention has been focused on those who suffer most from crime: the victims. Even less attention has been devoted to those whose cooperation is essential to successful prosecution: the witnesses. All too numerous newspaper accounts report on instances of brutal criminal activity, witnessed by many, where no one volunteered to help, or even alert the police. Unfortunately, newspaper reports of instances where witnesses of crime become victims of the justice process also have appeared. Everything possible must be done to encourage citizen participation in protecting law and order. Though effective and considerate handling of witnesses may seem of minor importance when viewing massive court budgets, excessive trial delays and the like, witnesses are a key element of our system of justice. Without witness cooperation our system of justice would grind to a halt.

This is the report of an exploratory survey of various aspects of the treatment of civilian witnesses as they are utilized by district attorneys' or public defenders' offices and as they come in contact with the California court system in criminal proceedings.

This report is written from the point of view of the witness; decisions have been made in the direction of benefiting witnesses. It is recognized that countervailing interests might very well lead to different conclusions. The reader is left to decide whether those interests should be given greater weight

in implementing suggestions from this report. Decisions on witness treatment in California can be made only after more thorough research than was possible in this study.

Improved handling of witnesses may contribute to improved criminal case processing. For example, statistics on case dispositions in the Los Angeles misdemeanor master calendar court indicate a marked improvement in the efficiency of case handling as a result of combined efforts of the judiciary, the city attorney's office and the witness project.^{1/} More importantly, improved witness handling should improve relations between citizens called as witnesses and the courts, prosecutors and defenders.

This project was undertaken as part of a larger project dealing with juror usage and management. To properly execute the entire project we have been compelled to limit the inquiry concerning witnesses by excluding assessment of some factors incident to implementing witness treatment programs and activities; police witnesses; expert witnesses or witnesses involved in civil or grand jury proceedings; treatment of witnesses at the scene of a crime or afterward; and measurement of witness attitudes.

The Judicial Council request for this study was motivated by the same concerns which led to an earlier jury study in California:^{2/} service as a witness or juror is an important contact point between citizens and our system of justice which

^{1/} John Swasy, Review of Witness Project Activities, September, 1975 through September, 1976, p. 72 (Los Angeles, California: Graduate School of Management, UCLA, January, 1977, Unpublished Report) referred to hereafter as "Witness Project Activities."

^{2/} National Center for State Courts. A Report to the Judicial Council on Jury Selection and Management, San Francisco, California, September 30, 1976.

requires efficient utilization of citizen time accompanied by efforts to make service a comfortable and positive experience.

Article VI, Section 6 of the California Constitution empowers the Judicial Council to "...improve the administration of justice,"...and "adopt rules for court administration, practice and procedure, not inconsistent with statute." Rules of practice and procedure adopted by the Judicial Council have the force and effect of law.

This report provides the Judicial Council with suggestions to improve handling of witnesses. To the extent that the Judicial Council can and does adopt standards to implement our suggestions, district attorneys' and public defenders' policies may be affected. This report also includes suggested improvements which district attorneys' and public defenders' offices might consider in starting or expanding witness treatment programs or activities. The solutions to some of the problems identified can only be achieved through increased cooperation between the courts, public defenders and district attorneys. Though the Judicial Council can take the initiative, cooperation cannot be legislated.

APPROACH & METHODOLOGY

After reviewing basic resource materials in this subject area,^{3/} a questionnaire identifying a broad spectrum of possible programs and activities was designed to determine what California

^{3/}Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, Improving Witness Cooperation, (Washington, D.C.: U.S. Government Printing Office, August 1976) referred to hereafter as "Witness Cooperation;" National District Attorneys' Association Commission on Victim Witness Assistance, Help for Victims and Witnesses, (Washington, D.C.: February, 1976) referred to hereafter as "Help for Witnesses."

prosecutors, public defenders and courts are doing to treat witnesses. (See Appendix 1.) Throughout this report we may refer to district attorneys' and public defenders' offices simply as "offices" or "agencies."

Pilot interviews were conducted with the cooperation of a Los Angeles County Municipal Court judge, the Alameda County district attorney, a division chief in the Los Angeles County District Attorney's office, a deputy in the Marin County District Attorney's office, and the Marin County Public Defender to ascertain whether our questionnaire items elicited the necessary information. A sample of 13 municipal and 11 superior courts, and district attorneys' and public defenders' offices in 18 counties was chosen for interviews. Questionnaire responses were received from 11 municipal and 9 superior courts, 18 district attorneys and 16 public defenders. (See Appendix 2.) Interviews and observations were conducted including on-going witness programs in Sacramento and San Mateo counties, and a new private program in Santa Clara County.

Survey findings were analyzed and statutes, new legislation and court rules concerning witnesses were reviewed. Existing research reports, studies and practices in other states also were reviewed. This report was prepared and submitted for review and comment to the project advisory committee and the executive boards of the California District Attorneys' Association and California Public Defenders' Association before submission to the Judicial Council.

Sample courts included in the survey were:

Municipal Court Districts

- (1) Beverly Hills
- (2) Central Orange
- (3) Chico
- (4) Fresno
- (5) Los Angeles
- (6) Monterey-Carmel
- (7) North Solano
- (8) Oakland-Piedmont
- (9) San Bernardino (Central Div.)
- (10) San Diego
- (11) Santa Cruz
- (12) Sunnyvale-Cupertino
- (13) West Orange

Superior Courts

- (1) Kern
- (2) Los Angeles
- (3) Marin
- (4) Napa
- (5) Riverside
- (6) San Bernardino
- (7) San Diego
- (8) San Francisco
- (9) San Luis Obispo
- (10) Santa Clara
- (11) Tulare

Public defender and district attorney offices were included from the following counties:

- | | |
|-----------------|----------------------|
| (1) Alameda | (10) Riverside |
| (2) Butte | (11) San Bernardino |
| (3) Fresno | (12) San Diego |
| (4) Kern | (13) San Francisco |
| (5) Los Angeles | (14) San Luis Obispo |
| (6) Marin | (15) Santa Clara |
| (7) Monterey | (16) Santa Cruz |
| (8) Napa | (17) Solano |
| (9) Orange | (18) Tulare |

The problems discussed in this report vary among the courts and offices surveyed. No projections can be made of the extent to which these problems exist in the California courts and offices not surveyed. Each court and office surveyed demonstrated some need for improvement in treatment of witnesses. Thus, there is reason to believe that many other courts and offices are experiencing the same needs.

GENERAL IDENTIFICATION OF PROBLEM AREAS

This section is comprised of a general statement of the problems encountered by witnesses. More detailed discussions are found in the "Problem Areas" portion of the report, beginning on page 21.

Under our criminal justice system, testimony of witnesses is essential for prosecution or defense of defendants. Yet witnesses are routinely treated indifferently, as mere elements in a process, rather than as individuals with needs directly stemming from the criminal acts committed against them or in their presence. In effect, many witnesses become victims of the very process intended to serve them, as they are drawn into it by repeated court appearances, often sustaining monetary and time losses that cannot be adequately compensated.

The system's impact on the witness begins before appearance in court. After being identified and interviewed by police, the witness may hear nothing more about the case until after the suspect is apprehended when the witness receives a subpoena. The subpoena is usually served on the witness at home by a uniformed police officer. Sometimes service is made at work which may cause embarrassment to the witness. The subpoena informs the witness of the date and time he must appear at the courthouse, but may not inform the witness of other particulars which would reduce witness confusion as to the purpose or meaning of the subpoena. A recurrent problem is the failure to notify witnesses subsequently that the date and time for appearance on the subpoena have been changed. Thus, witnesses often appear needlessly. Witnesses are rarely informed of reasons for these changes.

After being summoned, a witness must make arrangements to appear in court. The witness may encounter problems dealing with his or her employer and taking time off from work, with or without pay. In some cases the witness stands the chance of being fired. For many, transportation is a serious problem, especially in areas with inadequate public transportation systems. Parking in crowded courthouse areas is often difficult to find. Witnesses with young children must also make child care arrangements which may be difficult and expensive.

Frequently witnesses are not familiar with all of the steps in the criminal process from indictment to acquittal or sentencing. For example, many witnesses do not understand the purpose of the preliminary hearing or their role in that hearing.

Many kinds of information could be helpful to the witness, including a map of the community and courthouse, information on witness fees, appropriate dress, transportation and parking, and a description of the criminal process. Many witnesses are never informed in these areas.

The impact of the system on the witness continues upon arrival at the courthouse. Where does the witness go? Most courts do not have a special room where witnesses can wait until called to testify. Intimidation problems may arise as the witness stands in the hall with jurors and even the defendant while waiting for his appearance. Prosecutor and defender pretrial conferences in the hallway are also not appropriate in front of witnesses but frequently occur. Witnesses who have had to bring small children with them may have to leave them unattended in the halls while appearing in the courtroom.

Witness property used as evidence may be withheld long after trial.

Witnesses form an impression of the courts by treatment accorded them after their court appearance or in aspects unrelated to the actual testimony elicited from them.

Social service referral can be used to aid witnesses, particularly victim-witnesses, in seeking assistance to problems resulting from the crimes committed against them. In many jurisdictions, there is no such referral.

Case feedback, by informing the witness of the final disposition of the case, gives the witness a sense of finality and satisfies his curiosity. Witness statistics, compiled from exit questionnaires, can make witnesses feel that their impressions and responses are important, and ultimately can be used to formulate needed improvements. Many jurisdictions provide neither.

Training programs to educate law enforcement, district attorney, public defender and court personnel in treatment skills and policies will result in better witness handling but are in limited use. Court policies which encourage attorneys to prepare their cases so as to use witnesses most effectively, and other policies on scheduling, continuances and acceptance of negotiated pleas can also affect the treatment of witnesses.

Progress in these areas is hampered by conflicting interests of the various parties involved in the case. Of all those connected with a case, who deserves the most accommodation: judge, prosecutor, defense attorney, defendant, witness, jurors

or society? The current orientation appears to accommodate the court and attorneys. For example, many judges are reluctant to endorse a telephone-alert system which would allow witnesses to be called into court as they are needed because of the belief that court or judge time may be wasted waiting for slow or no-show witnesses. Until it is acknowledged that there is a responsibility to the witness, the problems faced by witnesses cannot be completely solved.

The adversary nature of our system creates the problem of determining where the witness treatment program should be located and which entity should run it: court, prosecutor, defender, probation department, law enforcement, independent agency?

SUGGESTIONS

Proper witness treatment involves consideration of many small things that can be done to indicate to witnesses that their services are appreciated. The following suggestions are aimed at providing that indication to witnesses.

An analysis of the survey responses (see page 13) from courts reveals that there is very little court involvement in the various programs and activities listed in the questionnaire. While many of the activities fall naturally within the control of district attorneys or public defenders, others are within the purview of the court.

Since witness contact with the system usually occurs at the courthouse, it is appropriate for the court to instigate many measures to accommodate witnesses and make their experiences positive ones. Facilities which the court can provide include reception centers or lounges, day care for children of witnesses and free parking.

Court policies can also greatly improve witness treatment. The court can encourage the use of notification by mail rather than formal subpoena procedures. (See page 26.)

Exit questionnaires can be designed and distributed by the court to survey witness responses and to evaluate treatment accorded to witnesses. (See page 45.)

Courts should have uniform, announced policies for payment of witness fees. (See page 27.)

Courts should attempt to pursue calendaring policies designed to utilize court resources efficiently. Witnesses will indirectly benefit from more efficient calendaring. See pages 41 and 42.)

District attorneys or public defenders who subpoena witnesses should provide an informational handbook to witnesses at the time of subpoena service. (See page 25.) The witness handbook should contain information for the witnesses of a general nature and any specific information as to what will be expected of that witness during the trial process. Counsel should provide sufficient numbers of their booklet to the court so that the court may distribute the booklets to those who arrive at court without a copy of the booklet.

Witness time should be utilized economically. Witnesses should be placed on standby alert, whenever appropriate, to be notified of the exact time of their required appearance shortly before they are needed. Responsibility for placing witnesses on telephone alert rests with counsel who subpoena witnesses. (See page 22.)

Witnesses' employment should be afforded the same type of protection from employer pressure as is currently provided for jurors' employment. (See page 35.)

SUMMARY ANALYSIS OF COURTS AND OFFICES SURVEYED

The National Center asked presiding judges, district attorneys and public defenders whether they provided any of 16 specific services for witnesses and to what extent they performed six administrative functions in support of their witness treatment programs. The National Center requested that their responses indicate whether witness services were organized as a formal program or were performed informally by individual judges or personnel.

The 16 specific witness service areas include:

<u>Services</u>	Probably Applies To		
	Prosecutors and Public Defenders only	Courts only	All three
(1) Verification of vital information on witnesses	X		
(2) Subpoena by mail			X
(3) Notification services, including case feedback	X		
(4) Witness handbook			X
(5) Employee assistance	X		
(6) Social service referrals	X		
(7) Video-taped witness depositions			X
(8) Transportation and parking			X
(9) Witness briefings	X		
(10) Reception center for witnesses		X	
(11) Day care center for children of witnesses			X
(12) Protection from intimidation			X
(13) Witness fees			X
(14) Witness impact on case disposition			X
(15) Witness response to service			X
(16) Return of evidentiary property			X

The six administrative functions include:

	Probably Applies to		
	Prosecutors and Public Defenders only	Courts Only	All three
(1) Witness services statistics	X		
(2) Legislation concerning witness treatment			X
(3) District attorney and public defender policies concerning witnesses	X		
(4) Training for witness treatment	X		
(5) Court policies concerning witnesses		X	
(6) General public information			X

In particular, presiding judges were asked to indicate what their courts had in the way of policies on:

(1) Deadlines for accepting a defendant's negotiated plea of guilty	X
(2) Continuances	X
(3) Scheduling witness appearances	X
(4) Setting companion cases.	X

In addition, a series of questions was asked about the characteristics of witness treatment programs such as their manner of organization, funding, and staffing.

Based on the results of the survey and assuming that the optimum condition would be every county providing all of the services listed above, witness treatment services provided in California can be characterized as below average.

This in no way reflects the quality of service nor does it reflect the difference in service levels between those conducted as formal programs and those conducted informally. At least 15 percent of the affirmative responses contained some qualification such as employee assistance is provided infrequently or case-feedback is provided only on request.

Services most frequently provided to witnesses, regardless of provider, are notification services, witness briefings, transportation and parking and payment of witness fees. Most of the district attorneys and public defenders surveyed indicated they have internal policies concerning witnesses and many courts indicated they have continuance policies favorable to witnesses.

Services are provided in moderate numbers in the following areas: employee assistance, witness feedback on cases, protection from intimidation and return of evidentiary property. In a moderate number of counties, there is some type of training for witness treatment, the courts have a policy on deadlines for accepting defendants' negotiated pleas of guilty that is favorable to witnesses and action has been taken or there is some interest in proposing legislation concerning witness treatment.

The most infrequently provided services include verification of vital information on witnesses, social service referral, subpoena by mail, witness handbooks, reception or waiting areas for witnesses, day care centers for children of witnesses, providing for witness impact on case disposition, providing for witness response to service, maintenance of witness service statistics and provision for general public information.

As might be expected, district attorneys do the most in providing services for witnesses. In survey interviews with district attorneys, many of them estimated they worked with four to nine times more witnesses than do public defenders. Several public defenders indicated such estimates were probably accurate. Public defenders provide quite a few of the services but not to the extent that district attorneys provide them. The courts provide the fewest services for witnesses. District attorneys, public defenders and courts in urban areas tend to provide more witness services and generally those of more value to witnesses than those provided in rural areas.

The table on the next page shows a profile of the organization, funding and staffing of witness treatment programs in the survey.

VICTIM-WITNESS CENTERS

Recently enacted Penal Code Sections 13835 et. seq. direct the Office of Criminal Justice Planning to designate certain public or private non-profit agencies as victim and witness centers to provide specified services and assistance to victims and witnesses of crime. The Legislature will fund these programs in an amount declining from 90 percent to 50 percent of the costs of the programs from 1-1-78 to 1-1-83, provided local governments contribute the remainder of the costs and that after 1-1-83 each center which is continued is supported by local funding entirely.

The enactment of this legislation will assist local governments in overcoming funding problems which have prevented the creation and operation of victim-witness centers.

Even without state funding a number of counties have been providing victim witness services using various funding sources. In order to report on examples of these programs, the National Center interviewed the directors of witness treatment programs in Sacramento, San Mateo and Santa Clara Counties. These programs were selected on the basis of knowledge of them, the difference in services offered, where the services are located and their proximity to the National Center's San Francisco office. Description of these programs starts on page 18.

Witness Treatment Organization, Funding and Staffing

	<u>Municipal Courts</u>	<u>Superior Courts</u>	<u>District Attorneys</u>	<u>Public Defenders</u>	<u>Total</u>	<u>% of Total</u>
No. of responses	11	9	18	16	54	
<u>Organization:</u>						
. Formal program*	---	1	9	1	11	
. Informal activities*	9	7	9	14	39	
. No activity	2	1	---	1	4	
<u>Program Funding:</u>						
. Grant funds used	---	---	4**	---	4	
Average level			\$57,375			
. Separate county general funds used	---	2	5	3	10	
Average level		Unknown	\$1,800	Unknown		
. No special funding	---	1	6	8	15	
<u>Formal Program Staffing:</u>						
. Permanent employees used						
. No. of programs	---	1	8	1	10	
. Average no. used		9	4	4		
. Volunteers used						
. No. of programs	---	1	10	1	12	
. Average no. used	---	57	10***	4		

* This indicates the number of courts and offices that have organized some type of program or activity for witnesses. It does not reflect their scope nor mean that they are comprehensive.

** One proposed grant for \$100,000 not included.

*** A number of district attorneys indicated they use volunteers, but did not indicate how many. This average is based only on the responses of those who did specify the number of volunteers used.

Sacramento County

The Sacramento County Victim-Witness program is in its first year of providing services to victims and witnesses in felony cases. The district attorney's office conducts this program using 2-1/2 employees. The program conducts activities including information and notification services, social service referrals, employer intervention, property return, escort services, witness waiting areas, child care services, emergency funds, investigative services, telephone emergency number.

The program offers aid to victims of violent crime and serves a witness processing role for felony cases in the district attorney's office. Approximately 900 people are assisted by the program per month.

The program has been funded with county general funds as part of the district attorney's budget, but a grant application for \$120,000 is being submitted for future funding.

The University of the Pacific's McGeorge School of Law has established a Victims of Crime Clinic that will coordinate with the district attorney's program as well as the Probation Department, Sheriff's Office and the Sacramento Police Department.

This clinic will provide three main services: assistance for victims processing claims for compensation through

the State Board of Control in the Attorney General's Office,^{4/}
exploration of alternative sources of compensation for the
victim and evaluation of claims of possible civil action
against the criminal.^{5/}

San Mateo County

The San Mateo County Aid to Victims and Witness Program is a two-year old comprehensive victim-witness program conducted by the probation department. The program utilizes six full-time employees and 70 volunteers to conduct virtually every program and activity identified by the National Center on its survey questionnaire.

The annual program budget is \$135,000 (75% LEAA, 20% county, 5% state). Local funding appears guaranteed when LEAA funds are exhausted.

The program offers aid to the victims of violent crime (458 in 1976-1977) and processes witnesses for the district attorney's office (2,190 in 1976-77).

The program director monitors relevant legislative activity and runs a workshop for other counties which want to set up victim-witness programs of their own.

^{4/} California Government Code Section 13959 et seq. currently provides medical, lost income, employment rehabilitation, survivors' benefits and funeral expense funds for violent crime victims meeting financial hardship and other requirements. An extremely complicated claims procedure and 12-month processing time have made this program less accessible than is desirable.

^{5/} "Law School will Assist Crime Victim, Witness," Los Angeles Daily Journal, April 21, 1977, p.4.

Santa Clara County

The National Conference of Christians and Jews in San Jose is initiating a victim-witness project. The project is initially directed toward victims of violent crimes and involves such services as: transportation; household assistance; notification of friends, relatives and employers; arrangements for, and verification of medical benefits; referrals to other agencies or community services; assistance in applying for State Victims Compensation; and personalized services as needed. The project proposes to train citizen volunteers.

In addition to victim services, this program will plan and develop a witness assistance and service element. Areas of assistance and service may include: transportation and escort service to the courts, facilitating the establishment of witness waiting rooms in court facilities, providing notification services for witnesses and general information regarding court procedure, and case disposition.

Initially, the project proposes to serve an area of approximately 100,000 people living in central-west San Jose. There will be a professional staff of three and a volunteer staff between 30 and 70. Ultimately, the project will provide a plan to expand the program county-wide. The first year budget of approximately \$70,000, and the second year's of \$100,000, were facilitated by an L.E.A.A. grant award to the local sponsor, the County of Santa Clara, with the National Conference of Christians and Jews providing the match and administration of the program.

SURVEY OF PROBLEM AREAS

This part of the report is divided into two sections. The first contains a description of those problems having the most impact on witnesses and, from the witness' perspective, probably deserve primary attention. The second section contains a description of problems of a lesser magnitude. In each section, the problems are discussed in the order of importance assigned to them by the National Center.

PRIMARY PROBLEM AREAS

COMMUNICATION WITH WITNESSES

Because of procedural requirements in criminal cases witnesses may have to appear at a line-up, preliminary hearing and trial. Witnesses react negatively to needless appearances and may eventually fail to appear. It has been estimated that 50 percent of the cases in Los Angeles Municipal Court's criminal division are taken off calendar because witnesses fail to appear.

Witnesses need to be kept informed of the status of the case and should be notified when a case has been continued or dismissed to prevent needless trips to the courthouse. The telephone-alert is a useful technique for alerting witnesses to changes in scheduled court appearances. The National District Attorneys Association believes use of the telephone alert to

be a "desirable objective."^{6/} The Law Enforcement Assistance Administration believes that such a system can solve the frequent complaint that witnesses have been summoned unnecessarily.^{7/} Under a telephone alert system, witnesses are informed that they must stay near the phone and will be notified one hour in advance of their appearance. An alternative is a call-in system where witnesses are given a phone number to call shortly before the time to appear stated on their subpoena. When witnesses call the number they receive a prerecorded message informing them whether or not to appear. Either type of system could be used by district attorneys or public defenders. Since the office subpoenaing a witness will be the best informed as to that witness' necessity to appear, and the exact timing and sequence of appearance, the subpoenaing agency should be responsible for providing notification services.

Many judges don't like witnesses to be placed "on call" for they feel witnesses are not responsible enough to appear. The Los Angeles Municipal Court found that 80 percent of those witnesses placed "on call" appeared as required, according to its witness project director.

Of the 34 responses to the survey, 17 district attorneys and 16 public defenders indicated they use some type of notification service for witnesses, or that such a service was in the planning stage.

The Sacramento District Attorney's Aid to Victim-Witness Program uses a card file system to keep track of approaching

^{6/}"Help for Victims," p. 16.
^{7/}"Witness Cooperation," p. 36.

appearances. Scheduled dates are confirmed with the prosecutor several days in advance, and when a continuance has been granted, each witness is personally contacted by the Victim-Witness Unit and cancelled or rescheduled so that needless appearances are not made.

A witness "call-off" procedure is used by the San Diego District Attorney's Victim-Witness Program to contact witnesses by phone or letter to inform them of continuances, dismissals or other changes. A "stand by" procedure is also used by attorneys or investigators to place witnesses on stand-by at home or work so they can be contacted as to when and where to appear.

A response by one district attorney indicates a factor which runs throughout many areas of this project. The district attorney said:

It should be noted that a court could very easily, because of attitude or personal preference, make any one of the programs impossible to function. In one court a judge demanded that witnesses for the prosecution be present before jury selection started because it would encourage disposition of the case short of trial. Not knowing what case would be sent to his courtroom essentially meant that the telephone alert or stand-by not be put into effect.

Cooperation among all the individuals involved is essential to realize the goals of a witness treatment program.

The Handbook on Witness Management encourages a centralized witness notification system, and describes how such a unit works in the Washington, D. C., prosecutor's office.^{8/} There, a

^{8/} "Witness Cooperation," pp. 33-34, 55-58.

Prosecutor's Management Information System (PROMIS) automatically tracks witness appearance dates and generates notifications when dates are changed.

Nine district attorneys and seven public defenders out of 34 who responded indicated that witnesses are notified of the disposition of the case or of the reason delays are occurring.

Witnesses have a legitimate right to know what is going on. Keeping the witness up to date on the status of the case encourages interest in participation, reflects a concern for the witness that will increase cooperation, and is a common courtesy. Two agencies indicated that case feedback was provided "upon request." Communication with witnesses should be automatic; witnesses should not have to ask for it.

Each office issuing a subpoena should accommodate the witness by providing current information regarding the case. Witnesses also should be advised of the final disposition of the case.

WITNESS HANDBOOKS

Of 54 survey responses 15 district attorneys and 3 public defenders indicated they provide handbooks to witnesses. None of the courts provides a witness handbook. Handbooks are provided by three field offices participating in the National District Attorneys' Association aid to victims and witnesses program.^{9/}

^{9/} "Help for Witnesses," p. 21.

Being a witness, particularly for the first time, is a new experience. Witnesses need to know what is expected of them as well as what they can expect from the system.

A handbook should be designed to convey practical information such as location of courts, courtrooms and parking facilities, availability of witness fees, social services, child care, as well as a brief introduction to court procedures. The Clark County (Las Vegas), Nevada, district attorney has prepared a handbook which lists the services provided by his Victim-Witness Center.^{10/} A sample handbook is provided in Appendix 3.

Handbooks are sometimes thought to be too expensive, particularly in small or rural counties. However, the handbook does not need to be in book or pamphlet form and need not be expensive; even a mimeographed page which conveys the necessary information can be a great aid. Some offices such as the Alameda County district attorney's office send maps of the courthouses and a general information sheet with the subpoena. The main concern should be to provide timely information that can be used by the witness. Also, there should be a relationship between handbook information and the information provided in witness briefings.^{11/}

^{10/} George Holt, Handbook for Victims and Witnesses, Las Vegas, Nevada: 1976, p. 2.

^{11/} "Witness Cooperation," pp. 28-29, 45-53.

One handbook could be designed to fulfill the needs of prosecution, defense and the court and could be distributed by court clerks. As an alternative, prosecutors and public defenders might each have their own handbooks to distribute, and provide a reasonable supply to courts in their counties for supplemental distribution.

The earlier a copy of the handbook is received, the more useful it will be to a witness. Delivery with the subpoena would be ideal. The Alameda and Los Angeles County district attorneys provide them this way. Delivery at the first meeting of the witness with the prosecutor or defender would be adequate, provided such meetings occur in advance of the witnesses' first court appearance.

WITNESS FEES

The discretionary nature of statutes providing for payment of witness fees has resulted in haphazard payment of those fees. Even when fees are paid, they are inadequate to compensate witnesses for the time actually spent.

Government Code Sections 68093, 68096 and 72230 and Penal Code Section 1329 provide for the payment of fees at the rate of \$12 per day and \$0.20 per mile (one way only) for attendance as a witness in superior, municipal or justice courts, only if the allowances are necessary for the expenses of the witness in attending. Where the witness' employer does not pay his salary for the time of his absence from work because of being a witness, Penal Code Section 1329 provides for the payment of fees

equal to the sum of the gross salary (up to \$18 per day) which the witness would have earned during that time.*

* California Unemployment Insurance Code, Sections 1252 and 1253.6 allow certain witnesses who appear under subpoena and meet other eligibility requirements to collect unemployment.

Under the provisions of Government Code Sections 29603 and 68098, witness fees in criminal cases in superior, municipal and justice courts are county charges paid by the court.

Witnesses should be compensated for the time and expense they incur while they are waiting and testifying at the courthouse. The National District Attorneys Association indicates that 38 states compensate all witnesses.^{12/} The Law Enforcement Assistance Administration has taken the position that it is unreasonable not to pay witnesses.^{13/} A survey of felony cases in Alameda County indicated that 22 percent of all witnesses lost wages because of court appearances required during working hours, according to the district attorney. Additional expenses for transportation, child care and meals which place a financial burden on the witness should also be compensated.

Since the law provides for discretionary payment of witness fees, many witnesses are not reimbursed. Many times, the witness who complains the loudest is the one who is paid. Some offices view payment of witness fees as a game. If witnesses don't find out about the availability of fees, the court need not pay them. Wasted time and financial burdens should not have to be the price witnesses pay for being present when a crime is committed. Such a system will not encourage citizen cooperation with law enforcement and with the criminal adjudication process.

Ten courts, 14 district attorneys and 9 public defenders indicated that they process requests for fees for witnesses. But some courts and offices do not think witnesses should be compensated for their time. Others who do think compensation should be made do nothing to inform witnesses of the availability

^{12/}"Help for Witnesses," p. 62.
^{13/}"Cooperation," p. 32.

of the fees. The criminal division of the Los Angeles Municipal Court adopted guidelines for paying witnesses. The San Mateo County Aid to Victims and Witnesses Program routinely assists witnesses in applying for fees. This automatic payment to those witnesses who appear is a good example of what a witness program should do to improve treatment of witnesses.

In contrast with other states, California statutory provisions for compensation are among the highest. Only seven states permit a higher maximum per diem payment and only four states allow a higher minimum.^{14/}

The Witness Fees Model Statute drafted by the National District Attorneys Association should be used as a guide in updating California law.^{15/} After further research, the advisory provisions of Government Code Sections 68093, 68096 and 72230 and Penal Code Section 1329, providing for the furnishing of witness fees if necessary, might be amended so that they are mandatory with discretion in the court to disallow payment when excess or needless witnesses are called. A firm policy of paying all witnesses for all appearances might be adopted.

^{14/} "Help for Witnesses," pp. 62-64.

^{15/} Insert in packet of materials provided by the Commission on Victim-Witness Assistance, National District Attorneys Association, 1900 L Street N.W., Suite 607, Washington, D.C. 20036 (202) 872-9504.

PROTECTION FROM INTIMIDATION

Penal Code Section 136 makes it unlawful to threaten or intimidate a witness, keeping him from appearing in court. Penal Code Section 137 makes it unlawful to dissuade a witness from giving testimony or to procure false testimony. Nonetheless it is obvious that prosecution or defense witnesses may be threatened or intimidated.

Witnesses may be threatened or intimidated in many different ways. According to the district attorney in Alameda County, a survey of felony cases in that county indicated that 47 percent of those responding felt compelled by their experiences to take some type of action to improve personal security, and 40 percent of the people said they experienced some form of fear of retaliation.

It is recognized that witness intimidation may occur at any point or time. We assume that any instances of intimidation will be dealt with as they occur. One place where witnesses are particularly susceptible to intimidation is the courthouse. Great potential for intimidation exists where witnesses are not provided a separate area to wait for their court appearance away from the area where the other party and their witnesses are waiting. Protection from intimidation includes more than just providing police protection after a witness has been threatened or harassed.

Protection from intimidation is offered by two courts, thirteen district attorneys and four public defenders. While most

offices offer protection to witnesses after a threat has been made, only a few programs include reception centers or an escort from the witness reception center when it is time for the witness to appear in court.

RETURNING EVIDENTIARY PROPERTY

Many victim-witnesses experience hardship when their property is held for use as evidence and not returned until after trial.

Penal Code Sections 1408, 1409, 1410 provide for the return of a person's property which is in the custody of a peace officer, magistrate or the court. Penal Code Section 1418.6 allows the return of evidentiary property at any time so long as the parties stipulate thereto, no prejudice results and a photographic record of the property is made.

The primary concern of the victim-witness is getting his property back. Secondary to return of his property is seeing the criminal convicted. Often the court or prosecutor may overlook the interest of the victim-witness in getting property back. For example, in shoplifting cases, recovered merchandise is often held until it is outdated, or dirty and no longer marketable. Other recovered personal property such as TV sets or cameras are held needlessly until the end of trial.

A survey of completed felony cases in Alameda County showed that nearly 30 percent of victim-witnesses who had property stolen and recovered never had it returned by the courts. In

addition to Alameda County, district attorneys in Kenton County (Covington), Kentucky, New Orleans, Louisiana and Westchester County (White Plains), New York, have established special property return procedures.^{16/}

Sometimes special witness programs have interceded for the victim or witness by coordinating with the district attorney and police department. The Manhattan Witness Aid Bureau identified this as one of its regular duties.^{17/}

Four presiding judges, fourteen district attorneys and eight public defenders indicated that they attempt to help in the early return of evidentiary property. This may be accomplished through the use of photographs of the property as evidence in court, so property can be returned before trial, or by the involvement of the agency in helping the victim-witness get his property back as soon as possible after trial. Such services should be provided as a matter of course and not, as one district attorney responded, only upon request of the victim-witness.

RECEPTION CENTER

Too few agencies provide adequate, well-marked, comfortable and quiet areas for witnesses to report to and use for the duration of their court appearances. In many courts, witnesses have to wait in noisy, congested areas which may reduce witness morale, increase the potential for intimidation and arouse anxieties.

^{16/}"Help for Witnesses," pp. 23, 36, 40, 47.

^{17/}Barbara Flicker, Project on Court Improvement: Witness Aid Bureau Final Report, (New York: Institute of Judicial Administration, May, 1976), p. 3.

There is no statutory provision or Judicial Council rule dealing with witness waiting.

In some courts, a special waiting area is provided for police witnesses but not for civilian witnesses. Considering that police would be less intimidated by contact with various parties, the lack of civilian witness facilities does not appear reasonable or consistent with witness treatment program goals.

Victim-witness reception centers should be located in district attorneys' offices, public defenders' offices and in courthouses. They should be constructed and furnished in a manner to provide the maximum amount of comfort and security to witnesses who have been injured or traumatized by criminal acts. In providing victim-witness reception centers, emphases should be on "non-institutional" settings; places where witnesses may leave their small children and have privacy.

The survey results indicate serious deficiencies in this area. Of 54 responses, only 13 (nine district attorneys, three public defenders and one court) indicated they maintain such centers.

EMPLOYEE ASSISTANCE

Penal Code Section 1331 indicates that disobedience of a subpoena or refusal to be sworn and testify may be punished as contempt.

There are no statutory provisions governing the protection of a witness' employment when he is required to be absent from work while appearing in court. However, Labor Code Section 230 provides such protection for jurors.

Because the employee is required by law to attend as a witness, and since there is no law protecting his interest in employment, there may be a need in some instances for intervention on behalf of witnesses either by letter, telephone, or in person with an uncooperative employer.

Employers are often understandably concerned over repeated and prolonged court appearances of their employees. The elimination of multiple court appearances and the reduction of wasted waiting time would greatly encourage employers to grant court leave to their employees. Effective utilization of witness time would greatly ease the economic burden currently placed on employers when their employees are held up in court for prolonged periods.

Of the 34 survey responses, 10 district attorneys and 11 public defenders indicated they provide assistance with uncoop-

erative employers. Such assistance is either provided formally, according to a fixed procedure, or informally, only as needed and at the deputies' discretion as to the procedure to follow.

District attorneys and public defenders should establish formal procedures for their offices to deal with employer problems faced by witnesses they subpoena.

Labor Code Section 230 could be amended to protect the employment of witnesses as well as jurors.

WITNESS SUBPOENAING AND SCHEDULING

California Penal Code Section 1328 provides the exclusive method for service of a subpoena, by delivering a copy to the witness personally. However, personal service of a subpoena may cause embarrassment to the witness and is more expensive than notice by mail.

Of the 54 responses received, ten district attorneys, two public defenders and one court indicated that they "subpoena" witnesses by mail. Service by mail results in the "subpoena" being, in reality, a request for the witness to appear since he is under no legal compulsion to appear. Use of a mailed "subpoena" has proved to be efficient but not always effective.

In cases where the sanction of the court may be required to obtain a witness' appearance, personal service is necessary. This must be determined on a case by case basis. In most other cases, arrival of a subpoena in the mail will be less upsetting than personal service at work or home by uniformed police.

Wherever possible and appropriate, courts, district attorneys and public defenders should notify witnesses of appearances by mail.

Penal Code Section 1331.5 allows some flexibility in scheduling appearance dates which are convenient for witnesses by allowing the witness to adjust that date with the agreement of the agency which summoned him. Unfortunately, many witnesses are not aware of this option and are not informed of it by the summoning agency. Scheduling convenient appearance dates is a policy which should be a part of any witness treatment program.

WITNESS BRIEFINGS

Eleven district attorneys and eleven public defenders of the 34 who responded indicated they brief witnesses before trial. Unfortunately, these briefings often are conducted very informally and quickly in noisy hallways before trial. Sometimes they are not conducted at all. Thus, witnesses may not be fully prepared for the role they will be expected to play in the courtroom. Witness handbooks, though extremely useful in answering witnesses' standard questions, cannot serve as an adequate substitute for direct contact between witness and attorney.

The district attorney of Alameda County advised that a survey of felony cases in that county indicated that 45 percent of those appearing in court felt they had been inadequately informed about what would be involved in testifying. Alleviating their fears and anxieties should aid in eliciting the best testimony from them.

Simple, uncomplicated answers to the witness' case-related and other questions as well as an overall view of the justice system should be provided. The briefing should include a discussion of the elements of proof or evidence which counsel expects the witness to supply. A discussion of all of the questions which a witness may be expected to be asked in direct and cross-examination would help the witness relax and understand that all which is expected of him is honest testimony regarding the alleged crime.

Each summoning office should concentrate on providing adequate, confidential briefings for witnesses. Briefings held over the phone may be the only practical way for some offices to contact witnesses. While this is less desirable, heavy workloads may make face-to-face meetings impossible.

TRANSPORTATION AND PARKING

Many people, especially the aged, disabled and indigent have difficulty getting to court. Often, witnesses who drive have trouble finding adequate parking spaces, especially near courts in urban areas.

Under the provisions of Penal Code Section 1330 a person does not have to appear as a witness outside the county of his residence unless the distance is less than 150 miles, or unless a judge endorses an order on the subpoena.

Provisions should be made by the court for free parking facilities, a special area reserved for witnesses, or a sticker

which could be placed on a windshield to identify a vehicle as a witness vehicle to exempt it in metered spaces. Courts providing parking facilities for jurors could make them available to witnesses as well. For example, some courts give jurors parking tags to place on their windshields, thereby allowing the vehicle to be parked in designated spaces, or indicating to meter attendants that the vehicle is not to be ticketed.

Witnesses should be advised of the availability of public transit serving their residence and the courthouse. Six courts, thirteen district attorneys and fourteen public defenders indicated they provided some transportation and/or parking facilities, either formally or informally.

Volunteer services providing transportation for those lacking any other access to the courthouse could be included in a witness treatment program on an "as needed" basis. For example, one program which uses volunteers as a regular part of its work force assigns a volunteer to pick up witnesses when the witness has phoned and indicated a lack of alternative transportation.

VERIFICATION OF POLICE INFORMATION

In some cases, witnesses are labeled by police or district attorneys as uncooperative, or they cannot be reached to serve as witnesses, because some information from the police report regarding the witness is absent, ambiguous or incorrect.

Only nine district attorneys and one public defender of the 34 who responded indicated they routinely verify information obtained from police reports, such as correct names, addresses and phone numbers of witnesses.

Since a witness may be classified and treated as uncooperative or may be unavailable to testify as a result of incomplete, ambiguous, or incorrect information on police reports, it is vital to improved witness treatment that law enforcement agencies, district attorneys' and public defenders' offices verify and revise, if needed, information obtained on police reports. Law enforcement agencies should assure that all of the necessary information is gathered and verified at the scene of the crime or shortly after the crime occurs. Responsibility should be placed upon the summoning entity to ascertain whether the information on the police report is complete, clear and correct. The scope of the problems that arise from failing to verify information on witnesses is presented in detail in the Handbook for Witness Management.^{18/}

^{18/} "Witness Cooperation," pp. 27-28.

SECONDARY PROBLEM AREAS

COURT POLICY - CONTINUANCES

Continuances before and during the course of the trial may result in inefficient use of court, attorney and witness time.

Penal Code Section 1050 allows granting of continuances only upon a showing of affirmative proof in open court, upon reasonable notice, and only where the ends of justice so require. No continuance may be granted for a longer time than is shown to be required in the interests of justice.

The Judicial Council has established as a Standard of Judicial Administration, a suggestion that trial courts should adopt strict standards for the granting of continuances.

(Sec. 10[a][6])

Survey responses revealed that 15 courts, 7 district attorneys and 1 public defender follow strict continuance policies.

Often, a continuance is a method of insuring that the defendant is given a fair trial, and therefore the need for granting a continuance may prevail over other considerations such as witness convenience or the societal interest in a prompt trial. However, when it appears that the continuance is being used as a stall tactic, court policy should be to deny the motion for the continuance.

Consideration must be given to many factors in arriving at an appropriate continuance policy for a court. If possible, such a policy should allow sufficient time to alert witnesses of changes in appearance dates.

COURT POLICY - NEGOTIATED PLEAS

Penal Code Section 1192.5 provides that on a plea of guilty or nolo contendere the plea may specify the punishment as a jury could do and may specify how the court may exercise other powers legally available to it. Once such a plea is accepted in open court, the sentence imposed cannot be more severe than the one specified in the negotiated plea.

The survey responses indicated that 10 courts and 6 district attorneys tried to limit the acceptance of guilty pleas on the day of trial, while only 2 public defenders followed that practice. When a guilty plea is accepted on the day of trial, witness time may be wasted.

Many prosecutors think last-day plea negotiations are especially effective when the defendant can see that the victim, witnesses, and even prospective jurors have arrived at court for his case. In addition to the prosecution's interest in encouraging last minute guilty pleas, even at the expense of witnesses, it is in the society's best interest for the court to accept a plea whenever it is made.

In addition, it appears common practice for some police agencies to overcharge an offense.^{19/} At the initial stages the district attorneys have nothing other than what the police have provided them; thus, the initial allegations also overcharge the offense. When the appropriate charge is found, the defendant is then able to plead guilty to that charge. If all this could

^{19/}Peter W. Greenwood, Sorrel Wildhorn, Eugene C. Poggio, Michael J. Strumwasser and Peter De Leon, Prosecuting Adult Felony Defendants, (Lexington, Mass.: D.C. Heath and Co., 1976,) p. xxiii.

be achieved before the day the case is supposed to go to trial, much last minute scheduling and inconvenience could be avoided.

District attorneys and public defenders should be encouraged to narrow the field of their dealings with each other so that defendants who are going to plead out can do so at an early stage in the process rather than the actual day of trial.

A court's policy on plea and sentence negotiation should incorporate calendaring and management concepts to best utilize the court's resources. An optimum policy should allow sufficient time to alert witnesses of cancelled appearances.

SOCIAL SERVICE REFERRAL

Witnesses, particularly victims, may need social services provided for them. Needs may exist for such services as physical health care, mental health care, welfare, employment and job counseling, child care, assistance in obtaining compensation as a victim of violent crime, other financial assistance, or religious group assistance.^{20/}

Of the 34 who responded, seven district attorneys and one public defender said they provide social service referrals. Two public defenders said that neither defenders nor prosecutors should get involved in the social problems of witnesses. Law enforcement agencies might provide this service, since they are usually in attendance at the actual time when the need exists.

^{20/} National District Attorneys Association, Social Service Referral: An Idea to Help District Attorneys Help Crime Victims, (Washington, D.C.), p. 10.

There are programs in existence which are designed to help people in many aspects of their lives. Referral of victim-witnesses to these programs would be easily accomplished by one agency, by the court, or by a joint effort between the prosecutor and defender's offices. Such referral requires contact with the agency and compilation of a directory or index of agencies, the services they provide, and their phone numbers for simple and quick referral. The next step is to find out what the witness or victim needs, and to inform the witness of how and where he can get help.

The Sacramento District Attorney's Aid to Victim and Witness Program offers referral services to all victims and witnesses. Case files of victims of violent crimes are marked so that staff members will be alert to aid the victim in making contact with various organizations, such as rape counseling centers or psychiatric programs. Other victim-witness programs offering this service include those in Alameda County, Pima County, (Tucson) Arizona, Westchester County, (White Plains) New York, Cook County, (Chicago) Illinois, Kenton County, (Covington) Kentucky and Philadelphia, Pennsylvania.^{21/} Any comprehensive witness program should offer this assistance to witnesses as an integral part of its services.

^{21/}"Help for Witnesses," pp. 24, 28, 37, 44.

WITNESS RESPONSE TO SERVICE

Witnesses are rarely given an opportunity to comment upon their experiences in the criminal justice system. A witness survey can be valuable to assist in identifying problem areas for participants in the system; responses elicited from witnesses also can be used to improve public relations by showing witnesses their observations and evaluations are valued.

Responses to the survey indicated that six district attorneys and two public defenders use some kind of exit questionnaire to survey witness attitudes. None of the courts surveyed does this.

A sample prosecutor's witness questionnaire has been prepared as a result of the Washington, D.C., witness survey.^{22/} (See Appendix 4.) Although much longer than necessary, this questionnaire is an example of what kind of information can be obtained.

Questionnaires could be handed out in the courthouse at the time of the witnesses' final appearance, or could be included with letters going out to witnesses advising of the final disposition of the case.

^{22/} "Witness Cooperation," pp. 59-63.

DAY CARE CENTER

Witnesses with young children may have difficulty finding child care while the witness has to appear in court. Often, the expense of paying for a sitter adds an additional burden to witness service.

Day care services are provided for or are in the planning stage in four counties. In Los Angeles both the district attorney and the public defender provide day care services. The public defender in Marin County, the municipal court in Orange County and the victim-witness program of the San Francisco County District Attorney's office all plan to offer day care services as part of their programs.

A day care center was initiated in the Los Angeles Municipal Court by the presiding judge several years ago. Now a part of the District Attorney's office, it provides a full-time certified teacher and a second center has been opened at the Superior Court Juvenile Court Annex. Volunteers are used extensively to assist in the program.

While a full-time certified teacher is an example of a service which can be provided by a large court, such elaborate services are not necessary. Adequate child care could be provided in a county of any size where there is space for a reception center or witness lounge in or near the courthouse. In such a center, parents could stay with their children until the time for their appearance: trained volunteers could then stay with the children in the center until the witness' return.

Responding witnesses approve of such day care centers. District attorneys and public defenders believe day care centers to be legitimate services which should be offered. However, because of the lower importance of this service in relation to other parts of their programs, day care services may suffer budgetary and personnel limitations which prevent or postpone implementation.

Courts could involve themselves in providing day care services for witnesses' children in a fashion similar to the way juror lounges are run. If a program currently exists for the care of jurors' children it could possibly be expanded to include witnesses' children. Even small counties could offer informal child care services in a witness reception center.

In the case of a victim/witness, California Rule of Court 410(f) states that one of the general objectives of sentencing is to secure restitution for the victims of crime. How such restitution is obtained is up to each judge.

WITNESS TREATMENT TRAINING

Even where a witness program exists it cannot be effective unless all professional personnel and volunteers are sensitized to the problems faced by witnesses and are trained to deal with them.

While most counties provide at least a minimal amount of witness services, actual training of deputy attorneys is provided in only a few cases. Many deputy prosecutors and defenders are well trained as lawyers and view their roles basically in that light; very few are trained to be sensitive to witness problems.

The National Institute of Law Enforcement and Criminal Justice has suggested a joint prosecutor and public defender publication to define procedures to be followed in witness management.^{23/} This publication could be used as a training manual for new attorneys. Some of the things to be included would be:

1. Do's and don'ts of obtaining and recording accurate and complete witness data: names, addresses, etc.
2. Timing and type of instructions to be given to witnesses regarding what is required of them, what they can expect, and where they may call to have their questions answered.

^{23/}"Witness Cooperation," p. 30.

3. Suggestions about special handling or treatment of victim or other witnesses involved in certain types of crimes, such as homicide, rape, assault or child abuse.
4. Procedures regarding retention and return of witnesses' property.

Other training could include crisis counseling techniques for victim-witnesses, guidelines for filing for state compensation for victims of violent crime, and social service. The Philadelphia District Attorney found in a survey that 70 percent of the assistant district attorneys in his office needed additional training, and 53 percent of the judges surveyed felt additional training was needed by their assistants. No judges indicated the need for additional judicial training in this area. ^{24/} In addition to training full-time staff, it is also important to train volunteers. ^{25/}

California public defender and district attorney associations could become involved in developing training procedures, guidelines and materials to improve personnel sensitivity and skills in handling witnesses. The San Diego District Attorney recommends that deputies be taught to deal with witness problems using a "3C" approach: courtesy, concern and common sense.

^{24/} "Help for Witnesses," p. 54.

^{25/} Ibid, pp. 31-32.

DISTRICT ATTORNEY AND PUBLIC DEFENDER POLICIES

While almost all district attorneys and public defenders indicated they are conscientious in formulating policies for the effective use of witnesses, many responses to the questionnaire indicated that actions were taken only "informally" or on a case by case basis. Thus, what is needed are more formal policies. A formal program such as used in the Sacramento County District Attorney's office might be suggested. In that office, all felony files are routed to the Victim-Witness Program at an early time. There, various procedures are set in motion on each file. A formal system insures that program objectives will be achieved, and uniform treatment is given to all witnesses.

WITNESS LEGISLATION

Many of the problems encountered by witnesses need to be resolved by enacting new legislation.

Courts and agencies should involve themselves in the promotion and support of legislation and that will reform and improve treatment of witnesses and victim-witnesses. Possible improvements may be suggested in areas such as providing for state assistance to counties or other local jurisdictions to establish and continue operation of community victim and witness assistance programs, and to streamline court procedures and policies regarding witnesses. At least one district

attorney indicated that legislation should be introduced to make a minimal witness treatment program mandatory, with state funding provided.

A few legislative proposals have been suggested in California during the past year. As of March 1, 1978 they include:

Assembly Bill 1539, a two-year bill, would add a fee to fines and forfeitures and create, in each county, a revolving fund to pay witness fees out of the monies collected.

Assembly Bill 1584, a two-year bill, would establish in the Department of Justice the California Commission on Victims, Witnesses and Jurors, which commission would study and report on the ways to improve the plight of victims, witnesses and jurors.

Senate Bill 295, a two-year bill, would permit sentence bargaining in felony cases.

Senate Bill 642, a two-year bill, deals with punishment for intimidating witnesses, conditional examination of witnesses and various rules of evidence.

GENERAL PUBLIC INFORMATION

Survey responses showed that nine district attorneys, two courts and one public defender provide general public information on their witness programs. Since the implementation of a program designed to provide assistance to witnesses and improve court efficiency has the effect of creating positive impressions of the criminal justice system and the courts, every effort should be made to give as much exposure to the programs as is possible.

Many people are unwilling to become involved in the justice system because they have preconceptions of the treatment accorded to witnesses. Witness programs currently in existence are overcoming many of the old problems which created such a bad public image for the criminal justice system, and a lot of the notions held by the public are no longer valid. By countering the misconceptions held by the public, through the use of news releases in the press and on radio and TV broadcasts, witness treatment programs can improve public cooperation with the police, prosecutor, defender and courts. The Los Angeles County witness program produced a thirty-second television spot encouraging citizens to fulfill their obligations in the event they are called as witnesses. The spot received wide exposure in the Los Angeles County community and also prime time exposure on the Today Show. The Handbook for Witness Management contains some further guidelines for launching and formulating such general public orientation.^{26/}

^{26/}"Witness Cooperation," p. 43.

VIDEOTAPED DEPOSITIONS AND PRERECORDED TESTIMONY

Penal Code Section 1336 provides for conditional examination (deposition) of a material witness who is about to leave the state, or who is so sick as to give reasonable grounds to believe that he will be unable to attend the trial. Under Penal Code Section 1338, three days' notice must be given to the opposing party. Penal Code Section 1339 guarantees the defendant's right to be present in person at the deposition.

Videotape offers the opportunity to present a clear record of a witness' testimony without requiring his presence in court. Delays in trial proceedings due to unavailable witnesses can be eliminated when prerecorded testimony has been taken before trial. Evidentiary judgments can be made by the judge outside the presence of the jury, by viewing the tape before trial. Any matter which is irrelevant or prejudicial can be deleted from the tape or skipped when the tape is shown to the jury.

The survey data revealed that two courts, two district attorneys and two public defenders use videotape in situations where a witness cannot otherwise appear. Because of severely limited applicability and lack of acceptance by those involved, videotaping will probably not come into general use in court proceedings. Still, use of prerecorded testimony has an unrealized potential which may someday be recognized. Statutory and attitude changes must precede any expanded use of videotaping.

WITNESS STATISTICS

Witness treatment programs should maintain statistics in order to evaluate and quantify their impact and success, to make needed changes, and to justify future funding. Where a witness has been uncooperative, statistics gathered from his exit questionnaire may be used to determine the cause and to aid in taking corrective action.

Statistics should include the number of witnesses assisted, as well as the number of witnesses who appeared but were not used, who did and did not receive fees, who did not receive sufficient advance notice when subpoenaed, who did not understand the reason for the subpoena, who did and did not have evidentiary property returned, or who were or were not advised of state compensation available to them for physical injuries.

Three public defenders and two district attorneys indicated they keep statistics relating to witnesses.

Evaluation may be based on written comments made by witnesses in exit questionnaires, volunteers in the program, and agency staff. Quantitative measures will be useful in supporting a program's existence, budget or grant requests. Statistics will also provide a basis for setting goals for future services or improving treatment, for developing and conducting training courses,^{27/} or, for public relations purposes, to indicate in quantitative terms what the program is achieving.

^{27/} "Witness Cooperation," p. 37.

WITNESS IMPACT

Of 20 responses, six courts indicated they use witness impact statements for sentencing. The National District Attorneys' Association urges the consideration of victim/witness impact at sentencing. While it might be desirable to consider the impact a crime had on witnesses to it, no formal program is suggested in this area. The judge will probably be aware of the impact a crime had on a witness, through the testimony of the witness at trial. This may affect the sentence the judge gives. The judge's lack of power to fashion a sentence around a crime's impact on a mere witness and the work already placed on probation departments to provide probation and sentencing reports, argue against including any sort of witness impact statement in the probation and sentencing report. In the case of a victim/witness, California Rule of Court 410(f) states that one of the general objectives of sentencing is to secure restitution for the victims of crime. How such restitution is obtained is up to each judge.

COURT POLICY - COMPANION CASES

Setting companion cases for the same day would theoretically coordinate use of witnesses and combine their appearances into one day.

Two courts said they set companion cases on the same day. The ability to coordinate scheduling requires much communication among judges and court clerks as well as between the prosecutor and defender.

In reality most courts think it is difficult, if not impossible, to coordinate such appearances. Because of the low priority assigned to this area, and the determination that no one thought it was presently practical to attempt to set companion cases on the same day, no suggestion has been made in this area. Nonetheless, this should not preclude case coordination as a possible future consideration.

ORGANIZATIONAL LOCATION OF WITNESS TREATMENT PROGRAMS

Survey responses varied greatly as to the logical organizational location for a witness treatment program. A large portion of the responses showed concern that a witness treatment program should be "neutral." One public defender went so far as to say that for secrecy reasons it was possible that defense witnesses in his county would never utilize an official witness program. A "neutral" location would be one run by other than the district attorney's, public defender's or law enforcement offices. Suggested locations included the court or court administrator's office, the probation department or an independent program such as that being started in San Jose by the National Conference of Christians and Jews.

Several problems are encountered when one agency attempts to provide services for both prosecution and defense witnesses. Co-mingling in a reception center of defense and prosecution witnesses before they testify could lead to confrontations or intimidation. As one public defender pointed out, problems faced by prosecution and defense witnesses are not identical; a program to provide service to both from a single agency might not be appropriate. The San Mateo County Aid to Victims and Witnesses Program is operated by the probation department and provides services to prosecution witnesses (who are often victims) but not to defense witnesses. It is unfortunate that defense witnesses do not benefit from this program, but most defense witnesses are friends of the defendant and do not require the services and aid often needed by victim-witnesses.

A majority of the responses indicated that the agency which summons the witness should provide the services. For example, a report on the Los Angeles experience with witness project activities suggests that victim/witness projects should be under the control of agencies which have the responsibility to deal directly with witnesses and victims at each stage in the judicial process.^{28/} It appears to be far more effective to establish a program within the particular office to be served so that all programs can be developed to meet the needs of these offices. One district attorney commented that whichever entity is dealing with a witness at a particular time should bear the responsibility for providing respectful and adequate treatment. The court would bear the responsibility while the witness is at the courthouse. This would place responsibility on the court to provide a comfortable waiting area and to insure that witnesses are not left waiting all day to appear.

Most district attorneys believe the most logical location for a witness treatment program is in their offices since victim-witnesses are the persons who require most attention and prosecutors are usually involved with four or five times as many witnesses as public defenders are. Separately, many public defenders believe they should be able to provide similar services to defense witnesses. One municipal court presiding judge suggested that in small courts such as his (three judges) it seemed rational to operate from the district attorney's office, since they would be calling the greatest number of people. In a large court, a setting at the courthouse was considered a realistic location.

^{28/}Witness Project Activities," p. 74.

As indicated in an earlier section (Special Interviews, p. 18) describing programs in Sacramento, San Mateo and Santa Clara counties, various agencies can provide witness services. Most of the areas considered originate from or revolve around the office which subpoenas a witness. For this reason, each office should normally provide for the needs of its own witnesses.

SUMMARY OF COMMENTARY SUBMITTED BY THE
CALIFORNIA DISTRICT ATTORNEYS' ASSOCIATION
AND THE
CALIFORNIA PUBLIC DEFENDERS' ASSOCIATION

The National Center requested the California Public Defenders' Association and the California District Attorneys' Association to comment upon this report.

Both associations responded not so much to the National Center report itself, but rather to the need for more association activity in the area of victim-witness services in the criminal justice system. They are in agreement that improved and expanded services are needed.

The commentary submitted by the California Public Defenders Association underscores the various aspects of the report which are of major concern to public defenders: intimidation, orientation and information, parking and other facilities. In addition the commentary emphasizes the problem of inadequate funding which prevents public defenders from initiating many of the programs which could improve services provided to witnesses.

California's Forgotten Victim's week, initiated by the California District Attorney's Association, for the "development of a public dialogue and creation of an environment in which victims and witnesses may again receive the justice and fair play to which they are entitled" is emphasized in the commentary submitted by the California District Attorney's Association. The commentary also highlights the point that the best program to benefit victims and witnesses is one which will improve safety and protection from crime and violence.

APPENDICES

Appendix 1

Questionnaire Used in Survey

Appendix 2

Summary of California Witness Treatment Responses

Appendix 3

Sample Witness Handbook

Appendix 4

Witness Questionnaire

Appendix 5

Commentary Submitted by the California District
Attorney's Association and the California Public
Defender's Association

Appendix 1
National Center for State Courts

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To: Presiding Judges
District Attorneys
Public Defenders

The National Center for State Courts is a non-profit organization serving the state court systems by helping determine and disseminate solutions to the problems of state judicial systems.

The Judicial Council of California has asked the Western Regional Office of the National Center to undertake exploratory research in the area of witness treatment.

Enclosed is a project description which outlines the project purpose and approach, and a list of witness treatment programs and activities. We would appreciate it if you would take a few minutes to indicate existing programs and activities in your Court or office and your general reactions as to their impact and any associated advantages or disadvantages. Also, we would like your comments on those programs or activities nonexistent in your Court or office and your views on the need and feasibility for each. If you wish to add items to the list, please do so. It would be very helpful if you could return your response to us within seven days.

Thank you for your cooperation and assistance.

Sincerely,

Clifford S. Lightfoot
Clifford S. Lightfoot
Project Director

CSL:cs
Enclosures

NATIONAL CENTER FOR STATE COURTS
WITNESS/TREATMENT PROJECT DESCRIPTION

This project will furnish a starting point by exploring methods to reduce witness inconvenience by revising court policies or otherwise improving witness treatment and determining the extent to which progressive programs exist within the jurisdictions surveyed. The extent and nature of witness treatment problem areas will be determined by survey; conclusions will be drawn indicating what attention local trial courts or the Judicial Council should provide. A summary of findings will be submitted to the California District Attorneys' Association and the California Public Defenders' Association before being included in the final report.

The following outlines our work in this area:

1. The National Center will review statutes, court rules and new legislation concerning witnesses. Prior studies, reports and practices in other states will be reviewed, also.
2. Pilot interviews will be conducted concerning the impact of court operations and practices on witnesses to identify the scope of witness problems in criminal proceedings.
3. A survey of witness management practices will be conducted in 24 courts - a blend of 13 municipal court districts and 11 superior courts in 18 California counties. These courts will be selected so as to be representative of municipal and superior courts throughout California. Visits

to the 24 courts will be augmented with interviews of district attorneys and public defenders in each location. Survey data collection will include personal interviews, physical observations, and supporting documentation.

The scope of this project extends only to the identification of problems relating to witness treatment in criminal proceedings.

WITNESS TREATMENT PROGRAMS AND ACTIVITIES
 (These have been identified through review
 of selected materials including those
 prepared by the Commission on Victim/
 Witness Assistance of the National
 District Attorneys' Association.)

Abbreviations used:

Courts - CT
 Law Enforcement - LE
 District Attorney - DA
 Public Defender - PD

<u>Programs and Activities for Witnesses in Criminal Proceedings</u>	<u>Probable Responsibility of:</u>	<u>Check if Provided for by Your Court or Office</u>
1. <u>Employee assistance</u> , e.g., contacting employers concerning witness appearances.	LE/DA/PD	<input type="checkbox"/>
2. <u>Notification services</u> , e.g., notifying witnesses that they are witnesses, informing them of case proceedings and when to appear (telephone alert), and giving reasons and explanations for events.	LE/DA/PD	<input type="checkbox"/>
3. <u>Witness responses to service</u> , e.g., exit interviews/short attitude survey questionnaires.	DA/CT/PD	<input type="checkbox"/>
4. <u>Subpoena by mail</u> .	DA/PD/CT	<input type="checkbox"/>
5. <u>Reception center for witnesses</u> - including operating procedures and facilities, and contact point for complaints and requests.	DA/PD/CT	<input type="checkbox"/>
6. <u>Witness handbook</u> - describing procedures and witness's role, explain various phases of trial, provide map of location.	LE/DA/PD	<input type="checkbox"/>

	<u>Probable Responsibility of:</u>	<u>Check if Provided for by Your Court or Office</u>
7. <u>Witness briefings</u> - orientation.	LE/DA/PD	<input type="checkbox"/>
8. <u>Transportation and parking for witnesses.</u> Include provisions for emergency transportation.	DA/CT/PD	<input type="checkbox"/>
9. <u>Day care center</u> - for children of witnesses.	DA/CT/PD	<input type="checkbox"/>
10. <u>Protection from intimidation</u> , e.g., escort services inside court facility and from district attorney's office to court.	LE/DA/PD	<input type="checkbox"/>
11. <u>General public information</u> , e.g., news media presentation or short subject items.	ALL	<input type="checkbox"/>
12. <u>Case feedback</u> - letting witnesses know the outcome of a case, and why delays are occurring. Providing one person in one office to contact regarding case.	DA/CT/PD	<input type="checkbox"/>
13. <u>Police verification</u> , e.g., correct names, addresses and phone numbers of witnesses.	LE/DA/PD	<input type="checkbox"/>
14. <u>Returning evidentiary property</u> - assure return of witnesses property and return it, if possible, before trial to reduce hardships. Follow up by responsible agency.	ALL	<input type="checkbox"/>
15. <u>Witness treatment guidelines training</u> - for use by law enforcement agencies, district attorneys', public defenders' offices and courts.	ALL	<input type="checkbox"/>

Check if
Provide
for h
Your Court
or Office

Probable
Responsibility of:

16. Witness statistics - statistics ALL
kept on witnesses by law enforcement agencies, prosecutors' offices, public defenders, courts, including identification of uncooperative witnesses and use of statistics. Use of objective standard to identify uncooperative witness.
17. Social services for witnesses, e.g., state and Federal aid. Examples of agencies for social service referral: physical health care, mental health care, welfare, unemployment, food-stamps, public and community emergency organizations, job counseling, businessmen's alliances, volunteer groups, day care centers, crime victim compensation agencies, community groups, and religious groups. (NO RESPONSIBILITY DESIGNATED: OPEN FOR COMMENT)
18. District attorneys' and public defenders' policies - that encourage DA/PD
deputies to prepare cases in such a manner that witnesses are used effectively during case processing.

Check if
Provided
for by
Your Court
Responsibility of: or Office

- | | | |
|---|--|---|
| <p>19. <u>Video-taped witness depositions</u> .
to avoid severe inconvenience to
witnesses, e.g., important business
out of town or the country, vacation
out of the country, health reasons.</p> | <p>DA/PD</p> | <p><input type="checkbox"/></p> |
| <p>20. <u>Court policies re witnesses</u> -</p> <ul style="list-style-type: none"> - Acceptance of defendant's
negotiated pleas of guilty
only to the original charges
on the day of trial (to avoid
wasting witness time); - Adhere to strict continuance
policy to reduce the number
of times witnesses must appear; - Scheduling witnesses appearances
so that they don't have to sit
through jury selection; - Setting companion adult and
juvenile cases for the same day. | <p>CT</p> <p>CT</p> <p>DA/PD</p> <p>CT</p> | <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p> |
| <p>21. <u>Witness impact</u> - statement included in
probation report.</p> | <p>CT/PD/DA</p> | <p><input type="checkbox"/></p> |
| <p>22. <u>Witness fees</u> - adequacy, uniformity,
timely payment.</p> | <p>DA/PD/CT</p> | <p><input type="checkbox"/></p> |
| <p>23. <u>Witness legislation</u> - to effect changes
in the way witnesses are treated. What
are the alternatives?</p> <p>_____</p> <p>_____</p> <p>_____</p> | <p>ALL</p> | <p><input type="checkbox"/></p> |

24. Witness treatment project characteristics -

- What is the logical organizational location for witness programs?

- What governmental and other organizations are involved in the programs?

- What is the nature of governmental or other organizational involvement?

- What is the source of funding for the project?

- At what level (\$) is the project funded?

- How many of your employees are involved in providing assistance to witnesses? How many volunteers are involved?

- What kinds of services do volunteers provide?

- How were volunteer services obtained?

- What number of people are served by the program per year (quarter, month)?

COMPLETED BY:

Name

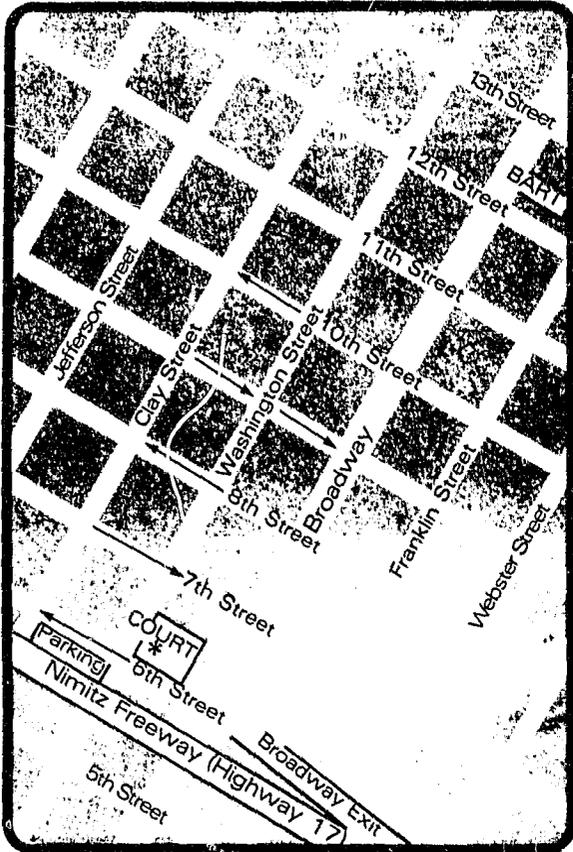
Title

Address

Phone: () ____ - ____

DATE: _____

R 5/12/77



*
Office of the District Attorney
Oakland-Piedmont Municipal Court
600 Washington Street, Room 6000
Oakland, California
874-5088

This Publication is a
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 Alameda County, California
 Lowell Jensen, District Attorney
 A3-1

Information for Witnesses



As a victim or witness to a crime, your assistance is vital to our system of criminal justice. The following information will explain what happens in bringing your case to trial, and what services are available to assist you. A Deputy District Attorney will handle the prosecution of the case you are involved in and represent your interests. You should contact him at any time you have any questions.

It is very important to keep the District Attorney's Office informed of your current address and phone number so we can contact you about your case. *If you move, be sure and let us know.*

Subpoena

A subpoena is a Court Order directing you to be present at the time and place stated. You may receive your subpoena by mail or in person. After receipt of the subpoena, immediately contact the District Attorney's Office at 874-5088. Look at the upper left corner of your subpoena to see whether your case is a preliminary examination or a misdemeanor trial.

Please bring your subpoena with you to court.

In some cases the preliminary examination or the trial will not be required because the case is continued or the defendant will plead guilty. In this instance, your testimony will not be required. To avoid an unnecessary trip to court, please call the District Attorney's Office at 874-5088 on your scheduled date before coming to court. Whenever possible, arrangements will be made when you call to place you on "telephone standby". "Telephone standby" means that you may continue your normal daily business; but you must be able to come to court immediately when called by the District Attorney's Office.

Preliminary Examination

In felony cases, your first appearance will be for the preliminary examination. Here a judge listens to the evidence of the crime and determines whether it is sufficient to require the de-

fendant to go to trial at Superior Court. (Normally only a part of the evidence is presented at this time.) The preliminary examination is not a trial. If there is sufficient evidence, the case is transferred to the Superior Court in Oakland.

The trial of a felony case will generally occur 45 days or more after the preliminary examination. In unusual cases this time could extend to a year. The trial will be held at the Alameda County Courthouse in Oakland. If you should have any questions concerning the status of your case during this time, call the District Attorney's Office at the Courthouse at 874-7618.

Misdemeanor Trial

In misdemeanor cases, your first appearance at court will be for the actual trial. There is no preliminary examination. Therefore, your testimony will only be required for the actual trial.

Your Testimony

You will have an opportunity to discuss your case with a Deputy District Attorney before you testify. Because the court has many cases to hear each day and because court hearings are often complex, you may be requested to wait a while before you testify.

At a preliminary examination or at a trial, you will be called by the Deputy District Attorney to testify to the facts within your knowledge. After the District Attorney has asked his questions the defense attorney has the constitutional right to test your memory of the facts. On some occasions the witness may not understand the question being asked by the attorney. If you don't understand a question, don't be afraid to have it explained to you.

After the Trial

The defendant will either be found guilty or not guilty of a crime. If he is found guilty he will be sentenced at a court hearing at a later date.

Before sentence is imposed, you may communicate your feelings concerning the sentence

by letter to the judge. If the defendant is convicted, the judge may impose any or all of the following sentences:

- jail
- probation
- fine
- restitution

Notification of Outcome

To insure independent testimony, the court will often ask victims and witnesses to remain outside the courtroom before and after their testimony. To find out the result of misdemeanor cases please call the District Attorney's Office at 874-5088.

You will be notified of the outcome in all felony cases.

State Compensation

If you were injured as a result of a crime and have suffered serious financial hardship or are a person who depended for support on a victim who was injured or killed, you may be eligible to receive compensation from the State of California. To receive compensation you must file a claim. Information and the proper forms for such a claim are available at your local police department or District Attorney's Office.

Fears/Threats

If you have any fears about your involvement in your case, contact the Victim Witness Assistance Bureau at 874-7618.

On extremely rare occasions you may receive a threat. If you are threatened, immediately contact your local police department or the Victim Witness Assistance Bureau to get immediate assistance.

- Oakland Police Department 273-3211
- Emeryville Police Department 652-0120
- Piedmont Police Department 653-7200
- Victim Witness Assistance 874-7618

Appendix 4

WITNESS QUESTIONNAIRE

INSTRUCTIONS: Please circle the letter in front of the statement or statements that represent the most appropriate answer to each question. It is not necessary that you sign this questionnaire; however, if you do, the information will be held in strict confidence and in no way used against you.

1. What crime was the accused charged with in this case?
 - a. Murder or manslaughter
 - b. Aggravated battery or assault
 - c. Robbery or larceny
 - d. Drug or narcotic violation
 - e. Rape
 - f. Other sexual offense
 - g. Other (Specify): _____
 - h. Don't Know
2. What was the outcome of the case?
 - a. Guilty
 - b. Not Guilty
 - c. Hung jury
 - d. Dismissed
 - e. No charges filed by this office (prosecutor)
 - f. Other (Specify): _____
 - g. Don't know
3. What was your role in this case?
 - a. Victim
 - b. Witness
 - c. Don't know
4. Were you supposed to appear in court but did not appear or dropped out of the case before it was finished?
 - a. No
 - b. Yes (If "yes," please give reason below):
 1. Was not notified
 2. Notified too late
 3. Furnished incorrect court date
 4. Other (Explain): _____
5. How many times in the past have you testified in court?
 - a. None
 - b. Once
 - c. Twice
 - d. More than twice
6. What would be your personal reaction if you were requested to testify in the future?
 - a. Would serve willingly
 - b. Would be reluctant to serve
 - c. Would not serve unless forced to
7. What are your reasons for the answer to question 6?

* This questionnaire is designed for use in all cases where an arrest is made. It should be transmitted to the witness by an individually signed letter from the prosecutor's office and should express appreciation for the witness' concern in seeing that justice is done. The letter ought to explain that the witness can, by completing the questionnaire, be of valuable assistance in the prosecutor's efforts to improve the criminal justice system and the future treatment of victims and witnesses of crime.

8. Were you personally acquainted with any of the following persons in the case?
- | | |
|------------------------------|------------------------------------|
| a. Victim (If other than me) | d. Accused's attorney |
| b. Other witness | e. Police officer |
| c. Accused | f. Not acquainted with any of them |
9. Did anyone make threats against you in an attempt to keep you from testifying?
- a. No b. Yes (If "yes," who?): _____
10. Did you have any other reason to fear that you or your family might be harmed or it might otherwise prove harmful to testify in this case?
- a. No. b. Yes (If "yes," please explain): _____
11. Did you give a written statement to the police who investigated the case?
- a. Yes b. No
12. Were you interviewed by an attorney from this office at the time the accused was arrested and the charges filed?
- a. Yes b. No
13. How would you rate this office in terms of courtesy and helpfulness?
- a. Good or excellent b. Fair c. Poor or bad
d. Had no direct contact with this office.
14. How would you rate this office in terms of thoroughness and efficiency in handling the case?
- a. Good or excellent b. Fair c. Poor or bad
d. Don't know or undecided
15. Please describe any weaknesses or suggestions for improvement in this office.
- _____
- _____
- _____
- _____
16. How would you rate the police officers who handled this case in terms of courtesy and helpfulness?
- a. Good or excellent b. Fair c. Poor or bad
17. How would you rate the police officials in terms of thoroughness and efficiency in handling the case?
- a. Good or excellent b. Fair c. Poor or bad
18. Please describe any weaknesses or suggestions for improvement in police practices and procedures.
- _____
- _____
- _____

19. In terms of the criminal justice system (police, prosecutor's office, and the court) do you feel the case received:
- More attention than it deserved?
 - Less attention than it deserved?
 - About the right amount of attention?
20. Do you have any other comments or suggestions about this office, the police, or the courts, particularly in terms of cooperation and coordination?
- _____
- _____
21. Do you have any problems at home that make it difficult for you to appear as a witness in court?
- No
 - Yes (If 'yes,' please complete items below)
 - Type of problem
 - Children
 - Other (Specify) _____
 - Suggested solution: _____
- _____
22. Do you have any problems in connection with your job or work that make it difficult for you to appear as a witness in court?
- No
 - Yes (If 'yes,' please complete items below)
 - Type of problem
 - Loss of income
 - Other (Explain) _____
 - Suggested solution: _____
- _____
23. Do you have any problems with transportation that make it difficult for you to appear as a witness in court?
- No
 - Yes (If 'yes,' describe):

PLEASE COMPLETE THE FOLLOWING QUESTIONS
ONLY IF YOU TESTIFIED IN COURT

24. If you were interviewed by an attorney from this office (the prosecutor) before the trial, did the interview help you in testifying? (Please circle answer "d" if not interviewed before the trial.)
- Very helpful
 - Somewhat helpful
 - Of little help
 - Was not interviewed.
25. How helpful to you as a witness was the attorney from this office at time of trial?
- Very well
 - Fairly well
 - Poorly prepared
26. How well prepared for the trial was the attorney from this office?
- Very
 - Fairly well
 - Poorly prepared
 - Don't know

27. How difficult was it for you to remember the facts about the case when asked to testify?
- a. Little or no difficulty b. Somewhat difficult
c. Very difficult
28. How nervous were you in giving your testimony?
- a. Slightly nervous b. Fairly nervous c. Very nervous
29. Do you feel that you were able to give all the facts you were aware of during the testimony:
- a. Yes b. No (If "no," explain): _____

30. Do you feel that your time as a witness in this case was wasted?
- a. No
b. Yes (If "yes" why?): _____

31. Do you feel that a correct verdict was reached in this case?
- a. Yes
b. No (If "no," explain) _____

32. Do you feel that the accused had a better attorney than this office (the prosecutor)?
- a. Yes b. No
33. Would you have been willing to appear as a witness if you had not been subpoenaed and ordered to testify by the court?
- a. Yes b. No
34. Did you suffer any financial loss as a result of serving as a witness in this case?
- a. No b. Yes (If "yes," please complete the following):
- (1) Amount of loss per appearance
(a) Under \$20 (b) Over
- (2) Financial loss due to:
(a) Lost wages (c) Transportation
(b) Baby-sitter (d) Other (Specify): _____
35. What is your type of occupation or source of income?
- a. Hourly worker f. Relief recipient
b. Salaried employee g. Student
c. Business proprietor h. Housewife
d. Sales—Commission i. Other
e. Self-employed
36. How long after the crime was committed were you asked to testify?
- a. Less than a month e. 4-5 months
b. 1-2 months f. 5-6 months
c. 2-3 months g. 6 months-1 year
d. 3-4 months h. Over 1 year

37. How many times did you come to the courthouse in connection with this case?

- a. Once
- b. Twice
- c. Three times
- d. More than three times

38. How much delay was there between the time you arrived at the courthouse and you testified in court? (If you appeared but one time, complete column "a," only.)

- a. *Maximum Wait*
 - (1) Up to 1 hour
 - (2) 1-2 hours
 - (3) 2-3 hours
 - (4) 3-4 hours
 - (5) 4 hours-1 day
 - (6) More than 1 day
- b. *Minimum Wait*
 - (1) Under 1 hour
 - (2) 1-2 hours
 - (3) 2-3 hours
 - (4) 3-4 hours
 - (5) 4 hours-1 day
 - (6) More than 1 day

39. What is the estimated total time spent on this case, including interviews with officers, travel and time spent at the courthouse?

- a. Under one hour
- b. 1-2 hours
- c. 2-4 hours
- d. 4-6 hours
- e. 6-8 hours
- f. More than 8 hours

40. Have you received any threats because you testified in this case?

- a. Yes
- b. No

41. Have you or your family suffered any harmful results because you testified in this case?

- a. No
- b. Yes, bodily or property damage
- c. Yes, other (Please explain): _____

42. In addition to any suggestions for improvement you may have already made (Question 15), what else can this office (the prosecutor) do to improve the treatment of victims and witnesses of crime?

Witness' Name (Optional) Name or Number of case (Optional) Today's Date

THANK YOU FOR TAKING THE TIME TO COMPLETE THIS QUESTIONNAIRE. YOUR RESPONSE TO THE QUESTIONS AND RECOMMENDATIONS ARE OUR MOST VALUABLE SOURCE OF INFORMATION FOR FINDING OUT HOW WELL WE ARE SERVING YOU, AND WHAT IMPROVEMENTS ARE NEEDED. WE WOULD BE PLEASED TO DISCUSS ANY OF THESE MATTERS WITH YOU PERSONALLY AS WELL.

Appendix 5

Commentary Submitted by the California District Attorneys
Association and the California Public Defenders Association



California Public Defenders Association

January 25, 1978

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SAN DIEGO FEDERAL

ESTELLA DOOLEY
SAN FRANCISCO COUNTY

RICHARD E. ERWIN
VENTURA COUNTY

WILLIAM HEIDEWALD
SISKIYOU COUNTY

JAMES F. HEWITT
SAN FRANCISCO FEDERAL

KEITH KELLUM
ALAMEDA COUNTY

MARTEEN J. MILLER
SONOMA COUNTY

GLEN MOWRER
SANTA BARBARA COUNTY

PATRICK MURPHY
CONTRA COSTA COUNTY

LONNY SPRINGER
SANTA BARBARA COUNTY

WILLARD L. WEDDELL
KERN COUNTY

FRANK L. WILLIAMS, JR.
ORANGE COUNTY

PAST PRESIDENTS

1969-70
JAMES C. HOOLEY
ALAMEDA COUNTY

1970-71
SHELDON PORTMAN
SANTA CLARA COUNTY

1971-72
WILBUR F. LITTLEFIELD
LOS ANGELES COUNTY

1974-75
PAUL LIGDA
SOLANO COUNTY

Mr. Clifford S. Lightfoot
Project Director
National Center for State Courts
Western Regional Office
235 Montgomery Street, Suite 1550
San Francisco, California 94104

Dear Mr. Lightfoot:

The Board of Directors asked me to comment on the aspects of your report which concerned Public Defenders. The concern your report evidences for witnesses equals our own. A witness who can relate the actual event as it happened is indeed a precious resource.

We are also very concerned that witness intimidation may occur in the very courthouse where a witness has appeared to give testimony. Such intimidation may originate with other witnesses, uniformed bailiffs, and even the District Attorney, who "checks out" the witness room. In Alameda County, there are four courtrooms on each floor, a situation probably not unlike the courthouse in other urban areas. This arrangement should make it feasible to develop separate facilities for defense and prosecution witnesses, thus minimizing the chance for intimidation of witnesses.

It has also been my experience that witnesses, as a rule, have no familiarity with the court system. They are frequently ignorant of the location of the courthouse, nor do they know how to dress for a court appearance. There should be a handbook informing the witness of these very basic matters, including information about witness fees, which is presently not imparted except on an individual basis.

Another major obstacle for a witness is parking, which is a tremendous problem here in Alameda County. Once the court personnel and other county employees have arrived, parking after 8:30 a.m. is at a premium. County Administrators, as well as Public Defenders, District Attorneys, and Judges, must realize that witnesses, as well as jurors are essential to make our system of justice run effectively. The citizen, whether juror or witness, is an extremely important component of our criminal justice system and should be treated accordingly.

It is therefore time that county government provide free reserved parking for both the witness and the juror.

In serving a witness with a subpoena, flexibility is desirable, but certainty is essential. The law should be amended to allow resubpoenaing witnesses by mail where preferable. It is important to realize that it is not merely the witnesses' convenience which is at stake, but the outcome of the case.

Although your survey response indicated that day care centers are not extensively used or planned by various county Public Defenders, this situation should not be interpreted to mean that such facilities are not felt to be available. Since the Public Defender is the agency least likely to receive adequate funding, resources must first be allocated for essential services. Most Public Defenders do not have the resources available to begin comprehensive services for their witnesses. Indeed, the general attitude displayed is that Public Defenders are a necessary evil. This unenlightened attitude behind inadequate funding thus reduces the Public Defender's chances for dealing with many of the serious problems of our witnesses.

Your report to the California Judicial Council on Witness Treatment on Criminal Proceedings underscores the need for various services that can and should be provided witnesses. Perhaps this recognition is the first step towards providing these services. I hope so.

Sincerely,

Keith A. Kellum

Keith A. Kellum
Assistant Secretary-Treasurer
Alameda County

KAK:kaz

cc: Manual Nestle
Executive Director
California Public Defenders' Association
1404 Franklin, Suite 418
Oakland, California 94612

C O M M E N T A R Y

Submitted by the

C A L I F O R N I A D I S T R I C T
A T T O R N E Y ' S A S S O C I A T I O N

Duncan James
President

Many innovative programs have been conceived during the past two years to improve the plight of crime victims and witnesses. Several have been, or are in the process of being implemented.

One major umbrella project, the National Commission on Victims Witness Assistance, conducted under the auspices of the National District Attorneys Association, and funded by the United States Department of Justice, Law Enforcement Administration, has engendered other analagous projects and subprojects throughout the nation.

From their beginning in New Zealand, violent crime victim compensation programs have been adopted in several states in this country.

Probably, the most universally appealing educational program, California's Forgotten Victim's Week, was conducted in late April, 1977, by the California District Attorney's Association (CDAA). The compassion and hope it engendered still continues.

By conceiving and developing this program, the first of its type in the nation, CDAA

provided a focus for efforts to restore meaning to the constitutional right of innocent citizens to personal security and an incentive to re-establish governmental protection from crime and violence.

Other groups which supported this program were the California Peace Officers Association, the California Sheriffs Association, the California Police Chiefs Association, the California Chamber of Commerce and the California Labor Federation, AFL-CIO.

President Jimmy Carter and Attorney General Griffin Bell added a major dimension of national support. In a letter to CDAA, dated April 27, Attorney General Bell declared:

"On behalf of the President, please accept my best wishes for the success of the 'California's Forgotten Victims Week' program. Its sponsors are to be commended for seeking responsible ways to improve justice and safety.

"There can be little justice if people cannot live in safety. It has been a long time since large numbers of our citizens felt safe or, in fact, were. Crime is often felt most cruelly by the poor and elderly--those least able to protect themselves.

"The Federal government is now developing a program for the national delivery of justice. It is a difficult task. But I am heartened to see California officials taking the lead to help their own citizens. I hope other states will also redouble their efforts."

California's Congressional delegation also provided a great deal of support. Both Senators Alan Cranston and S.I. Hayakawa endorsed California's Forgotten Victims Week in speeches delivered on the floor of the United States Senate.

Senator Cranston said, in part:

"Mr. President, this week California, under the leadership of the California District Attorneys Association, will give special attention to the victims of violent crime--our 'forgotten victims.'

"California's Forgotten Victims Week, April 25-29, has been proclaimed by Governor Jerry Brown pursuant to a joint resolution of the state legislature. The purpose is to educate and motivate the public and the government to respond to the plight of the victims and witnesses of crimes and to seek improvement in the criminal justice system.

"I applaud this effort and commend Assemblyman Alister McAlister who took the lead in introducing the resolution in the Assembly. The resolution was co-sponsored by 96 legislators and had the support of many state officials and agencies.

"The victims of crime are society's forgotten victims. We daily deplore crime, yet for unfathomable reasons society turns its back on the innocent victims. The treatment of victims of crime is a national shame."

Senator Hayakawa said, in part:

"Mr. President, in bringing this week to the attention of our fellow colleagues, I, too, wish to endorse the principles and ideals of California's Forgotten Victims Week. The people of my state do well to remind us that a victim's plight is all too often overlooked and forgotten in the administration of justice. Much has been said in these chambers about the rights of criminals to a fair trial. How often do we hear about the rights of their victims? We must remember the innocent victims and their families who suffer in silence through long and demanding court proceedings knowing, in most cases, their lives will never be the same.

"I applaud the efforts of my constituents to devote their time and attention this week to forgotten victims."

In a statement heard on more than forty radio stations all over California, Senator Hayakawa expanded on the Senate speech just quoted, and commended the CDA

for its leadership in creating and implementing California's Forgotten Victims Week.

By the formal resolution already mentioned by Senator Cranston, Assemblyman McAlister, State Senator George Deukmejian and 95 other legislative co-authors put the California Legislature squarely in support of California's Forgotten Victims Week. Similar support came from Lt. Governor Mervyn Dymally, Attorney General Evelle Younger, and Secretary of State March Fong Eu.

Many Grand Juries throughout California adopted resolutions in support of this effort as well.

The County Supervisors Association of California, and the Los Angeles, Sonoma, Sacramento, Mendocino, Alameda, Contra Costa, Santa Clara, Fresno, Kern, Santa Barbara, Riverside, San Bernardino, Orange, San Diego, San Francisco and other County Boards of Supervisors followed the lead of California's constitutional and legislative officers and adopted resolutions supporting the Week.

Like resolutions were adopted by the League of California Cities and the Mayors of Los Angeles, Santa Rosa, Sacramento, Ukiah, Oakland, Berkeley, Fremont, Concord, Hayward, Fresno,

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1 OF 2

Bakersfield, Santa Barbara, Long Beach, San Diego, San Francisco and other cities.

Many other public and private individuals and agencies have declared their support of the Week. Very moving support was provided by a petition signed by 88 elderly members of an East Oakland chapter of the American Association of Retired Persons. Further recognition was received from the California Office of Aging and the California Commission on the Status of Women.

Several bar associations throughout California lent their support. Among these were the Alameda County, Tulare County, Pasadena and Washington Township Bar Associations.

More and more, attorneys and their associations are recognizing the plight of crime victims. In fact, the American Bar Association has a Committee on Victims and Witnesses, chaired by Los Angeles County Municipal Court Judge Eric Younger. Judge Younger was an active participant in the California's Forgotten Victims Week.

During California's Forgotten Victims Week, the CDAA presented a series of panel discussions and luncheon seminars to focus on the ways and means to help victims and witnesses of violent crime. These panel discussions and luncheon seminars were conducted in Sacramento and Los Angeles and were aimed at citizen groups, law enforcement officials, elected public servants, relevant government agencies and the public.

Assemblyman McAlister, who, along with State Senator Deukmejian, originally introduced the legislative resolution, formally proclaiming California's Forgotten Victims Week, delivered the keynote luncheon address in Sacramento. Assemblyman McAlister declared that improving public safety was the primary way to improve the plight of forgotten crime victims.

Assemblyman McAlister also outlined a legislative package, including a Public Safety Bail Act, which would allow judges to consider public safety when they set bail. Such a consideration is now illegal. He spoke of the need to improve the Uniform Determinate Sentence Act of 1976, create the right to a fair and speedy trial for the people, and restore the death penalty. Finally, he called for creation of a California Commission on Victims, Witnesses and Jurors and for improvement in the Violent Crime Victims Compensation Act.

Terry Hatter, a former aide to Los Angeles Mayor Tom Bradley who was appointed by Governor Brown in April to the Los Angeles County Superior Court, delivered the keynote luncheon address in Los Angeles. He, too, called for an improved perspective on crime victims.

Governor Edmund G. Brown, Jr., delivered a luncheon speech containing a concise eight-point crime package which, he declared, would reduce crime, enhance the rights of victims and witnesses, and restore peace and harmony for all Californians so that they may, once again, freely and safely enjoy parks, streets and other public places.

One of the most notable points made by the Governor was a call to abolish the Probation Subsidy Program as it is now known.

In California, through the probation subsidy program, the state government pays county governments a fixed sum of money for every convicted felon the county does not send to state prison or the youth authority. The impact is clear--It is very difficult for a judge to ignore a probation officer's recommendation to place a convicted felon or youth on probation when the probation department gets up to \$6,000 from the state government's treasury if probation is granted.

On March 24, even before Governor Brown spoke, Senator Deukmejian strongly criticized the probation subsidy program. The Joint Legislative Audit Committee released its report the same day. It, too, was very critical. The Center of Administration of Criminal Justice at the University of California Davis, on April 6, declared that, while the probation subsidy program saved money, it increased crime. The report said probation subsidy had not proved innovative or effective in reducing the numbers of repeat criminal offenders.

A year ago, Senator Deukmejian almost achieved this major criminal justice reform with his Senate Bill 1452, that would have brought probation subsidy to an end. After passing the Senate, the bill was killed by the Assembly Criminal Justice Committee, even though the California Youth Authority, which administers the program, admitted in 1975 that probation subsidy "...has increased offenders on the streets, resulting in greater risk to the citizens of this state."

Senator Deukmejian introduced Senate Bill 1156 in 1977 to again seek abolition of probation subsidy.

California Supreme Court Justice William P. Clark delivered another of the luncheon speeches during Forgotten Victims Week. Justice Clark declared the "independent state grounds," so often used in recent years by a majority of the California Supreme Court, appears to be little more than a transparent device to insulate their decisions from review by the United States Supreme Court.

Justice Clark said that until his colleagues developed a more balanced perspective on the rights and needs of the victims, witnesses and survivors of criminal misconduct, little progress would be made in improving their plight or in reducing crime.

Other luncheon speakers included Edwin Meese, an attorney who is both a former Alameda County prosecutor and former Executive Secretary to Governor Ronald Reagan; Frank Carrington, the Executive Director of Americans for Effective Law Enforcement, and author of a best-selling book on crime victims, entitled The Victims, and George Nicholson, a former senior trial prosecutor in Alameda County, who is now Executive Director of the California District Attorneys Association. Nicholson is also senior editor of Forgotten Victims: An Advocate's Anthology, a book filled with information on victims, witnesses and crime reduction programs published in March, 1977.

Topics covered in the panel discussions included California's Forgotten Victims, Deterrence and Crime, Crime and the

Elderly, Rape and Other Crimes Against Women, Crime and Rest Homes, Crime and Its Impact on Minorities, Repeat Offenders and Career Criminal Programs, Victim/Witness Assistance Programs, Victim Rights Litigation, Crime and Its Impact on Business, and Crime and Its Impact on Labor. More than 50 notable panelists contributed their capable services.

Citizens for Law Enforcement Needs (CLEN), a citizens' group based in Los Angeles, provided volunteers, both in Sacramento and Los Angeles, to help conduct these programs. Other assistance was provided by CLEN founder and Chairman Emeritus Doris Dolan.

Citizens for Law and Order (CLO) a citizens' group based in Oakland, with more than 5,000 members statewide, led by its President Earl Hunting also provided assistance.

The goal of this program was, and continues to be, the development of a public dialogue and creation of an environment in which victims and witnesses may again receive the justice and fair play to which they are entitled.

On December 15, 1977, the California State Bar got the ball rolling in a National Forgotten Victims Week when its Board of Governors adopted a resolution commending those who conceived and conducted California's Forgotten Victims Week and asked President Carter and Congress to declare April 24-28, 1978, as National Forgotten Victims Week.

The California District Attorneys Association will again conduct such an observance, as will several states. The latter are expected to include Texas, Oklahoma, Kansas, New Mexico, Colorado, Illinois, and New York, among others.

Professor John Dussich, of the University of Mississippi, is leading efforts to obtain the necessary Presidential proclamation and Congressional resolution for a National Forgotten Victims Week.

It is particularly gratifying to see the National Center for State Courts is now investigating the dimensions of the problem faced by crime victims and witnesses and proposing solutions.

No project to enhance awareness of such problems, regardless of how effective or broadly based they may be, can adequately provide answers without active involvement of the judiciary. Hopefully, this study will presage that active involvement.

Clearly, most of the suggestions contained in the study would be productive. However, it should be made clear, the courts should not propose solutions which interfere with prosecutor-victim-witness relations, any more than those which interfere with attorney-defendant-defense witness relations.

Likewise, in the final analysis, all such studies must adopt one common conclusion. And that is, the best programs to aide crime victims and witnesses are crime deterrence and crime reduction programs. If the numbers of crime victims and witnesses

are reduced, many related problems are reduced. For too long, crime has been a growth industry. It is time to effectively inhibit that growth.

The National Center for State Courts is to be commended for undertaking this study and for developing this worthy set of proposals. Hopefully, the Center, and all participants in the administration of criminal justice, now recognize the injustice which occurs when virtually all attention is paid to protecting the rights of criminals at the expense of innocent crime victims.

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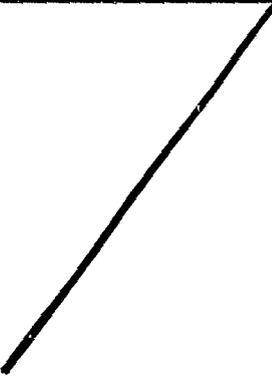
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