

NATIONAL GANG CENTER BULLETIN

No. 1

February 2007

Gang-Related Witness Intimidation

By: John Anderson, Assistant District Attorney, Orange County District Attorney's Office, Santa Ana, California

Introduction

Intimidation of victims and witnesses by gang members is a significant problem throughout all regions of the United States. Witness intimidation infringes upon the effective and fair operation of the criminal justice system. Simply put, without witnesses, the system will not work. As aptly stated in a National Institute of Justice study on the issue:

Witness intimidation—which includes threats against the victims of crime—strikes at the root of the criminal justice system by denying critical evidence to police investigators and prosecutors and undermining the confidence of the whole community in the government's ability to protect and represent the members of the community.¹

Unfortunately, gang members so frequently engage in witness intimidation that it is considered part of normal gang behavioral dynamics. Intimidation may be aimed at individual witnesses, either in a direct or indirect fashion, or may be something felt by an entire community living with the impact of an active criminal street gang in its midst. Meaningful control of gang crime requires minimizing the incidents and effects of gang-related witness intimidation.

A number of strategies exist to offset the impacts of gang-related witness intimidation.² Traditionally used strategies include intensive witness management, immediate apprehension and aggressive prosecution of intimidators, setting high bail in cases of gang violence (especially gang-related witness intimidation), creation and use of influential victim/witness assistance programs, and occasional relocation of threatened witnesses. Promising new approaches include increasing prosecutions of witness intimidation incidents and amending the rules of evidence in some states to allow the admission of a prior sworn statement or grand-jury testimony if the defendant causes the witness to be unavailable.

Scope of the Problem

Criminal activity by street gangs remains a critical nationwide phenomenon. The 2004 National Youth Gang Survey estimated that there were approximately 760,000 gang members and 24,000 gangs active in the United States. The gangs are reported in all areas of the country, from urban to rural.³ In the 2000 National Youth Gang Survey, "witness intimidation by gang members was reported as a common occurrence by 66 percent of respondents, ranging from 44 percent in smaller areas to 83 percent of respondents in larger areas."⁴ The problem of gang-related witness intimidation is so significant that 82 percent of the police agencies responding to the 2000 survey indicated that measures were being taken to deal with the problem.

The National Alliance of Gang Investigators Associations reported in its *2005 National Gang Threat Assessment* that today's gangs are "sophisticated and flagrant in their use of violence and intimidation tactics." Respondents to the threat assessment indicated that witness intimidation was a frequent activity of gangs and remains a sizeable problem in all regions of the United States. Perhaps most notable, the mere presence of gangs in a community was reported as creating a generalized fear of intimidation that hinders witness cooperation.⁵

Recent examples of gang-related witness intimidation are numerous and often shockingly brutal. The Los Angeles Police Department reported a yearly average of more than 778 gang-related witness intimidation offenses over a five-year period ending in December 2005.⁶ Specific recent examples of intimidation and retaliation underscore the necessity for focused attention on and zero tolerance for witness intimidation. The examples include:

In Baltimore, Maryland, a 17-year-old cooperative witness to a gang murder was shot in the back of his head by two fellow members of the suspect's gang.⁷

In Virginia, a 17-year-old girl, who was four months pregnant, was found hacked to death on the bank of a river. She was a witness to a gang murder in the state of Texas and had been in the federal witness protection program, which

she voluntarily left, rejoining her gang (the perpetrators of the murder she had witnessed). She was killed for her cooperation.⁸

U.S. Immigration and Customs Enforcement (ICE) added a Los Angeles gang member to its most-wanted-fugitives list after he went into hiding following his arrest for raping a 12-year-old girl and witness intimidation in 2001. The rape charges were dropped after “the chief witness in the case was found murdered.”⁹

One final indication of the pervasiveness of gang witness intimidation comes from the former president of the National District Attorneys Association, Bob McColloch, the prosecuting attorney in St. Louis County, Missouri, who testified in 2005 before the United States Senate Judiciary Committee that “prosecutors across the country believe that the issue of witness intimidation is the single biggest hurdle facing any successful gang prosecution.”¹⁰

Nature and Extent of Intimidation

Witness intimidation comes in many forms, none less intimidating than the others. Defendants often intimidate or cause others to intimidate witnesses in hopes of causing the witnesses to withhold, change, or falsify testimony. Typically, the defendant, fellow gang members, or even nongang friends or family perpetrate the act(s) of intimidation. The pressure on the witnesses is normally increased to prevent the witnesses from testifying as important court dates near, such as preliminary hearings or trials.

One factor increasing the odds of intimidation occurring is the voice of the initial crime. Further, the greater the possible penalty for a crime, the greater the desire of a defendant to prevent witnesses from coming forward. Intimidation potential increases when the defendant has a personal connection to the witness (e.g., they went to school together or grew up in the same neighborhood). A witness who lives near a defendant or within the territory of the defendant’s gang, or whose address is known to the defendant, is particularly vulnerable.

Direct Intimidation¹¹

Overt/Explicit Threats

Perhaps the most common form of witness intimidation is the use of explicit threats of physical violence. These threats are effective because of the reputation and history of violence of the defendant’s gang. Also, threats frequently are made during crimes of violence. The threat takes on added significance given the level of violence or threat used to perpetrate the initial crime. Home-invasion robberies are prime examples of how seriously a threat of future harm is taken by victims of violent crime, given the outrageous levels of violence inflicted on the victims during the commission of a robbery.

Physical Violence

Physical violence is a common form of direct witness intimidation. Gang members *usually* do not murder the witnesses they are intimidating. Instead, physical beatings are perpetrated by fists and feet or the use of a weapon. Witness murders, however, do happen with tragic frequency.¹²

Implicit Threats

Sometimes, gang members intimidate without physical violence. Merely staring at a witness or driving slowly by the witness’s house with the witness watching can intimidate the witness. Anonymous phone calls or letters mentioning the case without an explicit threat, a photocopy of a police report with the witness’s name, a court transcript with the witness’s testimony, or new gang graffiti near the witness’s home are other forms of implicit threats.

Property Damage

Another form of intimidation is harming or destroying a witness’s property. Examples of this tactic include shooting or throwing objects at a witness’s house or car, firebombing property, slashing tires, spray-painting graffiti, or hurting pets.

Courtroom Intimidation

It is not uncommon for gang members to sit or stand outside a courthouse or courtroom where their fellow gang member is on trial. Such an atmosphere breeds fear, considering its location, because the witnesses fear the gang members are there to watch the witnesses testify. Gang members also pack the courtroom; stare at a witness before and during testimony, if permitted by the presiding judge; make verbal or nonverbal threats; wear black clothing or clothing with messages (e.g., “stop snitching” or “not guilty”); and take or pretend to take pictures of the witness with a camera cell phone.¹³

Implicit Intimidation

Implicit intimidation occurs when witnesses face a real but unexpressed threat of harm. For example, significant ongoing gang violence in a neighborhood creates a communitywide atmosphere of fear. Witnesses rightly fret when they know the suspect or defendant is a gang member. Victims of violent gang crime have personally experienced the type of violence the gang inflicts. Fear of further violence should the witness testify is a reasonable, legitimate concern. This concern is obviously magnified when the crimes are perpetrated in the homes or businesses of the victims. At times, implicit intimidation has the same effect on witnesses, even when the gang takes no direct intimidation action.

Communitywide Intimidation

Gang members often openly and notoriously commit crime in their turf or neighborhood. It is not uncommon for neighborhood residents to observe or be victims of violent crime. Gang members are present in the streets, and their graffiti on the walls is a constant reminder of their criminality. Neighborhood residents also see gang members being detained and field-interviewed or arrested by police. All of these factors produce resident fear of the gang members and retaliation, should the residents ever cooperate with the police.¹⁴

A further issue with using neighborhood residents as witnesses is that they know the gang members as relatives of other neighbors or friends. Cooperating witnesses thus face possible public ridicule for turning against the gang members. At a minimum, it is impossible to keep secret one's cooperation with the police under such circumstances. Gangs also often exist in neighborhoods with sizeable immigrant populations who are fearful or distrustful of the police. Finally, given the lack of cooperation in police investigations, it is not unusual for neighborhood residents to see gang members quickly returning to the streets following an arrest. This dynamic further frightens residents against cooperation.¹⁵

Witness-Protection Programs

Law enforcement must always take seriously the potential for witness intimidation in gang-related cases. Reports of intimidation should be taken immediately. Risks and ways to mitigate or eliminate the risks should be explained to witnesses. Police and prosecutors should never promise more protection than available and should document all offers of protection and discussions about the risks caused by cooperating. Law enforcement officials should also insist that protected witnesses strictly adhere to the conditions of relocation or other assistance. Finally, cooperating witnesses need to know that they are only being protected and not immunized from the liability of future criminal acts (especially retaliation when the witness is a cooperating rival gang member).

Witness-protection strategies and programs exist on the federal, state, and local level. More comprehensive witness-protection programs address the biggest precursor of gang-witness intimidation—known location and accessibility of the witnesses against a defendant by that defendant. Relocation of vulnerable, intimidated, or threatened witnesses and immediate family members is the surest way to protect the witnesses against actual harm and is the main objective of the best witness-protection programs.

Witness Relocation

At times, relocating witnesses is critical to ensure their safety. It is also imperative to assuage the fears of victims or witnesses of physical violence. Occasionally, witnesses themselves will bear the cost of relocation. Typically, however, witnesses lack the

financial wherewithal to quickly relocate. Relocation is used in emergency situations for up to a week, when a credible threat is made that necessitates removing the witness from the threatening environment. Short-term relocation lasting for more than a week (up to a year) can also occur during the pendency of a case. Usually, intimidation efforts cease following a witness's testimony. It is reported that few gang members want to risk incarceration for retaliating against a witness following the witness's testimony.¹⁶

Sometimes, however, permanent relocation is necessary. This is because the case either lingers in court for a long time or the nature of the intimidation indicates the threat will remain following the conclusion of the case. Relocation is most easily accomplished if the witness lives in public housing. The housing authority in the jurisdiction commonly arranges moving from one project to another. Renters are the next easiest group to relocate. Moving expenses, security deposits, and, perhaps, first- and last-month rents are provided to witnesses who rent. It is nearly impossible to relocate witnesses who own their homes, because most police or prosecution agencies or statewide witness-protection programs lack the resources to purchase witnesses' houses, condominiums, or mobile homes. This problem is particularly acute during times of recession in the housing market, when witnesses face a loss on the sale of their homes.

Relocation is often necessary and is always expensive. In California, for example, the California Witness Protection Program, which pays for witness-relocation expenses, has distributed \$10,511,540 in witness-protection funds since its founding in 1998. From July 1, 2003, to June 30, 2004, the program paid to relocate 1,367 witnesses and their relatives. More than 74 percent of the relocations were on gang-related cases.¹⁷

Specific Witness-Protection Programs

Witness-protection programs utilize some or all of the strategies discussed in the Comprehensive Witness-Security Strategies section below. Arguably, the more strategies a witness-protection program incorporates, the more protection the program affords witnesses. Comprehensive witness-protection programs are costly and available in only a minority of states. Fortunately, a good level of witness protection is still available in states with limited witness-protection program funding.

The best-known witness-protection program is the Federal Witness Security Program, which is used in federal organized crime and racketeering offenses, drug-trafficking cases, other serious federal felonies, and any state offenses similar in nature to the qualifying federal crimes, in which the life of a witness is placed in jeopardy as a result of testifying for the government. The Federal Witness Security Program provides suitable documents to enable witnesses to establish new identities, living expenses, and housing, and to transport household furniture and personal property. It also assists witnesses in obtaining employment and provides services to aid witnesses in becoming self-

sustaining. Persons admitted into the program must agree to testify or provide investigatory information to the sponsoring law enforcement agency, must not commit any crime, must not reveal their participation in the program, and must comply with a number of other provisions designed to ensure the participants' security and continued cooperation with law enforcement. State witnesses may also be admitted to the program, but only if the state agrees to reimburse the United States government for all expenses incurred.¹⁸

Many states have witness-protection programs that reimburse local agencies for the cost of providing temporary protective services. Others, like Kentucky and Connecticut, further reimburse for temporary relocation of a witness (and immediate family if endangered) during critical periods of a court proceeding (e.g., preliminary hearings or trials), when witnesses are in most danger of retaliation.¹⁹ Massachusetts created a new statewide witness-protection program in January 2006. The enabling legislation includes a budget of \$750,000 for the program. Services available to witnesses include armed protection or escorts, surveillance of the witnesses' residences, and physical relocation, if necessary. The program is designed to provide protection during the duration of a criminal case.²⁰

The most comprehensive state witness-protection programs mimic the Federal Witness Security Program in breadth of available services. The California Witness Protection Program is a good example of such a comprehensive statewide program. The program reimburses local law enforcement agencies for a number of services: costs of providing armed protection or escort by law enforcement before, during, or after legal proceedings; physical relocation of endangered witnesses and immediate family members; housing expenses; appropriate documents to establish new identity; transportation (or storage) of personal possessions; basic living expenses (e.g., food, transportation, utility costs, and health care); and any other services determined by the state attorney general as necessary.²¹ The state of Delaware's witness-protection program covers all of the same type of expenses reimbursed in California and also provides for assisting protected persons in obtaining employment in their new locations.²²

In states without an organized statewide program, local police and prosecution agencies are forced to deal with witness-intimidation issues on their own, with limited or no reimbursement for protective services from the state. Despite this disadvantage, there are many low-cost, yet effective, witness-protection strategies still available. Police and prosecutors can protect witnesses by redacting witnesses' names and identifying information on police reports until discovery is absolutely necessary, requesting high bail for gang-member offenders, aggressively investigating and prosecuting witness-intimidation cases, providing witnesses with easy access to investigators and prosecutors during the pendency of criminal investigations and prosecutions, ensuring courtroom security in collaboration with judges

and court security staff, and arranging safe custodial accommodations for incarcerated witnesses.

Comprehensive Witness-Security Strategies

Historically, four approaches have been used to prevent or minimize the effects of witness intimidation. They include requesting high bail for defendants charged with the original crime or for defendants charged with intimidation, aggressively prosecuting intimidators, conscientiously managing witnesses, and utilizing victim/witness programs.

Requesting High Bail

Keeping gang-member intimidators locked up reduces the opportunities to intimidate and enhances the safety of cooperating witnesses. Therefore, it is imperative to seek appropriately high bails for the defendants of gang-related crime (especially violent crime) and intimidation or for those who intimidate at the defendant's behest. Seeking high bail is particularly appropriate in jurisdictions allowing judges to consider a defendant's danger to the community, as opposed to merely the prospects of the defendant's appearance in court.

Some jurisdictions limit bail determinations to an amount designed to ensure the defendant's future court appearances. Thorough research is needed in such jurisdictions regarding the defendant's prior-appearance record, including any failure to appear for seemingly insignificant offenses, such as traffic violations. Most states also allow for a hearing to determine whether the source of the bail is legitimate and not from criminal proceeds. In cases involving drug-trafficking gangs, these hearings frequently keep defendants in custody or delay their release.

Vigorous Witness-Intimidation Prosecution

Vigorous, immediate prosecutions of witness intimidators are critical. A message must be sent that such action will not be tolerated. The charges must stick, however, or the message perceived by gang members is that they are invincible and that the police and prosecutors make hollow threats. Expedited and thorough police investigations are necessary.

Some states have weak intimidation laws carrying misdemeanor or low-grade felony penalties. Alternatives to intimidation charges include (if the intimidator is on probation or parole) warning the defendant when arrested or at the first court appearance of the legal consequences of intimidation, issuing a "stay-away" order to the defendant, and advising the defendant's fellow gang members or family members of the penal consequences of intimidation. A defendant's fellow gang or family members can usually be prosecuted as accessories after the fact for attempting to help the defendant avoid prosecution by intimidating the witnesses. Typically, the crime of accessory to a felony carries a felony sentence.

Conscientious Witness Management

It is critical to reassure a witness that intimidation will be aggressively investigated and vigorously prosecuted. It is even more important to follow through on that assurance. Police and/or prosecutors should arrange protection immediately, if needed, and establish “24/7” access to an investigating officer, a district attorney investigator, or even the prosecutor. Police can arrange for routine patrol checks near the witness’s residence or place of business.

At times, it is necessary to provide material support (cash for food or referrals to social-service providers) to a witness. It is important to regularly check on the witness’s whereabouts and safety. Vertical prosecution (the same specialized prosecutor handling the case from start to finish at all phases of court proceedings) allows a prosecutor and prosecution investigator to get to know the witness and vice versa. Such a relationship helps build trust and witness confidence and cooperation.

Creating and Utilizing Victim/Witness-Assistance Programs

A comprehensive victim/witness program is indispensable in successfully prosecuting gang-related crime. In Orange County, California, the district attorney’s office works closely with the Gang Victim Services program. In the program, trained gang victim/witness specialists provide crisis intervention, emergency assistance (food, clothing, shelter, and medical care), orientation to the system (explaining the court process and accompanying victims and witnesses to court, helping victims retrieve property that was taken or recovered in an investigation, and providing restitution assistance, bilingual assistance, and community mobilization against crime), outreach, and community workshops against gang violence.²³

Program participation requires that the victim or witness cooperate with the prosecution or lose the program benefits. Victims and witnesses can obtain financial reimbursement up to \$46,000 for medical expenses, loss of wages or support, funeral expenses, professional counseling, and job retraining or rehabilitation.

Discovery Issues

Witnesses’ names, addresses, and other identifying information should be redacted by the prosecution before police reports, transcripts, tape recordings, or other discovery items are turned over to the defense. Many states have laws prohibiting a defense attorney from giving witness information to anyone other than a defense investigator.²⁴ It is good practice to get a court order prohibiting the defense attorney from disclosing witness-identification information. Delaying disclosure of witnesses’ identities until just before trial, when possible, is another helpful safety tactic. Sometimes delayed disclosure requires a showing of good cause in an *in camera* hearing with the court.²⁵ Prosecutors should always advise the defense of delays in disclosure

to alert the defense to the issue, should the defense wish to challenge the delay.

Preventing Courtroom Intimidation

Courtroom safeguards designed to ensure witness security require the involvement of judges, bailiffs, investigating officers, prosecution investigators, and prosecutors. Courtroom intimidation cannot be tolerated and normally is not, especially if the presiding judges recognize the intimidation tactics while they are occurring. Educating judges and court personnel is a necessary step in minimizing courtroom gang-related witness intimidation.

Some typical preventative measures to minimize courtroom intimidation include identifying and photographing all persons entering the courtroom and checking for wants and warrants; using walk-through metal detectors or wands on the spectators as they enter the courtroom; having a school official present to identify possible truants; alerting probation or parole officers to the presence of a probationer or parolee; and designating the defendant’s fellow gang members as possible witnesses (relevant to the issue of the defendant’s gang membership), who can then be excluded on the basis of a witness-exclusion order.

An excellent long-term solution to gang members’ packing of courtrooms is to include a probation condition in all negotiated dispositions that prohibits gang-member probationers from attending court proceedings unless they are participants in an action or are subpoenaed by one of the parties. It is not atypical for a significant number of a gang’s members to be on probation for juvenile, misdemeanor, or low-grade felony offenses (e.g., joyriding). A “no association with fellow gang members” condition of probation is another excellent way of keeping gang members away from court. Secure victim/witness waiting areas prevent most hallway contact between witnesses and gang members. It is also helpful to bring witnesses into court through back hallways, if warranted by the circumstances.

Judges have wide latitude in maintaining courtroom security. It is not unusual for a judge to warn audience members that no acts of intimidation will be tolerated and to have gang members who disregard the warning removed from the courtroom. Recently in Massachusetts, judges began barring the wearing of garments that bear the phrase “Stop Snitching,” which has been associated with gang-related witness intimidation. Judges also imposed strict limitations on the use of mobile-phone cameras in courthouses after spectators in several gang cases pointed the phones at witnesses, jurors, or law enforcement officials.²⁶ A court may temporarily close a courtroom or limit access to the public in extraordinary circumstances of severe witness intimidation. A judge should make a detailed record of the intimidation before closing a courtroom.

Another good tool for preventing courtroom witness intimidation is minimizing the number of courtroom appearances required of the witness. Felonies usually can proceed by way of grand-jury indictment instead of by complaint and preliminary hearing. Grand-jury proceedings are secret, closed hearings. There is typically no requirement of informing a suspect or defendant that an indictment is being sought. The indictment procedure expedites cases to trial by avoiding the usual defense delays preceding preliminary hearings.

The downside of proceeding by indictment is that in many states, hearsay testimony is not allowed to support an indictment. Moreover, the prosecution must present witnesses before the grand jury. Because the testimony is not cross-examined by the defense, usually it cannot be used at trial if the witness becomes unavailable. Sometimes it is possible to redact the transcript to remove witnesses' names and identifying information with a court order before the transcripts of the proceeding are discovered to the defense.

Grand-jury transcripts are not always without value, particularly if a witness dies before trial or refuses to testify. In California, for example, under Evidence Code, Section 1231, a sworn statement (which includes grand-jury testimony) is admissible in a subsequent trial if the statement relates to a crime committed by the defendant in association with, for the benefit of, or at the direction of a criminal street gang and the witness dies before trial from "other than natural causes." In Massachusetts, a July 1, 2005, decision of the state Supreme Judicial Court "allows prosecutors to introduce earlier sworn statements of a witness who has either disappeared or refused to testify at trial if they can show that the defendant himself played a significant role in coercing or intimidating the witness."²⁷

Another way to keep witnesses out of court to avoid possible intimidation during initial court hearings is to present hearsay testimony at the preliminary hearing. Many jurisdictions allow for "hearsay prelims." The presence of the witness is not needed and, usually, cannot be forced by the defense, absent a good-faith showing of the need to call the witness at the preliminary hearing. Qualified law enforcement officers are allowed to recite a witness's statement made during the investigation. A significant downside to hearsay preliminary hearings is lack of prior sworn testimony subjected to cross-examination by the defense, which would have been admissible at trial should the witness have disappeared before trial.

Most states also allow for the conditional examination of a witness who may be unavailable for trial because of illness or departure from the state or whose life is in jeopardy. A showing that the witness falls into one of the three categories must be made for a judge to order a conditional examination. The examination itself is usually conducted in a courtroom with all parties and the defendant present. The questioning proceeds as if the witness were testifying at a trial. At the onset of trial, if the witness is unavailable for one of the three

qualifying reasons, the transcript of the conditional examination can be used as evidence. Although rarely used, conditional examinations represent a potentially useful tool under the right circumstances.

Custodial Protection

It is not uncommon for witnesses in gang cases to include incarcerated fellow or rival gang members to the defendant or uncooperative witnesses in custody for failing to appear when subpoenaed for the case. Intimidation prospects are high in custodial settings. Necessary witnesses can be kept in protective custody, though they frequently are opposed to it because such a classification is a sign to all other inmates that the witness is a "snitch." Sometimes, however, it is the only way to guarantee protection to an in-custody witness.

Ways to reduce jailhouse intimidation include always keeping the defendant and the witness separate in jail, during transportation to and from court, and while in holding cells at the courthouse; housing the witness in a city jail while the defendant is housed at the county jail; keeping communication with the witness open regarding possible intimidation, either directly or through the witness's attorney, if represented; using a "mail cover" to read the defendant's mail, watching for a solicitation or a discussion of witness intimidation; keeping tabs on the witness's visitors, ensuring that the defendant's fellow gang members, friends, or family members are not visiting the witness; and checking with jailhouse informants regarding any word of planned assaults on witnesses.

Conclusion

As highlighted above, gang-related witness intimidation represents one of the greatest challenges to the administration of justice. It cannot be tolerated, or it will inevitably increase in frequency and level of violence. Many strategies and programs exist that reduce the periodicity and severity of witness intimidation. Thorough knowledge and use of these strategies and programs are essential to successful prosecutions of gang-related crime.

Endnotes

- 1 Finn, Peter, and Healey, Kerry Murphy. 1996. "Preventing Gang- and Drug-Related Witness Intimidation." *Issues and Practices*. November 1996. Washington, DC: U.S. Department of Justice, National Institute of Justice.
- 2 Law enforcement must deal frankly with victims and witnesses of gang-related crime. Police and prosecutors share an ethical obligation and a legal duty to warn and protect a witness when official action creates a foreseeable peril that is not readily apparent to the witness. Civil liability may result when law enforcement officials minimize the danger of cooperation to a witness, fail to protect a witness in light of an obvious threat after promising the witness protection, fail to honor an expressed or implied promise to warn of danger, or place an unprotected witness near someone who poses a danger to the witness.
- 3 Egley, Arlen, Jr., and Ritz, Christina. 2006. "Highlights of the 2004 National Youth Gang Survey." *OJJDP Fact Sheet*. April 2006. Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- 4 Egley, Arlen, Jr., and Arjunan, Mehala. 2002. "Highlights of the 2000 National Youth Gang Survey." *OJJDP Fact Sheet*. February 2002. Washington, DC: U.S. Department of Justice, Office of Justice Programs.
- 5 National Alliance of Gang Investigators Associations. *2005 National Gang Threat Assessment*. Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance.
- 6 "Crime Statistics." LAPDOnline. January 2006. City of Los Angeles Police Department. http://www.lapdonline.org/portal/insidethelapd.php?page=/general_information/Crime_statistics/crime_statistics_main.htm
- 7 Erlich, Robert L., Jr. 2006. "Governor Erlich Announces Witness Intimidation Initiative." January 25, 2005. Maryland Governor Robert L. Erlich, Jr., press release. http://www.governor.maryland.gov/pressreleases/2005/012505_witness.html
- 8 Kraul, Chris, Lopez, Robert, and Connell, Rich. 2005. "L.A. Violence Crosses the Line." *LA Times.com*. May 15, 2005. <http://www.latimes.com/news/local/la-me-gang15may15.0.2106407.full.story?coll=la-home-headlines>
- 9 "MS-13 Gang Member on ICE Most Wanted List." 2005. *Inside ICE*. Volume 2, No. 11:2. Washington, DC: U.S. Immigration and Customs Enforcement.
- 10 Polley, James, IV. 2005. National District Attorneys Association. *Capital Perspective*, July/August 2005.
- 11 The following case illustrates direct intimidation tactics in action. In the early 1990s, a gang-related drive-by shooting occurred in the city of Garden Grove, California, that resulted in the murder of two victims, including a 17-year-old rival gang member and a four-year-old boy.

Additionally, three teenage girls were shot and seriously wounded. The victims were in three separate cars—each full of gang members, their girlfriends or wives, and their children. It was a typical, senseless murder common for the time. It also became a textbook example of the various forms of witness intimidation.

The only witness to come forward was "Ralph," an older, self-proclaimed former member of the victim gang who was living in the perpetrator gang's neighborhood at the time of the crime. He provided critical statements to the police and necessary testimony during the jury trial in the case. Four gang members were charged in the drive-by. Ralph was continually subjected to all forms of intimidation before, during, and after the trial.

Prior to trial, relatives were told that Ralph would be killed if he continued to cooperate with the case or testify. Gang members frequently drove down his street, staring at him or members of his family. He was twice assaulted in the courthouse and a few times outside his house. One time he was stabbed. His wife was also verbally and physically accosted on occasion. His new car was firebombed. Each time he testified, several members of the defendants' gang crowded into the courtroom. For years following his cooperation, pieces of cheese were thrown onto the lawn in front of his house.

- 12 National District Attorneys Association. *Testimony of Honorable Robert P. McCulloch, Prosecuting Attorney, St. Louis County, Missouri, and President, National District Attorneys Association, Before a Hearing of the Committee on the Judiciary on Gang Violence and Witness Intimidation*. September 17, 2003.

- 13 Saltzman, Jonathan. 2006. "Judge Fights Courtroom Intimidation." *The Boston Globe*. January 11, 2006.
- 14 Opatmy, Dennis, and Blumberg, Peter. 2005. "Federal Prosecutors Tackle Gang Killings." *Los Angeles Daily Journal*. 2005. September 23, 2005.
- 15 National District Attorneys Association. *Testimony of Honorable Robert P. McCulloch, Prosecuting Attorney, St. Louis County, Missouri, and President, National District Attorneys Association, Before a Hearing of the Committee on the Judiciary on Gang Violence and Witness Intimidation*. September 17, 2003.
- 16 Finn, Peter, and Healey, Kerry Murphy. 1996. "Preventing Gang- and Drug-Related Witness Intimidation." *Issues and Practices*. November 1996. Washington, DC: U.S. Department of Justice, National Institute of Justice.
- 17 California Witness Protection Program. 2005. "Annual Report to the Legislature 2005." Sacramento, CA.
- 18 See generally, 18 United States Code 3521.
- 19 Kentucky Revised Statutes, 421.500(1); State of Connecticut, Division of Criminal Justice, Programs and Services, The Witness Protection Unit. April 3, 2006.
<http://www.ct.gov.csa0/cwp/view.asp?a1798&q=285778>
- 20 Lewis, Raphael, and Helman, Scott. 2006. "Mass. House OK's Witness Protections." *The Boston Globe*. January 11, 2006. http://www.boston.com/news/local/massachusetts/articles/2006/01/11/mass_house_oks_witness_protections/
- 21 See California Penal Code, Sections 14020–14033.
- 22 Title 11, Crimes and Criminal Procedure, Special Programs, Chapter 96. Protection of Witnesses. April 3, 2006. <http://www.delcode.state.de.us/title11/c096/>
- 23 Mendez, Louis. 2005. Supervisor of Gang Victim Services, a program of community service programs. Personal interview. December 14, 2005.
- 24 See, for example, California Penal Code, Section 1054.2, which makes willful disclosure of such information a misdemeanor.
- 25 See, for example, California Penal Code, Section 1054.7.
- 26 Saltzman, Jonathan. 2006. "Judge Fights Courtroom Intimidation." *The Boston Globe*. January 11, 2006.
- 27 WHDH-TV. 2005. *Mass. Prosecutors Can Now Use Grand Jury Testimony When Witnesses Intimidated*. <http://www.whdh.com/news/articles/local/BOS2718/>

Additional Reference

- Jones, Eddie. Testimony before the United States Senate Committee on the Judiciary. *Combating Gang Violence in America: Examining Effective Federal, State, and Local Law Enforcement Strategies*. September 17, 2003.

The **National Gang Center** (NGC) is a collaborative effort between the Office of Justice Programs' (OJP) Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

This partnership works to provide professionals in the field of gangs with tools that can be used in a comprehensive range of strategies to respond to street gangs, from prevention and intervention to criminal justice strategies such as suppression, prosecution, and re-entry.

John Anderson, Esquire, is an assistant district attorney with the Orange County District Attorney's Office in California. He joined the office in 1985 after attending Hastings College of Law. He currently supervises the TARGET unit, which is a specialized unit dedicated to the targeting and suppression of gang activities, working closely with gang units and local law enforcement agencies throughout Orange County to target gang-related crime. Mr. Anderson also writes resource articles and provides gang prosecution training for the National Gang Center to prosecutors and law enforcement officers around the United States.

This project was supported by Grant No. 2004-LD-BX-1404 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.