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

National Institute of Justice

Issues and Practices

Preventing Gang- and Drug-Related Witness Intimidation

About the National Institute of Justice

The National Institute of Justice (NIJ), a component of the Office of Justice Programs, is the research and development agency of the U.S. Department of Justice. NIJ was established to prevent and reduce crime and to improve the criminal justice system. Specific mandates established by Congress in the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Anti-Drug Abuse Act of 1988 direct the National Institute of Justice to:

- *Sponsor special projects, and research and development programs* that will improve and strengthen the criminal justice system and reduce or prevent crime.
- *Conduct national demonstration projects* that employ innovative or promising approaches for improving criminal justice.
- *Develop new technologies* to fight crime and improve criminal justice.
- *Evaluate the effectiveness of criminal justice programs* and identify programs that promise to be successful if continued or repeated.
- *Recommend actions* that can be taken by Federal, State, and local governments as well as by private organizations to improve criminal justice.
- *Carry out research on criminal behavior.*
- *Develop new methods of crime prevention* and reduction of crime and delinquency.

The National Institute of Justice has a long history of accomplishments, including the following:

- Basic research on career criminals that led to the development of special police and prosecutor units to deal with repeat offenders.
- Research that confirmed the link between drugs and crime.
- The research and development program that resulted in the creation of police body armor that has meant the difference between life and death to hundreds of police officers.
- Pioneering scientific advances such as the research and development of DNA analysis to positively identify suspects and eliminate the innocent from suspicion.
- The evaluation of innovative justice programs to determine what works, including drug enforcement, community policing, community anti-drug initiatives, prosecution of complex drug cases, drug testing throughout the criminal justice system, and user accountability programs.
- Creation of a corrections information-sharing system that enables State and local officials to exchange more efficient and cost-effective concepts and techniques for planning, financing, and constructing new prisons and jails.
- Operation of the world's largest criminal justice information clearinghouse, a resource used by State and local officials across the Nation and by criminal justice agencies in foreign countries.

The Institute Director, who is appointed by the President and confirmed by the Senate, establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the Department of Justice, and the needs of the criminal justice field. The Institute actively solicits the views of criminal justice professionals to identify their most critical problems. Dedicated to the priorities of Federal, State, and local criminal justice agencies, research and development at the National Institute of Justice continues to search for answers to what works and why in the Nation's war on drugs and crime.

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

Preventing Gang- and Drug-Related Witness Intimidation

by
Peter Finn
and
Kerry Murphy Healey

November 1996

Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Each report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion on the subject. The intent is to provide information to make informed choices in planning, implementing, and improving programs and practice in criminal justice.

National Institute of Justice

Jeremy Travis
Director

Samuel C. McQuade
Program Monitor

Advisory Panel

A. Franklin Burgess, Jr.
Deputy Presiding Judge
Criminal Division
Superior Court of the District of Columbia
500 Indiana Avenue, NW
Room 2500
Washington, DC 20001

Michael O. Freeman
Hennepin County Attorney
C200
Hennepin County Government Center
Minneapolis, MN 55487

Thomas O. Mills
Deputy Chief
Kansas City, Missouri, Police Department
Police Headquarters
1125 Locust Street
Kansas City, MO 64106

John J. Pogash
9954 Mallow Street
Manassas, VA 22100

James W. Rice
Special Agent
Federal Bureau of Investigation
Violent Crimes and Gang Unit
1900 Half Street, SW
Washington, DC 20535

Prepared for the National Institute of Justice, U.S. Department of Justice by Abt Associates Inc., under contract #OJP-94-C-007. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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

NCJ 163067

Table of Contents

Page

Page

PART II DEVELOPING OR IMPROVING THE PROGRAM

List of Figures

Foreword

Many police officers and prosecutors have become increasingly frustrated by their inability to investigate and prosecute cases successfully when key witnesses refuse to provide critical evidence or to testify because they fear retaliation by the defendant or his family and friends. This problem is particularly acute, and apparently increasing, in gang- and drug-related criminal cases. Witnesses' refusal to cooperate with investigations and prosecutions should be a major concern: it adversely affects the justice system's functioning while simultaneously eroding public confidence in the government's ability to protect citizens.

A number of law enforcement agencies and prosecutors' offices across the country have already taken steps to prevent witness intimidation. These include increased use of traditional witness security measures such as routinely requesting high bail for known intimidators, aggressively prosecuting reported intimidation, closely managing key witnesses, and expanding victim/witness assistance services. Several jurisdictions have also adopted innovative approaches, such as emergency and short-term relocation of witnesses (sometimes in collaboration with local public housing authorities), methods to prevent intimidation in the courthouse and jails, and outreach programs to reduce community-wide fear and intimidation.

This *Issues and Practices* report describes how several jurisdictions have carried out these victim/witness security strategies. It offers a blueprint for combining these discrete approaches into a comprehensive, structured program to protect witnesses and help ensure their cooperation with the justice system. Investigators and prosecutors can benefit by the approaches discussed here—which their colleagues have undertaken—to help ensure that offenders do not go unpunished and communities do not lose faith in the justice system.

Jeremy Travis
Director
National Institute of Justice

Acknowledgements

We wish to thank the many individuals from the jurisdictions chosen as study sites who patiently answered our questions and sent us materials about their efforts to prevent witness intimidation. In particular, we thank Patricia C. Jessamy in Baltimore; Daniel C. Voogt in Des Moines, Iowa; Walter Arsenault in New York City; Harold Boscovich in Oakland, California; Earl Sanders in San Francisco; and David Schertler and Steve T'Kach in Washington, D.C. We also thank Gary Balzer, Sharon May, and Donald Todd in Baltimore; Blaine Tellis, Dennis O'Donnell, and James Rowley in Des Moines; Teresa Lesney, Barbara J. Schell, and Victoria Villegas in Las Vegas; Michael Genelin in Los Angeles; James H. Anderson, Stanley Paul Golde, Ralph M. Lacer, and Theodore Schwartz in Oakland, California; Micky Cook and Paul Scoggin in Minneapolis; Tom Allessandro, Judy Osoria, and Fred Watts in New York City; Marcia Thomas Bayne, Richard Carroll, and Charles Grant in Philadelphia; G. Wayne Cox in Prince Georges County, Maryland; John Edward Dupuy, Alfred Giannini, Ronan Byrne, and Veronica Zecchini in San Francisco; and Mike Berry, Cathy Breeden, John Cleveland, Kenneth J. Darnall, Mary Lou Leary, Jeffrey Stowe, and Kathryn Turman in Washington, D.C.

The following advisory board members provided very useful comments in the course of a one-day meeting in Washington, D.C., periodic phone consultations, and reviews of the report outline and draft report: A. Franklin Burgess, Jr., Michael O. Freeman, Thomas O. Mills, John J. Pogash, and James W. Rice.

Samuel C. McQuade, Program Manager for the project at the National Institute of Justice (NIJ), provided constant support and beneficial advice throughout the project. Cheryl Crawford, Contracting Officer's Technical Representative at NIJ, and Virginia Baldau, Director of NIJ's Program Development Division, Office of Development and Dissemination, provided helpful suggestions for improving the report. Ted Hammett of Abt Associates made useful comments. Mary-Ellen Perry and Myradia Rivera masterfully coordinated production, and Karen Minich expertly desktopped the final publication.

Peter Finn
Abt Associates Inc.
Cambridge, Massachusetts

Kerry Murphy Healey, Ph.D.
Consultant to Abt Associates Inc.
Beverly, Massachusetts

Executive Summary

This report focuses on efforts to prevent witness intimidation, in gang- and drug-related cases—efforts that prosecutors' offices and law enforcement agencies have developed separately from their standard victim assistance programs.

The Nature and Extent of Witness Intimidation

Two forms of witness intimidation are hampering the investigation and prosecution of crime throughout the country:

- *overt intimidation*, when someone does something explicitly to intimidate a witness; and
- *implicit intimidation*, when there is a real but unexpressed threat of harm, as when rampant gang violence creates a community-wide atmosphere of fear.

Most overt intimidation occurs only when there is a previous connection between the defendant and the victim, and when they live relatively close to each other.

Components of a Comprehensive Witness Security Program

Traditional Approaches to Witness Protection

Historically, prosecutors and police investigators have used four approaches to witness protection:

- requesting high bail to put and keep intimidators behind bars,
- prosecuting intimidators vigorously,
- making a conscientious effort to manage witnesses, and
- enhancing basic victim/witness program services.

All too often, these traditional approaches are not sufficient to prevent intimidation or actual harm to witnesses, or to motivate them to testify. Nevertheless, innovative twists can make these measures more effective, and using them makes a symbolic statement that the criminal justice system takes witness intimidation seriously.

Relocating Intimidated Witnesses

Most innovative witness security programs include provisions for relocating genuinely endangered witnesses, and most of the prosecutors and law enforcement officers interviewed for this study report that confidential witness relocation is the core protection service that all programs need to provide. Respondents identified three levels of relocation:

- *emergency relocation*—placing the witness and his or her family in a hotel or motel for up to a few weeks;
- *short-term* or *temporary relocation*—using a hotel or motel for up to a year or placing the witness with out-of-town relatives or friends; and
- *permanent relocation*—moving the witness between public housing facilities or providing a one-time grant to reestablish the witness in new private housing.

Because most relocations involve witnesses living in public housing, prosecutors and police investigators have implemented a variety of approaches to working with local housing authorities to arrange the necessary transfers.

Preventing Intimidation in Courtrooms and Jails

Gang members and associates of defendants often appear in court in order to frighten witnesses into not testifying. Since the threat may be very subtle and because judges often feel that the constitutional requirement of a public trial prevents them from removing such individuals from the courtroom, it is often difficult to stop this kind of intimidation. Nevertheless, a number of judges have taken steps to remove gang members from the courtroom, to segregate gang members and other intimidating spectators, or to close the courtroom entirely to spectators.

Incarcerated witnesses who are targets for intimidation in gang- and drug-related cases require special protection,

including separation from the defendant within the same correctional facility or transfer to a nearby correctional facility, and separate transportation to court to testify.

Reducing Community-wide Intimidation

An atmosphere of community-wide intimidation, even when there is no explicit threat against a particular person, can also discourage witnesses from testifying. Prosecutors and police investigators try to reduce community-wide intimidation through community-based policing and prosecution strategies, vertical prosecution, and other strategies.

Developing or Improving the Program

Developing a Comprehensive Witness Security Program

Whenever possible, jurisdictions can combine the range of witness protection approaches discussed above into a coordinated, comprehensive, and formal witness security program. Prosecutors and police investigators recommend that a witness security program be structured carefully in order to maximize the use of shared resources, reduce prosecutor and police investigator involvement with time-consuming witness management tasks, and minimize civil liability of the prosecutor's office and police department. To achieve these goals, a comprehensive witness security model includes an organizing committee, an operational team, a program administrator, and case investigators. Formal interagency cooperation among the groups involved in protecting witnesses is essential to achieving these goals.

Legal Issues

Prosecutors often have statutory authority to prevent intimidation through techniques ranging from requesting the exclusion of gang members from the courtroom to impeaching the prosecution's own witnesses if they change their testimony between deposition or preliminary hearing and trial. To avoid liability for the safety or misconduct of witnesses participating in witness security programs, experts strongly advise that no promises be made to witnesses unless they can be kept and that any promises that are made be cleared first with whoever has authority to comply with the promises.

Sources of Help

This study has found written materials, organizations, and funding sources that can provide guidance and support for the development of witness protection programs. In addition, several experienced practitioners are available to assist in setting up or improving a comprehensive witness security effort.

Chapter 1
The Nature and Extent of Witness Intimidation

Key Points

- Because in most jurisdictions the problem of witness intimidation has only recently begun to have a major impact on the investigation and prosecution of crime, there appear to be few comprehensive, coordinated programs that address the issue. However, jurisdictions can plan a comprehensive and formal program by taking advantage of the discrete efforts that a number of law enforcement agencies and county attorney's offices have already implemented.

- Prosecutors, police officers, judges, and victim advocates agree that witness intimidation is widespread, increasing, and having a serious impact on the prosecution of crime across the entire country.

- There are two principal types of witness intimidation:

  — *overt intimidation*, when someone does something explicitly to intimidate a witness, often in connection with a single case; and

  — *implicit intimidation*, when there is a real but unexpressed threat of harm, as when a history of gang violence creates a community-wide atmosphere of fear.

  Sometimes witnesses feel intimidated even when they are in no actual danger.

- In addition to fear, a witness may be deterred from testifying because of strong community ties, a deep-seated distrust of law enforcement, or a personal history of criminal behavior.

- Intimidation takes many forms: it may involve physical violence, explicit threats of physical violence, implicit threats, property damage, and intimidation in the courtroom or from the jail.

- Most explicit intimidation is said to occur only when there is a previous connection between the defendant and the victim and they live relatively close to each other.

- Intimidation is most likely to occur between arrest and trial—especially as the trial date approaches—but it also occurs frequently during the trial itself.

What Is Witness Intimidation?

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

Types of Intimidation

There are two principal types of witness intimidation:

(1) *Overt intimidation* occurs when someone does something explicitly to intimidate a witness into withholding, changing, or falsifying testimony:

- The sister of a defendant slaps a witness outside the courtroom and says she will kill her if she testifies.

- Two gang associates of a defendant drive by a witness's apartment, slash his car tires, and smash the windshield.

- An incarcerated defendant puts the word out on the street through fellow gang members that a murder witness will be killed if he cooperates with the prosecution.

(2) *Implicit intimidation* involves a situation in which there is a real but unexpressed (or indirectly expressed) threat of harm to anyone who may testify. Implicit intimidation is often community-wide in nature and is characterized by an atmosphere of fear and noncooperation generated by a history of violent gang retaliation against cooperating witnesses or by a cultural mistrust of the criminal justice system:

- A drug-related shooting occurs at a softball game; three players are killed in full view of spectators, but no cooperative witnesses can be found.

- Two individuals suspected of stealing money from the homes of Vietnamese immigrants are arrested, but the victims all claim they did not see the faces of the perpetrators.

"Occasionally, there is actual witness intimidation . . . but while actual witness intimidation is obviously a serious problem, it is the general fear of retaliation on the part of virtually all of our witnesses that presents an even bigger problem. In almost every case we prosecute involving violence, there is at least some level of apprehension on the part of the witness."

— J. Ramsey Johnson, Assistant U.S. Attorney for the District of Columbia, Superior Court Division

Sometimes witnesses feel intimidated even when there is no actual danger. Threat assessments by police and prosecutors do not always support the fears of potential witnesses, as when the defendant and his associates do not have a history of violence or the witness lives and works outside their neighborhood. As J. Ramsey Johnson, Assistant U.S. Attorney for the District of Columbia, Superior Court Division, states, "Of course, all claims of intimidation must be taken seriously enough at least to conduct a threat assessment. Occasionally, there is actual witness intimidation . . . but while actual witness intimidation is obviously a serious problem, it is the general fear of retaliation on the part of virtually all of our witnesses that presents an even bigger problem. In almost every case we prosecute involving violence, there is at least some level of apprehension on the part of the witness."

Overt intimidation, implicit intimidation, and misperceived intimidation may operate separately or in tandem. Furthermore, each instance of actual intimidation or violence against witnesses by gangs or drug-selling groups promotes the community-wide perception that any cooperation with the criminal justice system is dangerous.

Overt intimidation, because it may be publicized widely in the press or by word of mouth, may contribute to an exaggerated perception of the risk of injury. Many of the prosecutors and police inspectors contacted for this study reported that, as bad as intimidation may be, the public often overestimates both its likelihood and the danger it represents. Moreover, community-wide and misperceived intimidation can be as harmful to witness cooperation as explicit threats. A public *perception* that the criminal justice system cannot protect the citizens of a community is as effective in destroying the ability of police investigators and prosecutors to do their jobs as any specific threat. As a result, prosecutors, police administrators, and victim/witness program administrators need to prevent all types of intimidation.

Gang-Inspired Fear: A Particularly Pervasive Problem

Both case-specific and community-wide fear of retaliation are often fed by the fear that incarcerated gang members will return quickly to the community after serving brief sentences or will be able, from behind bars, to arrange for friends or family members to threaten potential witnesses. Because connections between incarcerated gang members and neighborhood gangs are often uninterrupted, most witnesses no longer feel that imprisonment of the defendant pending trial, or even after conviction, can ensure their safety in the community.

Prosecutors note that the mere fact that a crime is gang-related can be sufficient to prevent an entire neighborhood from cooperating. This type of community-wide intimidation is especially frustrating for prosecutors and police investigators because, while no actionable threat is ever

The Focus of This Report

This publication is intended as a practical guide for assisting prosecutors, police investigators and administrators, and coordinators of victim/witness assistance programs to improve their efforts to prevent witness intimidation. In addition, judges will learn about strategies for preventing intimidation in the courtroom in chapter 4, and legislators will find suggestions for witness protection in chapter 7.

The report focuses on intimidation in gang- and drug-related cases. While victims in domestic violence cases are also intimidated, prosecutors, police investigators, and victim advocates agreed that a separate publication devoted exclusively to the intimidation problem as it relates to drug- and gang-related violence was needed because

- intimidation associated with gang- and drug-related violent crime is escalating,
- little has been written about gang- and drug-related intimidation, and
- intimidation in domestic violence cases is different in nature from gang-related intimidation because it does not terrify the community at large and because the intimate relationship between domestic partners makes intimidation in violent domestic relationships inevitable.

Useful information on the nature of witness intimidation in domestic violence cases, and how to prevent it, may be found in *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*, by Peter Finn and Sarah Colson (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, March 1990), and *Domestic Violence, Stalking, and Anti-Stalking Legislation* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, April 1996.) Furthermore, many of the suggestions for preventing witness intimidation provided in this publication can be implemented as a means of reducing intimidation in cases of domestic violence.

Only two programs were identified that address the witness intimidation problem in a comprehensive and coordinated fashion: one in Baltimore, which was just starting when the research for this publication was conducted, and one in Washington, D.C., which is atypical because most of the primary groups involved are Federal agencies. It is not surprising that few mature, comprehensive programs were found or that the formal programs that have been established are in special settings: most prosecutors and police investigators report that witness intimidation has only recently become such a severe impediment to investigating and prosecuting cases that it requires sustained attention. As a result, while this report largely describes discrete responses to witness intimidation that jurisdictions have implemented, police administrators and county attorneys can combine these approaches into a comprehensive plan to prevent intimidation (see chapter 6).

made in a given case—thereby precluding conventional responses—witnesses and victims are still discouraged from testifying.

Given these circumstances, this report goes beyond recommending measures for countering explicit gang-related intimidation to provide suggestions for *building community trust* in the criminal justice system through *community policing*, *community prosecution*, and *outreach to community groups* interested in reclaiming ownership of their neighborhoods and housing developments from gang members and drug dealers (see chapter 5, "Reducing Community-wide Intimidation").

Fear Is Not the Only Reason Witnesses Do Not Testify

Police and prosecutors suggest that fear is only one of several factors that may deter witnesses from testifying; strong community ties and a deep-seated distrust of the criminal justice system can also be formidable barriers to cooperation. Many of the communities in which gangs operate are worlds unto themselves—places where people live, attend school, and work all within a radius of only a few blocks beyond which they rarely venture. As a result, victims and witnesses are often the children of a defendant's friends or relatives, members of the same church as the defendant, or classmates or neighbors. Furthermore, community residents may regard many of the crimes for which witnesses are sought as private "business matters" among gang members or drug dealers, rather than as offenses against the community which should inspire willing civic participation in the process of law enforcement. To many, the police are "outsiders" who do not understand or care about their problems.

At the same time, prosecutors and police investigators uniformly report that most of the key witnesses who need their protection in gang- and drug-related cases are themselves "bad guys"—or, as is often said, "today's witness is tomorrow's suspect." Some witnesses are even said to be "commuter victims"—drug dealers and gang members who were on their way to committing a crime when *they* were victimized. These individuals are often unwilling to testify not necessarily because they fear retaliation but because they want to avoid any contact with the criminal justice system if there are (real or imagined) outstanding warrants against them, if they think they might be arrested for having broken the conditions of their probation or parole, of if they have developed a lifelong dislike for and mistrust of police officers and prosecutors. Fear of gang retaliation among honest citizens in gang-dominated neighborhoods forces prosecutors and police to rely increasingly on these unwilling and perhaps tainted witnesses—including incarcerated witnesses and co-defendants—for testimony in gang cases. Prosecutors in larger jurisdictions estimate that as few as 5 percent of witnesses requiring security are so-called innocent witnesses, that is, people with no prior contact with the criminal justice system as suspects or offenders.

Prosecutors and police investigators interviewed for this study also report that many members of some minority and ethnic groups avoid cooperating with the criminal justice system for cultural reasons, including a sense of group loyalty that makes them reluctant to testify against members of their own culture. In particular, recent Asian immigrants who have experienced repression at the hands of the law enforcement systems in their countries of origin may be apprehensive that the American criminal justice system will be similarly unresponsive, and illegal immigrants from all cultures may be reluctant to have contact with law enforcement because they are vulnerable to the threat of deportation. Fortunately, some jurisdictions report that newly initiated outreach efforts with minority populations can reduce these obstacles to cooperation.

How Serious Is Witness Intimidation?

No one knows the precise extent of witness intimidation because only limited scientific research has been conducted on the problem.[1] However, most of the prosecutors, police officers, judges, and victim advocates interviewed for this report agreed that witness intimidation is widespread, that it is increasing, and that it seriously affects the prosecution of violent crimes.

> ***"The number of gang cases is definitely growing here, and there is more intimidation than ever before."***
>
> — Daniel Voogt, Assistant County Attorney, Drug and Gang Unit, Polk County (Des Moines, Iowa) Attorney's Office

A 1990 study by the Victim Services Agency of New York City found that 36 percent of victims and witnesses interviewed in the Bronx Criminal Court in 1988 had been threatened, and 57 percent of those who had not been threatened feared reprisals; 71 percent of all the witnesses interviewed said they would feel threatened if the defendants were to be released on bail.[2] The problem is prevalent in many parts of the country, not just in New York City: prosecutors and police administrators from such heartland cities as Des Moines, Tulsa, and Minneapolis also report serious problems with witness intimidation. According to Daniel Voogt, an assistant county attorney in Polk County, Iowa, "The number of gang cases is definitely growing here, and there is more intimidation than ever before."

Witness intimidation and its debilitating impact on prosecution are not new problems.[3] However, a number of prosecutors and police investigators report that the problem has

worsened and spread dramatically with the advent of crack cocaine and the growth of drug gangs in many urban centers since the mid-1980s.[4]

Whatever the exact extent of the problem, most criminal justice system professionals report that witness intimidation *feels* like a new problem and indisputably *is* a serious one:

- A 1994 survey of a sample of 192 prosecutors found that intimidation of victims and witnesses was a major problem for 51 percent of prosecutors in large jurisdictions (counties with populations greater than 250,000) and 43 percent of prosecutors in small jurisdictions (counties with populations between 50,000 and 250,000); an additional 30 percent of prosecutors in large jurisdictions and 25 percent in small jurisdictions considered intimidation a moderately serious problem.[5]

- Several prosecutors interviewed for this report estimated that they suspect witness intimidation occurs in up to 75 to 100 percent of the violent crimes committed in some gang-dominated neighborhoods.

- In a 1993 survey of 319 victim/witness assistance programs, more than 60 percent of program directors reported there was a need to investigate threats of harassment of victims by suspects.[6]

> ***"We don't have any national gangs here in the District of Columbia, but we do have small neighborhood 'crews' involved in drug trafficking that are often just as ruthless in their willingness to shoot or murder potential witnesses."***
>
> — David Schertler, Chief, Homicide Section, U.S. Attorney's Office, District of Columbia

Prosecutors and police administrators in some jurisdictions may feel that witness intimidation is *not* a significant problem in their community and does not hamper their ability to bring offenders to trial. However, some individuals in the criminal justice system have warned, "If you feel you don't have a serious witness intimidation problem *now*—just wait." Furthermore, a jurisdiction need not have nationally affiliated gangs or rampant cocaine dealing for extensive witness intimidation to be occurring: small informal groups of neighborhood criminals and more fluid drug-dealing groups can be just as intimidating as "gang-bangers." For example, David Schertler, who heads the U.S. Attorney's Homicide Section in Washington, D.C., emphasizes that while no national gangs have taken root locally, "we do have small neighborhood 'crews' involved in drug trafficking that are often just as ruthless in their willingness to murder potential witnesses."[7]

In short, gangs or drug-selling groups do not need to be highly organized to engage in effective witness intimidation. Indeed, current research strongly suggests that these groups are not highly structured or disciplined organizations in most jurisdictions, although there are notable exceptions, including the well-established multigenerational gangs of Los Angeles and Chicago.[8]

Forms of Intimidation

Intimidation—whether of an individual or a community—may involve the following tactics:

- physical violence,
- explicit threats of physical violence,
- implicit threats,
- property damage, and
- courtroom intimidation.

Attempts by gangs or drug dealers to promote community-wide noncooperation may include the public humiliation or assault, or even execution of victims or witnesses (or members of their families), as well as isolated public acts of extreme brutality that, intentionally or unintentionally, terrify potential witnesses.

- According to one police investigator, a gang leader in Des Moines was afraid that a man he had forced out of business for refusing to pay extortion money would testify in court about the gang leader's extortion racket. When the two met at a party, the gang leader roughed up the businessman and warned him to keep his mouth shut.

- In Washington, D.C., a prosecutor reported that a female resident of a gang-dominated neighborhood where a homicide had occurred was shot and killed by gang members who saw her simply speaking to police (in fact, she had refused to cooperate in the investigation).

Some Explanations for the Recent Increase in Intimidation

"In my view the reasons for this dramatic increase in fear and intimidation are many and varied. The defendants we prosecute for committing violent crime are not only much younger than in the past, but they very often display several commonly held attitudes and beliefs, including

- a profound lack of respect for authority,
- the expectation that their own lives will be brief or will be lived out in prison,
- a sense of powerlessness and social inadequacy that can lead to the formation of gangs or neighborhood crews,
- the ready availability of very powerful firearms,
- a willingness to use those firearms for almost no reason or in retaliation for the most minimal slight to their extraordinarily fragile egos, and
- lastly, and ironically, the increased penalties being imposed on those convicted of violent crime, which can raise the stakes of a prosecution."

— *J. Ramsey Johnson, Assistant U.S. Attorney for the District of Columbia.*[9]

Prosecutors and police emphasize that the general atmosphere of intimidation and violence common to drug- and gang-dominated neighborhoods—including frequent personal exposure to drive-by shootings, armed robberies, and drug sales—is itself sufficiently intimidating to dissuade many witnesses from testifying.

- According to one homicide prosecutor, a local drug-selling gang in New York City executed a local man for a petty drug theft, decapitated him, and used his head as a soccer ball in the street. In this neighborhood, resident noncooperation was said to have prevented law enforcement officials from solving about 30 homicides in 1994 and to have allowed an atmosphere of violence in which an average of eight gunshots occurred each night.

Physical Violence

While incidents of physical violence were described by respondents in all jurisdictions, they were reported to be much more common in some jurisdictions than others. Some prosecutors, mostly from nonurban jurisdictions, reported an exaggerated sense of alarm in their communities about victim and witness intimidation, citing statistics that showed that threats were rarely carried out. However, prosecutors and police investigators in eight urban jurisdictions reported that violent acts of intimidation—including homicides, drive-by shootings, and physical assaults—occur on a daily or weekly basis.

> ***"We get as many witnesses who want protection for their family as witnesses who want it for themselves. We had a woman who saw an attempted homicide, but she wouldn't testify because she was afraid for her mother, who lived nearby."***
>
> — Daniel Voogt, Assistant County Attorney, Drug and Gang Unit, Polk County (Des Moines, Iowa) Attorney's Office

Explicit Threats of Physical Violence

Prosecutors and police investigators reported a high incidence of threats of physical violence against victims, witnesses, and their families. These respondents said that threats

are much more common than actual violence but that threats were often just as effective in deterring cooperation because in gang- and drug-dominated communities these threats are credible. Threats against a victim's or witness's mother, children, wife, or partner were cited as being particularly effective forms of intimidation. According to Daniel Voogt in Des Moines, "We get as many witnesses who want protection for their family as witnesses who want it for themselves. We had a woman who saw an attempted homicide, but she wouldn't testify because she was afraid for her mother, who lived nearby."

Indirect Intimidation

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

Property Damage

Only slightly less common than the three types of intimidation described above is intimidation involving the destruction of property: drive-by shootings into a witness's house, fire-bombing of cars, burning of houses, hurling bricks through the window of a car or home, and other types of violence.

Courtroom Intimidation

Another common form of intimidation occurs when friends or relatives of the defendant direct threatening looks or gestures at a witness in the courtroom or courthouse during a preliminary hearing or a trial. Court-packing by gang members is a particularly effective form of intimidation. Gang members may demonstrate solidarity with the defendant—and make clear their readiness and ability to harm the witness—by wearing black (symbolizing death), staring intently at the witness, or using threatening hand signals. If judges and prosecutors do not understand the meaning of certain gestures or other nonverbal threats, they may fail to address these explicit attempts to intimidate the witness. In other cases, the judge may be aware of what gang members are doing but feel that ejecting these individuals from the courtroom would violate their right to freedom of expression or the judiciary's duty to provide an open trial (see chapter 7, "Legal Issues").

Other Forms of Intimidation

Less common forms of intimidation cited by prosecutors and police include economic threats (in domestic violence or fraud cases) and threats concerning the custody of children, deportation, or the withholding of drugs from an addicted victim or witness or from addicted members of his or her family.

The Primary Actors in Witness Intimidation

Certain types of individuals are more likely than others to engage in witness intimidation or to be its targets.

Types of Perpetrators

Interviews with prosecutors, police administrators, and working-group members suggest that, if witness intimidation is known to be aggressively prosecuted in a jurisdiction, the primary intimidators will most likely be the gang, family, or friends of the defendant rather than the defendant himself. Even in the absence of aggressive prosecution, intimidation in gang-related cases is rarely carried out by defendants themselves; other gang members usually take on this responsibility. Gangs may also be ruthless in their self-protection: sometimes a gang member who becomes a defendant is seen as a potential threat to the gang and is therefore targeted for intimidation or execution.

Some prosecutors interviewed for this report expressed concerns about information gained from witnesses and then provided to defendants by defense attorneys, including, in some instances, confidential court papers. In many jurisdictions, prisoners have unmonitored access to phones and their correspondence is not screened, making it easy for even defendants who are incarcerated to arrange for intimidation attempts on the basis of improperly obtained information.[10] Some gangs are said to hire attorneys to represent witnesses who may be in custody in relation to the crime in question or on another unrelated charge, without the witness's knowledge or consent, in an effort to control his or her testimony (see chapter 7, "Legal Issues").

The Most Likely Targets of Intimidation

Anyone is a potential victim of intimidation, as the criminal justice professionals consulted for this study have empha-

sized; however, they also pointed to four factors that increase the chance that a witness will be intimidated:

- the initial crime was violent;
- the defendant has a personal connection to the witness;
- the defendant lives near the witness; and
- the witness is especially vulnerable—for example, he or she is elderly or a recent or illegal immigrant.

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

Incarcerated witnesses and juvenile witnesses are also especially vulnerable to intimidation. Witnesses who are in jail or prison are easily identified by offenders (who may themselves be either inside or outside the facility), and because they cannot hide, they are easy prey to other inmates, including the defendants in the case at hand or defendants' associates or family members.

Sources of Information for This Report

The information presented in this report comes principally from four sources:

- a literature search and a review of the relevant case law;
- structured telephone interviews with 32 criminal justice professionals from 20 urban jurisdictions, including prosecutors; Federal, State, and local law enforcement officers; directors of victim/witness services programs; judges; and academics;
- the comments of a working group of 20 criminal justice professionals, including several of those already interviewed, contributed during an all-day meeting held in Washington, D.C., in September 1994;[11]
- structured telephone interviews with from four to six additional criminal justice system professionals in each of four jurisdictions—Las Vegas, Los Angeles, Minneapolis, and Philadelphia; and
- on-site interviews with over 50 professionals, conducted in Baltimore, Des Moines, New York City, Oakland, San Francisco, and Washington, D.C.

Candidate study sites were identified on the basis of telephone calls made to over 40 jurisdictions selected to represent a wide geographic distribution. The project's advisory board (see page ii) and other criminal justice practitioners and experts also made recommendations. Jurisdictions were then selected for site visits or telephone interviews on the basis of the size, geographic distribution, and the thoroughness and creativity of their witness protection procedures.

No formal witness protection programs in rural areas were identified; rural law enforcement officers and prosecutors reported that formal programs were not needed because intimidation cases requiring special measures occurred too infrequently. However, these practitioners also felt that most of the individual protection strategies available in larger jurisdictions could be used in rural areas on an ad hoc basis, although in some cases planning would be required to make sure the approaches, even if needed infrequently, could be used on short notice. Furthermore, since the research for this publication was completed, some rural law enforcement administrators and prosecutors have begun to suggest that, with the spread of gangs to their jurisdictions, they are beginning to see the need for comprehensive witness protection programs.

"Once the testimony has been given, it's done; all the pressure is gone. Bad guys don't want to go to jail for intimidation* after *the witness has testified."

— Dennis O'Donnell, Investigator, Des Moines, Iowa, Police Department

Juveniles are another especially vulnerable group because they are often less able or less willing to take precautions against being located by would-be intimidators, and because they are more susceptible to family or peer pressure not to testify. Relocated juveniles may endanger themselves by contacting old friends and visiting old neighborhoods. Juveniles may also be less able to take advantage of witness security measures, even where these are available, because minors not living with both parents may not relocate out of State, or in extreme cases, change their identity, without the consent of the noncustodial parent.

Despite the diversity of individuals associated with witness intimidation, most explicit intimidation occurs only *when there is a previous relationship or other connection between the defendant and the victim* and *they live relatively close to each other*. As a result, witnesses who have been—and stay—relocated and are able to keep their home and work addresses secret are generally immune to intimidation. Most prosecutors and police consider it extremely rare for defendants or their associates to leave their own communities to intimidate a witness in another jurisdiction or even another neighborhood.

When Intimidation Occurs

Prosecutors and police agree that the most dangerous time for a witness is between the arrest and the trial of a defendant. Although there was some variation by jurisdiction, in general, as the trial approaches, the victim or witness becomes a more likely target, and the long trial delays experienced in most jurisdictions allow ample opportunity for intimidation. The second most dangerous period for victims and witnesses is during the trial itself. However, according to one police investigator in Des Moines, whose observation was reflected in the experience of other law enforcement officers and prosecutors, "Once the testimony has been given, it's done; all the pressure is gone. Bad guys don't want to go to jail for intimidation *after* the witness has testified."

Very few intimidation attempts are made at the scene of the crime (although violent crime is in itself intimidating) or at the time of arrest. However, in cases involving community-wide intimidation, the witness may feel endangered from the moment he or she is aware that the crime is gang- or drug-related.

Conclusion

Witness intimidation is a pervasive and insidious problem. No part of the country is spared, and no witness can feel entirely free or safe. The remainder of this report provides police investigators and prosecutors with a variety of methods—all currently in use—for helping to prevent intimidation. While the severity and ubiquity of the problem may seem discouraging, investigators and prosecutors who have used these approaches have made it possible for key witnesses to testify and thereby convict thousands of violent felons who might otherwise have gone free.

Endnotes

1. However, see, for example, Connick, E., and R.C. Davis, "Examining the Problem of Witness Intimidation," *Judicature* 66 (1983): 439–447; and Davis, R.C., "Victim/Witness Intimidation in the Bronx Courts: How Common Is It, and What Are Its Consequences?" unpublished monograph, New York: Victim Services Agency, 1990.

2. Davis, "Victim/Witness Intimidation in the Bronx Courts."

3. In the late 1960s, the U.S. Department of Justice recognized that victim and witness intimidation had become a serious impediment to obtaining testimony in organized crime cases. In response, Congress enacted the Organized Crime Control Act of 1970, laying the basis for the Federal Witness Security Program, which operates today under the Witness Security Reform Act of 1984. In 1982, the Victim and Witness Protection Act expanded Federal laws regarding witness security and victim services by establishing significant penalties for witness tampering, intimidation, and harassment; providing for civil restraining orders; authorizing restitution for crime victims; and outlining Federal guidelines for the fair treatment of victims and witnesses. The problem of witness intimidation was also highlighted by the American Bar Association in the early 1980s in "Reducing Victim/Witness Intimidation: A Package," Washington, D.C.: American Bar Association, 1983; in Connick and Davis,

"Examining the Problem of Witness Intimidation"; and in Cannavale, F.J., and W.D. Falcon, *Witness Cooperation*, Lexington, Massachusetts: D.C. Heath, 1976.

4. Although there is no research supporting the perceived connection between the arrival of crack cocaine in the mid-1980s and an escalation in gang- and drug-related violence, the majority of prosecutors and police officers interviewed for this report attributed the escalation of gang- and drug-related intimidation to this event. A recent publication that examines the perceived connection between gangs, violence, and crack sales suggests that the statistical connection between street gangs, drug sales, and violence is smaller than anticipated. See Maxon, C. L., *Street Gangs and Drugs Sales in Two Suburban Cities*, Research in Brief, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, September 1995.

5. Johnson, C., B. Webster, and E. Conners, *Prosecuting Gangs: A National Assessment*, Research in Brief, U.S. Department of Justice, National Institute of Justice, February 1995.

6. McEwen, T., "Understanding the Needs of Victim Assistance Programs," unpublished report, U.S. Department of Justice, National Institute of Justice, n.d.

7. The violent intimidation practiced by Washington, D.C., crews is well documented in the news media. See, for example, "The Teflon Suspect: In 6 Years, Prosecution Hasn't Been Able To Make Charges Stick," *Washington Post*, March 27, 1994.

8. For an analysis of the relationship between gang membership, crime, drug sales, and gang structure, see Decker, S.H., "Gangs, Gang Members, and Drug Sales," unpublished paper presented at the National Institute of Justice Workshop on Gangs, August 6, 1995. (See also chapter 8, "Sources of Help.")

9. Johnson, J. Ramsey, Assistant U.S. District Attorney for the District of Columbia, Statement Before the Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, U.S. House of Representatives, August 4, 1994.

10. For an illustration of intimidation orchestrated by mail from jail, see "Letters from Gang Members Leave Trail of Violence," *Washington Post*, May 24, 1995.

11. The results of the interviews and working group meeting are available in Healey, K.M., *Victim and Witness Intimidation: New Developments and Emerging Responses*, Research in Action, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, October 1995.

PART I
Components of a Comprehensive Witness Security Program

Chapter 2
Traditional Approaches to Witness Security

Key Points

- Four traditional approaches to witness security are
  - — requesting high bail,
  - — prosecuting intimidators vigorously,
  - — making a conscientious effort to manage witnesses, and
  - — enhancing basic victim/witness program services.
- These traditional approaches to addressing witness intimidation tend to have limited effectiveness, but some prosecutors and police investigators have added innovative twists that make them more useful.
- Practitioners suggest that witness management in particular can be effective in addressing implicit, imagined, and overt intimidation, especially when intimidation occurs in the courtroom or is caused by juveniles.
- While all four traditional approaches to addressing witness intimidation have drawbacks, they are important to implement because they make symbolic statements to the community and to other potential witnesses that the criminal justice system takes witness intimidation seriously.

For the purposes of discussion, the steps that criminal justice agencies have taken for preventing witness intimidation can be divided into two types:

(1) approaches that many jurisdictions have been using for a long time, which are here called "traditional," and

(2) approaches that relatively few jurisdictions have implemented, here termed "innovative."[1]

This chapter discusses four traditional approaches to witness protection:

- requesting high bail,
- prosecuting intimidators vigorously,
- conscientiously managing witnesses, and
- enhancing basic services provided by victim/witness assistance programs.

The following three chapters address innovative—that is, less widely used—methods. The remaining chapters suggest a process for combining both types of approaches into a comprehensive master plan for preventing intimidation.

Requesting High Bail

A long-standing strategy for preventing witness intimidation has been to request high bail for defendants or to ask

that they be jailed without bail, in an effort to put and keep them behind bars so that they cannot personally threaten or harm witnesses. Most prosecutors interviewed for this report consider high bail an essential component of an effective witness protection program. However, the strategy has limitations:

- Unless there is State legislation that permits judges to establish bond on the basis of the defendant's danger to the community (so-called preventive detention statutes), a judge may consider only the defendant's predisposition to show up for trial in setting bail.

- Judges in many jurisdictions operate under strict bond schedules that typically provide for relatively small bail levels for intimidation.

- Jail and prison crowding in most jurisdictions weighs heavily on the minds of judges when setting bail.

- Locking up defendants who are gang members does not prevent the incarcerated individuals from arranging for gang associates to intimidate witnesses. Even without prompting, the defendant's family members may threaten or injure the witness.

Daniel Voogt, one of three assistant county attorneys who make up the special Gang and Drug Unit in the Polk County (Des Moines) Attorney's Office, uses three strategies to make bond requests more effective. First, whenever possible, Voogt will file more than one charge against the defendant and ask for bond on each charge. For example, with a drive-by shooting, he will charge attempted murder, terrorism, and weapons possession (if the defendant is a felon). Although some judges will then give the highest bond among the charges, about half the time the court agrees to setting separate bonds for each charge.

Second, Voogt sometimes asks for high bond immediately after an arrest to force the defendant to request a bond reduction hearing; if granted, this at least keeps the defendant in jail for a few days while the police and Voogt talk with witnesses. In addition, Voogt tries to make his bond request when the on-call judge on duty is one who is known for setting high bail. The potential value of this approach was illustrated in a case in which a gang leader was arrested on a Friday. Voogt asked for no bond, charging that the defendant had already intimidated the witness. The judge agreed, and the man spent the weekend in jail until a bond reduction hearing on Monday enabled him to post bail.

Third, on occasion Voogt himself requests a bond review hearing to request higher bail. In one case, the court had already followed his recommendation and set a $100,000 cash-only bond for a defendant wanted for attempted murder who had been at large for over a week. However, when the defendant turned himself in on a Friday, he received an automatic bond review on Saturday that resulted in a bond reduction to cash or surety because the assistant attorney on weekend duty was unfamiliar with the case. When Voogt discovered this on Monday morning, he asked for another bond review, at which police officers testified to the defendant's gang membership and to his refusal to surrender himself for over a week despite a manhunt. As a result, the judge reinstated the cash-only bond and, since the defendant had been ordered to come to court for the bond review, he was ordered back to jail, where he remained until his later guilty plea.

Deputy Chief Thomas Mills of the Kansas City (Missouri) Police Department tries to buttress his case for high bail by looking up the defendant's records for previous violations with which to charge him, since he can then argue that the greater the number of charges, the greater the risk the defendant will not appear for trial. Mills also sees if he can charge the defendant with a violation of a Federal statute—for example, possession of a firearm after a prior felony conviction—which also makes it more difficult for the person to get bond.

Vigorous Prosecution of Intimidators

All the jurisdictions studied for this report have some type of statute prohibiting witness intimidation or obstruction of justice. In addition, all the prosecutors interviewed charge some individuals under these statutes. However, because they have very different perceptions about how useful their statutes are, some prosecutors charge intimidation frequently and others rarely.

Charging Practices

The Philadelphia District Attorney's Office frequently prosecutes individuals for violating the Pennsylvania felony intimidation statute, getting a warrant issued within one to five days after a detective takes the witness's statement. Although the bail commissioner who issues the warrant is bound by the city's prison cap guidelines, witness intimidation is an exception to these guidelines. By contrast, Alfred Giannini, a homicide prosecutor in San Francisco, rarely

brings charges under the California witness intimidation statute even though the legislation makes the act a felony punishable by 16 months to 3 years in prison; Giannini says he uses the statute with great discretion because "if you arrest and don't charge or make it stick, you send a message that you're impotent."

Minnesota has a witness tampering statute, but Paul Scoggin, the deputy county attorney in charge of the appellate division of the special litigation unit in the Hennepin (Minneapolis) County Attorney's Office, makes more frequent use of a State accomplice-after-the-fact statute because it permits much stiffer sentences. Scoggin reports that because of the potential severity of the punishment, prosecutors rarely have to bring actual charges. Instead, they or police investigators explain to intimidators the penalties they risk under this statute if they continue to threaten witnesses. As a result, Scoggin says, many intimidators stop their behavior. Victoria Villegas, a deputy district attorney in the Las Vegas prosecutor's Major Violators Unit, charged a gang member with six counts of intimidation after he had used his finger to simulate pointing a gun to his head in an attempt to intimidate a witness in court. Villegas used a Nevada law that, when combined with the State's gang enhancement statute, doubles the punishment for intimidation. The judge put the gang member in jail because of the gang enhancement charge (and because the intimidation occurred in *her* court).

The Washington, D.C., Council has increased the maximum penalty for obstruction of justice to the maximum penalty for the underlying offense. In an unusual resolution, the Federal judges of the U.S. district court notified criminal defendants and those assisting them that "stern measures will be taken by the court to halt witness intimidation," including the imposition of maximum sentences.[2] In addition, the judges resolved to request that law enforcement authorities investigate reports of witness intimidation on an urgent basis.

The principal features of these and other anti-intimidation statutes are discussed further in the section, "Legislation Designed To Prevent Intimidation" in chapter 7, "Legal Issues."

Advantages and Drawbacks of Prosecution

Several prosecutors and police officers agreed with Richard Carroll, the head of the Felony Waiver Unit in the Philadelphia District Attorney's Office, who said, "Courts like and respect intimidation charges and take these cases seriously—sometimes more seriously than the underlying case." Carroll offers another reason to prosecute individuals who intimidate witnesses: if the person charged is on probation or parole, binding him or her over for a felony trial, unlike simple arrest, constitutes a *prima facie* case to revoke probation or parole and detain that person pending a hearing on whether any parole or probation conditions have been violated. In addition, when defendants are drug dealers, they are likely to be especially reluctant to risk jail and be forced to leave their businesses.

> ***"Courts like and respect intimidation charges and take these cases seriously—sometimes more seriously than the underlying case."***
>
> — Richard Carroll, Chief, Felony Waiver Unit, Philadelphia District Attorney's Office

Alfred Giannini, assistant district attorney in the San Francisco District Attorney's homicide unit, used the California witness intimidation statute in a case involving

Prosecution Strategies

- ✔ If the defendant is on probation or parole, ask the probation or parole officer to make it very clear that any harassment (or additional act of harassment) will result in imprisonment.
- ✔ Look at the defendant's rap sheet for dismissed cases or withdrawn complaints, which often indicate the use of intimidation in the past. Reopen these old cases and bring new charges against the defendant based on any past transgressions that are still within the statute of limitations.
- ✔ Go to the defendant's home, or to the homes of other reported intimidators, and tell them what will happen if they intimidate the witness.
- ✔ Ask the defendant's attorney to warn the defendant against trying to intimidate witnesses and to explain the possible consequences.

an explicit death threat as part of a plea bargain, and the court sent the defendant to jail for a year for the intimidation. Charles Grant, former chief of the Philadelphia District Attorney's homicide unit, observes, "Going after intimidators shows the witness 'We will help you, we care about you, we're not just after your testimony and then bye-bye.'" To emphasize the point, Grant made sure that witnesses were informed whenever the court locked someone up who had tried to intimidate them.

According to Lieutenant Teresa Lesney, Commander of the Gang Investigation Section of the Las Vegas Police Department, an intimidation charge is a useful tool for stacking charges. Because defendants usually have cases pending , a prosecutor can often use the witness intimidation charge in a plea bargain to get a higher sentence on another charge. As a result, most defendants charged with intimidation in Las Vegas serve at least a little time. However, this approach may inadvertently backfire if the witness and other potential intimidators feel the prosecutor is sending the message that witness intimidation is unimportant compared to the other charges. As a result, Deputy Chief Thomas Mills in Kansas City recommends bargaining away the other charges in exchange for a guilty plea to the intimidation charge if jail time is likely to be part of the intimidator's sentence.

The principal drawback to charging offenders with witness intimidation is that it is often difficult to convince judges to set high bail, or any bail at all. Furthermore, according to Daniel Voogt in Des Moines, "Defendants come up with amazing amounts of cash, or their friends post bond, or they find a bondsman." Voogt has also found that prosecuting these cases can be difficult in terms of getting sufficient evidence because the threats themselves are often subtle. Furthermore, because the Iowa tampering statute makes the offense only a misdemeanor, getting jail time is all but impossible. "Intimidators simply see the tampering statute as the cost of doing business." Richard Carroll notes that a weakness in the Pennsylvania statute is that it does not cover associates or family members who are intimidated, only the witness.

Even in jurisdictions with strong statutes, some prosecutors feel that the types of individuals who will engage in intimidation are not frightened by the prospect of spending time in jail. Paradoxically, other prosecutors feel that strong anti-intimidation statutes could make some intimidators *more* dangerous: alleged offenders who know that with one more conviction they will be locked up (for example, because of a three-strikes or habitual offender statute) may decide to escalate the intimidation in an effort to ensure that no one will dare accuse them of threatening a witness.

Jurors Can Also Be Intimidated

According to James Anderson, Assistant District Attorney in Alameda County (Oakland), "Jurors *do* feel intimidation. On the questionnaire that prospective jurors complete, some people write, 'I could not vote for the death penalty (in a capital case) because I know it's gang-related and I don't feel safe.'" For this reason, Alfred Giannini in San Francisco uses his peremptory challenges to exclude potential jurors who live in the same neighborhood as the defendant. Anderson himself once used a peremptory challenge to keep a man off the jury whom he suspected might be susceptible to intimidation; the next day, when he ran into the rejected juror at a fast food restaurant, the man spontaneously thanked him for excluding him because, indeed, he had been afraid of retaliation. An assistant State's attorney in Baltimore reported he found it difficult even to impanel a jury in some cases because of the prevalence of implicit, community-wide fear. According to New York City gang prosecutor Walter Arsenault, in order to make juror intimidation more difficult, instead of revealing their precise address, jurors in Manhattan are required to provide only the section of the borough where they live.

Witness Management

A number of prosecutors and police investigators reported that they spend considerable time—sometimes an inordinate amount of time—taking steps to make sure particularly important witnesses will testify. The steps may include

- reassuring witnesses that they are safe;
- arranging protection;

Witness Management Strategies

- ✔ Contact witnesses as soon as possible and let them know how they can get in touch with you quickly.
- ✔ Don't dodge the intimidation issue with witnesses, or give false assurances; simply explain that you are available and how to reach you if the witness has any problems. If other witness security services are available, make the witness aware of them.
- ✔ Audiotape or videotape witness's statements in case he or she recants.
- ✔ Start witnesses off without the tape running, to avoid making them nervous, and then turn it on, telling them, "We want to have a record of what you know." Make duplicate tapes for the police investigator (or prosecutor) and for discovery.
- ✔ Find out what the source of the intimidation problem is; it may be the witness's fear for his or her family, not for his or her own safety.
- ✔ Don't change personnel on the witness, who may become frightened at losing the relationship that has been established with a particular investigator or deputy county attorney.
- ✔ Be accessible to key witnesses at all times by giving them your pager number, direct office telephone number, or even your home telephone number, and by meeting with them in person.
- ✔ If true, explain to witnesses that they are not the only ones putting themselves at risk to get the defendant convicted.
- ✔ Although the majority of witnesses may have criminal backgrounds or associates and they may be scorned as "snitches," treat them with respect and concern.
- ✔ Consider managing potential *intimidators*, as well. In one small jurisdiction, police officers found it effective to visit the families of potential intimidators to explain forcefully the laws concerning obstruction of justice.

- providing material support, ranging from small amounts of cash for food to a part-time job; and
- checking regularly on their whereabouts.

Why do all this? According to prosecutor Alfred Giannini in San Francisco, "You have to be prepared to deal with the entire range of witness problems from the beginning. It wrecks a case if a key witness recants; you don't just lose a witness, you lose the case because it kills the DA's and cops' credibility." So Giannini does whatever it takes. He gives key witnesses his home phone number and puts up with callers asking, "My mother is sick; can you send me to Georgia to be with her?" or, "How can I live on $15 a day for food?"

Polk County prosecutor Daniel Voogt in Des Moines gives his pager numbers to key witnesses and shows up at the scene of many gang and felony-level drug cases in part to make sure that witnesses know whom to call if they are intimidated. John Sarcone, the county attorney and Voogt's supervisor, goes to the scene of *every* murder, and he encourages key witnesses to call him, giving them his direct office telephone number and, when necessary, meeting with them in person.

Investigator Blaine Tellis of the Des Moines Police Department's Special Investigations Unit gave a key Vietnamese witness in an Asian gang extortion case his 24-hour pager number and home phone number (warning him strongly not to misuse the latter). The witness made proper

use of both numbers. In one instance, he had been roughed up at a party and called to question whether it was safe to stay at home. Tellis offered to put him up in a motel, and, although the witness chose to stay with friends instead, also asked an officer who was stationed in the precinct to drive by the man's house a few times during the night. The second time the witness called he was out of money and hungry. Because the man was reluctant to ask for help, Tellis insisted on giving him aid. Tellis hand-carried him $50 in cash and got a receipt. Tellis also called him three to six times a day for the first week to make sure he was safe, then daily for two weeks, then once every two or three weeks—even after the man had relocated temporarily to Vietnam pending trial. When the witness was flown back for trial at the police department's and prosecutor's expense, the defendant agreed to a plea bargain during the deposition hearing—as soon as he saw that the man was available and prepared to testify. Tellis and Daniel Voogt, the prosecutor, then arranged to have the witness's moving expenses paid so that he could relocate to another State.

Several county attorneys also emphasized the following advantages of vertical prosecution for witness management, whereby the same assistant county attorney handles a given case from initial filing through motions, trial, and any appeals:

- It makes it easier to manage witnesses because they feel reassured by maintaining continuity with the same prosecutor.
- It precludes the need for police investigators to establish rapport with each new prosecutor and provide each one all the details of the case.
- It enables county attorneys to develop expertise on gang- and drug-related cases that facilitates their working with the investigators and handling witnesses effectively.

These prosecutors and investigators in effect act as case managers for their witness "clients"—largely because there is no one else available to shoulder these responsibilities. Investigators who stay with a case through all its stages often have the strongest motivation and the most knowledge to keep the witness on board. Furthermore, they know that most witnesses feel a lot safer, and are more likely to testify, if there is a single point of contact within the criminal justice system to whom they can go whenever they are afraid. Finally, some investigators feel that existing witness protection services fail to provide adequate services. One detective reported, "I don't use our department's protection program because it's difficult to get funds from the program, some key witnesses don't meet its criteria, and it doesn't provide the level of protection witnesses need to get them to cooperate. So I do it [case management] on my own." Other programs fail to provide 24-hour, 7-day-a-week service—and investigators often need help most critically at night or on weekends.

Advocates in the Hennepin County (Minneapolis) Victim Witness Program tell witnesses that most people are afraid to testify but that program staff have yet to see retaliation against a fearful witness who has taken the proper precautions. Advocates emphasize that the safety of witnesses depends far more on what they do than on what advocates and prosecutors do. They also try to get witnesses who seem unjustifiably afraid to articulate what *they* feel they need in

Interviewing Strategies

- ✔ Don't talk to witnesses at the scene; they may fear being seen "cooperating" with the police or prosecutor.
- ✔ Don't appear at the door of potential (or actual) witnesses, which may label them as "snitches" and increase their reluctance to cooperate with the investigation. Arrange interviews away from the community in a neutral place, such as on a boat, in a church whose clergy you know, or in an unmarked van.
- ✔ Witnesses will often say they will talk to you but will not go to court. Tell them that is all right and get all the information you can anyway. You can always consider subpoenaing an individual later as a hostile witness, if necessary.
- ✔ Tell witnesses that they have vital information—and what can be done for them. Use salesmanship, because they may not believe you at first. Tell witnesses specifically what you can do to protect them.

order to feel safe enough to testify. A witness may say, "I just need my door fixed and a good lock put on it," or "I don't have a telephone to call 911 if I am threatened"; the Hennepin County program will then pay for having the door fixed and a lock installed, or pay for the installation (but not monthly charge) of a telephone.

> ***"When you get involved with witness security you become a huge social service agency. You're responsible for treating venereal disease, solving personal and financial problems, and dealing with pregnancies, immigration issues, and Social Security payments. [Witnesses] are often dysfunctional."***
>
> —Walter Arsenault, Chief, Homicide Investigation Unit, Manhattan District Attorney's Office

The burden on a prosecutor's or a police officer's time and emotions in managing a witness can be considerable. As Walter Arsenault, Chief of the Manhattan District Attorney's Office's Homicide Investigation Unit, says, "When you get involved with witness security you become a huge social service agency. You're responsible for treating venereal disease, solving personal and financial problems, and dealing with pregnancies, immigration issues, and Social Security payments. [Witnesses] are often dysfunctional." As a result, few prosecutors or police officers have the time or energy to manage a witness from the beginning to the end of a given case. Because of this limitation, a few prosecutors' offices have identified a single person to act as a case manager for all their intimidated witnesses. Chapter 6, "Developing a Comprehensive Witness Security Program," describes such an organized case management approach; however, even with the efforts of skilled case managers, it is likely that prosecutors and police investigators will themselves need to provide special attention to key witnesses in order to keep them reassured and willing to cooperate throughout the frequently lengthy criminal justice process.

Given the likely need for continued time-consuming witness management, police executives and chief prosecutors need to consider ways to lessen the burden on investigators and assistants, such as by streamlining procedures for providing funds (at least in emergency situations) for witness support activities, identifying a staff person to act as a case manager, and providing public recognition to staff who take extra time to manage witnesses.

Basic Victim/Witness Assistance Program Services

Almost all jurisdictions contacted for this report provide some support services for witnesses through victim/witness assistance programs housed in the prosecutor's office, police department, or another local government agency, or operating as freestanding community-based organizations. Depending on their resources, most victim/witness assistance programs offer basic support by explaining the operations of the criminal justice system and providing court escort.[3]

- Most programs provide victims and witnesses with an explanation of the adjudication process and a tour of the courtroom. This orientation can allay the fears of some intimidated witnesses by removing uncertainty about what will happen to them as the case proceeds.

- Many programs provide areas where victims may wait apart from the defendant before testifying, and most also provide advocates to escort frightened witnesses to and from court. Prosecutors in the Clark County (Las Vegas) Attorney's Office regularly call the county's victim/witness assistance program if they know that a witness feels intimidated to request that the program advocate stationed in the court sit with the witness during the hearing or trial. Based on public hearings, the American Bar Association has concluded that

  > the mere presence of a third person who knows the criminal justice system can be dramatically reassuring to the crime victim or key witness. Simply having someone to talk to during the trial or to walk to the drinking fountain or the restroom with (vitally important if the defendant is on bail or his family is in or near the court) are very important to the victim or witness in reducing perceived intimidation in almost every case and to the reduction of real threats in a considerable number.[4]

Some programs take further measures that may help prevent intimidation as well as reduce witnesses' fears. When they learn that a victim has been intimidated by a defendant, Polk County victim service program staff often call the public defender to ask that the client be told to "ease up"; typically, the intimidation stops. Some programs provide victims with security surveys and lock repairs. The St. Louis Victim Service Council arranges for police to conduct security surveys of homes. Staff of the Greenville (South Carolina)

Victim/Witness Assistance Unit, having been trained by local police, conduct these security checks themselves. These services can be expanded to include witnesses who feel that would-be intimidators could invade their homes. On a few occasions, the Hennepin County Attorney's Office has arranged to have security systems installed in the home of key witnesses who refused to relocate even temporarily due to job requirements or family ties, or because they felt they would be safe as long as their homes were wired into the police station. The cost of a security system may even be less than the expense of relocation in some cases.

> ***"Victim advocates help immensely with witness intimidation because the primary battle is perceived intimidation, and advocates can convince people through a lot of day-to-day hand-holding that, unless they have actually been threatened, they can testify safely."***
>
> — Paul Scoggin, Chief, Appellate Division, Special Litigation Unit, Hennepin County (Minnesota) Attorney's Office

Many victim assistance programs encourage witnesses to contact them immediately if they experience intimidation. The Clark County victim/witness assistance program gives a pamphlet to clients that includes a discussion of witness intimidation under the heading "What if Someone Threatens Me To Drop the Case?" Prosecutors and police administrators can ask the coordinators of every local victim assistance program to make it standard operating procedure for all advocates to ask victims and witnesses if they are afraid of retaliation. Program staff can then do what they can to reassure each witness, including providing assurances that, unless there has been an actual threat made to them, they have little to be worried about. Advocates can work to allay apprehensions on a long-term basis, not just during the two days before trial when most prosecutors begin to spend time with a witness. For a sample victim/witness services interview guide for intimidated witnesses, see appendix A1, "Intimidation Interview Guide."

Victim/witness assistance programs can be especially helpful and cost-effective by counseling, staying in regular touch with, and escorting witnesses who exaggerate the risk of retaliation—thereby making it unnecessary to expend scarce resources on actually relocating them. According to Paul Scoggin of the Hennepin County Attorney's Office, "Victim advocates help immensely with witness intimidation because the primary battle is perceived intimidation, and advocates can convince people through a lot of day-to-day hand-holding that, unless they have actually been threatened, they can testify safely."

Although lack of funds and limited hours of operation place constraints on the help that most victim/witness assistance programs can offer, the reassurance and court escort services they provide are an indispensable component of a comprehensive witness security effort. Furthermore, as illustrated in the box "Las Vegas Witness Assistance Center Helps Relocate Witnesses" a few victim assistance programs have begun to provide actual security by arranging for witnesses to relocate temporarily.

Conclusion

A number of jurisdictions have implemented other traditional forms of witness protection, but each has serious drawbacks. For example, many police departments have on occasion provided 24-hour protection, but this approach is very expensive, and in the vast majority of cases it is not needed. Some judges issue warnings to defendants and other people in the courtroom not to contact witnesses, but prosecutors and police agree that these admonitions are usually ineffective in dealing with today's hardened gang members and drug dealers.

Despite the limitations of traditional approaches, it is still important for prosecutors and police investigators to include them as part of a comprehensive plan for preventing intimidation. In some cases, these methods *can* be effective with certain types of intimidation. In addition, using traditional approaches makes an essential symbolic statement that the criminal justice system cares about witnesses, takes intimidation seriously, and is determined to prevent it. Sending this message may encourage some hesitant witnesses to testify and discourage some would-be intimidators from taking action. Furthermore, in rural areas, where intimidation may occur infrequently and where, as a result, it may be impractical or not cost-effective to develop a comprehensive witness protection program, selected traditional approaches by themselves may provide adequate protection. However, even in rural areas traditional approaches are likely to have a greater impact if they are implemented in conjunction with other techniques for preventing intimidation. By applying several strategies in tandem, a comprehensive program creates the impression

Las Vegas Witness Assistance Center Helps Relocate Witnesses

Barbara Schell, the director of the Las Vegas District Attorney's Witness Assistance Center, estimates she devotes about 10 percent of her time—much of it overtime and after hours—to protecting witnesses, mostly in gang-related cases. Schell accepts these cases only from the police and prosecutors; she refers call-ins and walk-ins seeking protection to the police investigator or deputy district attorney handling the case in question. Acting as case manager, Schell assesses the witness's need for protection and lines up the needed services.

Schell makes herself available by beeper 24 hours a day to police officers and selected witnesses. She helps about four witnesses in gang cases per month and relocates about six of these individuals a year. She may spend two weeks nearly full time on a single case. For example, on one occasion when police officers referred a family to her for assistance, the father said that the defendants boasted they were going to firebomb his house with his wife and children in it. As a result, she moved the family twice during the night from one motel to another and at 10:00 a.m. the next morning arranged for them to stay with relatives in another town.

For the most part, these witness protection efforts are a one-person operation that Schell has voluntarily decided to undertake because the need is there—and not being met. However, she coordinates her activities closely with prosecutors and local police departments. If she puts someone in a hotel, she tells the sector shift sergeant and police gang detail so that, if a call comes into the station from the hotel or from the witness, the officers sent to the scene will know what to expect and with whom they are dealing. Schell also calls the assistant district attorney prosecuting the case regarding any actions she has taken.

and the reality of a concerted and determined effort by the criminal justice system to deal effectively with this problem.

The following three chapters present more innovative approaches to witness security which, when used with the traditional approaches presented in this chapter as part of a comprehensive witness protection strategy, may do a great deal to prevent intimidation and encourage a larger percentage of intimidated witnesses to testify.

Endnotes

1. The separation of approaches into "traditional" and "innovative" is somewhat arbitrary in that some prosecutors and police administrators who have never used the methods referred to as traditional may find them unfamiliar, while other criminal justice system practitioners who have been using so-called innovative approaches for a number of years may consider them standard practice.

2. Johnson, J. Ramsey, Assistant U.S. Attorney for the District of Columbia, Statement Before the Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, U.S. House of Representatives, August 4, 1994.

3. Tomz, J.E., and D. McGillis, *Serving Crime Victims and Witnesses*, 2nd ed., Issues and Practices, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1996.

4. American Bar Association, "Reducing Victim/Witness Intimidation: A Package and 'How To Do It' Suggestions for Implementing the ABA Victim/Witness Intimidation Recommendations," Washington, D.C.: American Bar Association, 1982, 28–30.

Chapter 3
Relocating Intimidated Witnesses

Key Points

- Many police investigators and prosecutors consider confidential relocation to be the single most reliable protection for witnesses.
- Lack of funds and personnel can make it difficult to use relocation as often as desired.
- While all witness security programs should have the capacity to relocate witnesses, in practice, small or rural jurisdictions may use relocation only once or twice a year.
- There are three levels of witness relocation:
  - — *emergency relocation*, which usually involves placing the witness and his or her family in a hotel, motel, or safe house on a very short-term basis;
  - — *short-term relocation*, which utilizes many of the same approaches as emergency relocation but may also include placement in a month-to-month rental accommodation or placement with an out-of-town relative or friend; and
  - — *permanent relocation*, which may involve a move between public housing developments or Section 8 housing, or one-time grants of first and last month's rent to reestablish the witness in new private housing, and occasional use of the Federal Witness Security Program.
- To make relocation effective, relocated witnesses often need assistance with the transfer of social services and school and other records, and sometimes with obtaining treatment for drug addiction.
- In addition to logistical difficulties associated with moving and protecting witnesses and their families, witnesses often present a number of social problems—such as addiction, unemployment, poverty, gang membership, and even criminal activity—which make relocating and managing them a challenge.
- Prosecutors disagree about the length of time a witness needs to commit to relocation. In jurisdictions where gangs are highly organized and multigenerational, prosecutors insist that relocation should be permanent; in jurisdictions with smaller, less formal gangs, short-term relocation is reported to be adequate.
- Most relocations involve witnesses living in public housing. A variety of approaches to working with local public housing authorities can facilitate moving these witnesses in an expeditious manner.

Witness relocation is a critical component of all serious witness security efforts examined in this report. Many police investigators and prosecutors consider secure relocation to be the single most reliable protection for witnesses in urban, suburban, and rural areas. However, lack of funds and personnel, and problems related to managing relocated witnesses, make it difficult for most jurisdictions to use relocation as often as they would like.

In general, there are three levels of witness relocation: emergency relocation, which is needed immediately and typically lasts only a few days; short-term or temporary relocation, which typically lasts for a few months or up to a year (or until the conclusion of the trial); and permanent relocation. These three levels may overlap in some jurisdictions and, as discussed below, there are differences of opinion concerning the length of time a witness needs to commit to relocation. Figure 3-1 presents the steps that investigators and prosecutors can use in deciding whether to offer a witness relocation in a given case, and at what level.

Emergency and Short-Term Relocation

Short-term relocation is handled differently in each jurisdiction studied, depending on the housing needs of the intimidated witnesses and the resources available to prosecutors and police investigators. Three common approaches are

- maintaining witnesses and their families in hotels and motels for the duration of the threat or until a permanent option can be found (the most expensive approach),
- a combination of a motel and such measures as the offer of a bus or plane ticket to send the witness to stay with out-of-town friends or relatives, and
- relocation to temporary out-of-town accommodations under a month-to-month lease arrangement.

Prosecutors' choices regarding the type of emergency or short-term relocation they use are determined by the available resources, the structure of the security program, and the assistance available from other agencies.

How Emergency and Short-Term Relocation Procedures Work in Three Jurisdictions

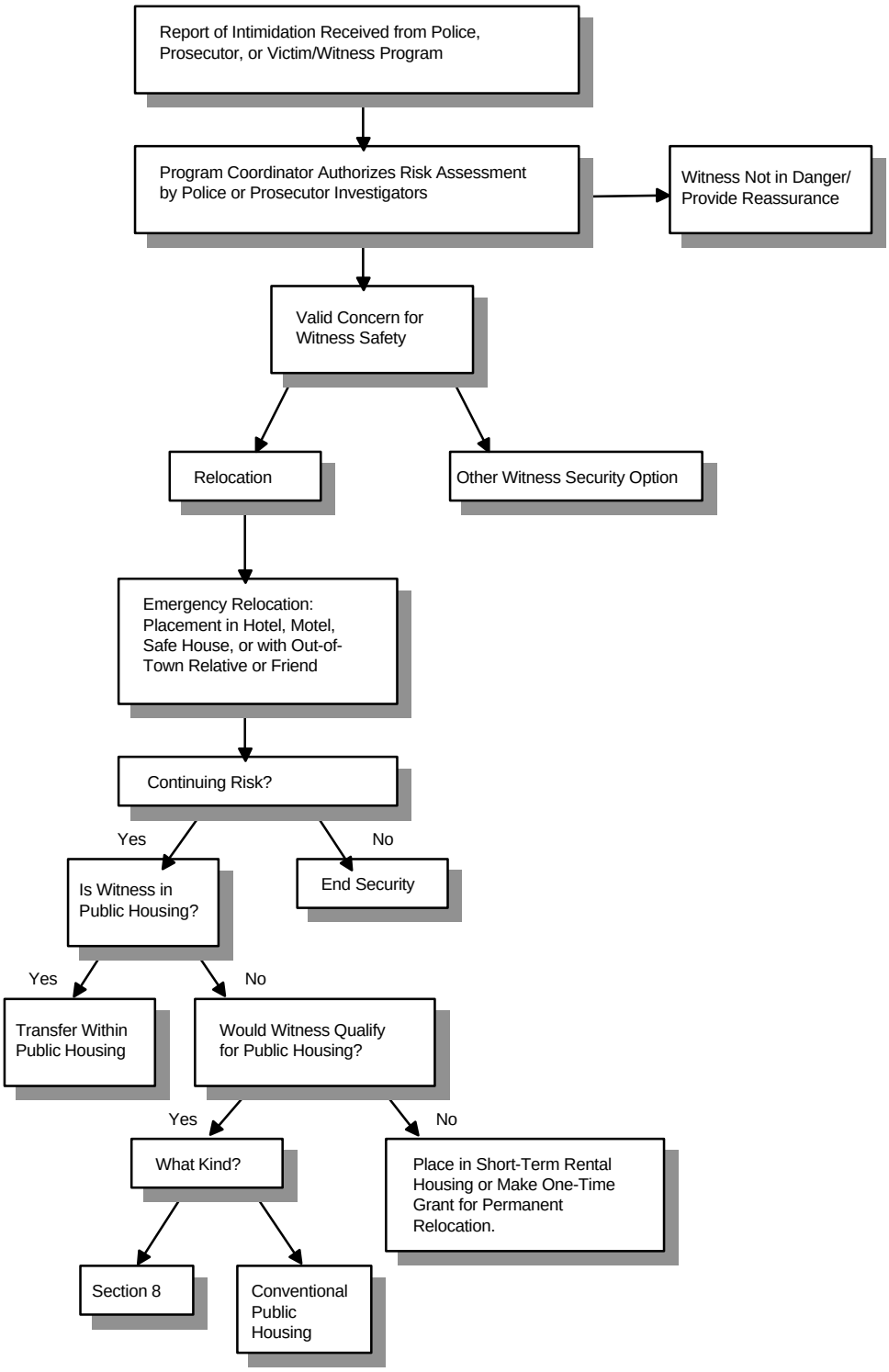
The following descriptions summarize relocation approaches in Hennepin County (Minneapolis), New York City, and Washington, D.C. The approaches and procedures that each site uses reflect local needs and available funding.

- **Hennepin County, Minneapolis.** Minneapolis police investigators typically make their own determination of whether a witness needs special security assistance, pending review by the county attorney, and then provide whatever is required, from increased patrols to temporary placement in a motel. The county attorney's office and the police department may negotiate an agreement as to which agency will pay for temporary witness relocation costs. The assistant county attorney handling the case may learn of a potential need to relocate a witness from victim/witness program staff (who, in turn, may have heard about the problem from police investigators or the victim) or at a later date directly

How Far Away?

Prosecutors and police investigators differ on how remote emergency and short-term relocations need to be from the source of the threat. Some prosecutors report that the lives of gang members are often so insular that a move to a hotel across town is sufficient protection for intimidated witnesses; others believe that there are significant advantages to placing a witness outside the jurisdiction and, whenever possible, in another State. A police inspector in San Francisco placed a witness with her grandmother in Samoa pending trial; a prosecutor in Des Moines relocated a witness to Vietnam. New York City gang prosecutor Walter Arsenault observed that intimidated witnesses "always go back, so the farther away the better." In practice, however, long-distance witness relocations are the exception. Most prosecutors feel that local relocations—for example, between public housing developments in the same city—are adequate to protect most witnesses.

Figure 3–1
Assessing Relocation Options



from the witness after charges have been filed. The attorney then contacts an investigator in the county attorney's office, who interviews the witness, attempts to substantiate the need for assistance, and records the information on a series of special witness assistance forms.

Next, the victim/witness program director convenes a meeting with the assistant county attorney, the investigator assigned to the attorney's trial team, and the victim/witness staff assigned from the program to work with the witness. Using the information gathered, the team determines what type of assistance to offer and the approximate amount of money to be allowed to cover the costs. If the request is approved, the victim/witness advocate is responsible for making any hotel, travel, or other authorized arrangements.

If the witness is found to need temporary relocation, the advocate first tries to place the witness with a relative. The second choice, if the witness is living in public housing, is to try to arrange for the person to move to another development, but this can rarely be done swiftly enough to make it a viable option. For the 10 to 15 witnesses each year who cannot move in with a relative or be quickly transferred to another public housing development, victim/witness advocates have the witnesses find suitable apartments on their own and send the program documentation of their new addresses; then the program provides money for damage deposits and the first month's rent. On occasion, an advocate may ask the director of a victim/witness assistance program in another jurisdiction to locate temporary housing for a witness.

Advocates try to arrange for any case manager the witness may have (such as a social worker) to take care of such time-consuming logistical problems as switching the children's school records rather than assume the burden themselves. The entire team meets weekly to review the status of any witness who receives special assistance for longer than a week. To pay for relocation services, such as reimbursement for out-of-pocket expenses, the prosecutor uses county funds earmarked for witnesses.

- **New York City.** In New York City, the Manhattan District Attorney's Office spent approximately $775,000

Relocated Witnesses Have Many Needs

In addition to housing, witnesses relocated on an emergency or short-term basis have a wide range of needs and rely on prosecutors, police investigators, and victim/witness assistance program staff for everything from basic necessities, such as food, to more complex needs like referral to substance abuse counseling and emergency medical care. Some prosecutors and police attempt to provide a flexible array of services to relocated witnesses (all focused on ensuring that the witness will be available to testify); others provide only those services that meet the most basic needs of the witness.

- Witnesses in hotels usually require a per diem stipend for food and other necessities.
- One prosecutor reported that he needed to go to one witness and her family on a daily basis to dole out their food subsidy in order to prevent the witness from spending the entire week's allotment in one night.
- Prosecutors told of supplying everything from diapers to methadone for witnesses in hiding. California has written guidelines specifying the expenses that can be authorized for relocated witnesses, including food, transportation and travel expenses to the new area, emergency lodging (for up to 21 days), and moving expenses. More telling, however, is the list of specified nonreimbursable witness expenses, which includes private transportation not related to testifying, medical and dental care, alcohol, tobacco, pet supplies, cosmetics, candy, books and magazines, furniture, and cable television service.

in 1994 to protect 134 witnesses. Most of the money was spent on hotel and motel costs for witnesses waiting for public housing transfers or placement with friends or relatives. The average stay for a witness in a motel was reported to be approximately one week, but some witnesses stayed only a few days, while others were housed in hotels for more than three months. Emergency hotel costs for one family were reported to exceed $100,000.[1]

This heavy reliance on hotels and motels was largely a result of a shortage of public housing. Witness security staff in the Manhattan District Attorney's Office estimated that a priority case might be relocated within public housing in three to six months and that new Section 8 certificates (see below) could be completed in three months, but they cautioned that relocation could take anywhere from between three weeks to more than a year depending on the case. Nonetheless, the witness aid services unit completed 484 housing relocations in 1994, 41 percent more than in 1993.

Only in exceptional cases do investigators place witnesses out-of-State or work with Federal authorities to effect a permanent relocation. Despite the difficulties encountered in administering this program, the effort is reported to have significantly improved the prosecutor's ability to obtain witness cooperation and convictions in drug, gang, and homicide cases. (See the program evaluation data in appendix D.)

- **Washington, D.C.** Short-term relocation is the core of the witness security program in Washington, D.C. In the District of Columbia, the U.S. attorney fills the role usually assumed by a local district or State's attorney. The U.S. Attorney's Office in Washington, D.C., differs from both other U.S. Attorneys' offices and local prosecutors' offices in that it currently participates in the Short-Term Protection Program, a Federal pilot program for relocating threatened or intimidated witnesses temporarily. However, unlike many local prosecutors, the U.S. Attorney's Office has no source of funding for the *emergency placement* of witnesses in hotels or motels, or for informal protection arrangements such as a bus or plane ticket to send an intimidated witness to stay briefly with out-of-town relatives or friends (although possible funding options for these services are being considered). As a result, the Metropolitan Police Department is called on to provide immediate assistance to these witnesses until the individuals can be authorized by the U.S. Department of Justice for emergency protection (usually within 24 to 72 hours) under the Short-Term Protection Program. However, because the department has only limited funds for witness protection, some witnesses are left without protection until they are authorized for temporary Federal protection.

  The Short-Term Protection Program is a derivative of the Federal Witness Security Program and is administered under the authority of the Witness Security Reform Act of 1984. It is overseen by the Office of Enforcement Operations of the U.S. Department of Justice and administered by the U.S Marshals Service. The project uses U.S. marshals to relocate threatened witnesses and their families out of the District and to guard them during testimony, but it does not give witnesses new identities or, except on rare occasions, education or job assistance.

Special Security for Moving Witnesses

In especially threatening cases, police officers need to take extra precautions when they move witnesses to temporary housing. These tactical measures are covered in a five-day training course offered by the Prince Georges County (Maryland) Sheriff's Office. The course explains how to set up a special witness team and provide dignitary and witness security. Using a 120-page in-service training module, the course provides guidance in developing route surveys, staking out a hotel, and doing a site survey for a potential safe house; engages trainees in simulated on-road motorcade driving techniques, ways to lead and follow the protected vehicle, the use of decoy vehicles, and moving witnesses from the vehicle to the courthouse and back to the vehicle; provides hands-on training in moving people in and out of hotels; and gives instruction in courthouse security. Additional information on the course is available from Colonel Gerry Powers, Assistant Sheriff, Office of the Sheriff, Prince Georges County, 14524 Elm Street, P.O. Box 548, Upper Marlboro, MD 20772, (301) 952–4000.

Typically, witnesses are housed in hotels or motels for a month or longer while the application and approval process is completed for a transfer from emergency program authorization to the full short-term program authorization, which moves all participating witnesses out of the jurisdiction. The Short-Term Protection Program uses public housing transfers and HUD-assisted housing placements as a part of its witness protection efforts, as well as private rental housing.

Hotels and Motels

Police investigators or prosecutors in almost every jurisdiction use hotels and motels for emergency relocation and, when no other options are available, for short-term relocation. Using motels provides an instant, if short-term, solution to witness fears. When the danger to a witness (or the witness's family) is immediate and genuine, a motel functions as a form of safe house where the person can be hidden or—in extreme cases—guarded while victim services advocates, the prosecutor, or investigators search for a longer-term relocation option.[2]

Most jurisdictions rely on police officers or sheriffs to transport endangered witnesses to hotels or motels for emergency relocation. Although some prosecutors or victim services advocates perform this job, many consider it too dangerous for civilians. When possible, the assignment is given to law enforcement officers who have received special training in the secure moving of witnesses or dignitaries (see

Tips for Moving Witnesses Safely to and From Hotels and Motels

Police investigators and prosecutors offered a number of suggestions concerning placing witnesses in motels and hotels.

- ✔ Whoever transports the witness should be dressed in street clothes and drive a civilian car. One prosecutor reported having to relocate a witness after the police delivered him to the chosen motel in a squad car and then used a uniformed officer to check him in, thereby identifying the man as a protected witness. Precautions to disguise the escort should also be taken by whoever has responsibility for transporting the witness to and from court and to meetings with the prosecutor. Other police officers recommend the use of side entrances or service elevators, and avoiding motel and hotel lobbies.

- ✔ A number of police investigators and prosecutors charged witness's rooms to their own credit cards—or to another account that was not easily identifiable as belonging to the police department or district attorney's office—and preregistered them under false names. Often the motels were not notified that the guest was a protected witness. However, one prosecutor cautioned that room payments should not be refundable to the guest—in one case a witness had gotten a refund, left the hotel to commit a crime, and returned.

- ✔ In Las Vegas, the victim services director considers the safety of the *other* guests as well as the safety of the witness when choosing accommodations. She recommended using hotels for witnesses who are not gang members, because hotel-style accommodations offer added security, but using motel-style accommodations—those which have doors that open directly to the outside—for gang-member witnesses, who are more likely to engage in illegal activity from the room or attract a violent attack which would endanger other guests.

- ✔ A number of hotel and motels should be used to avoid the easy identification of one site as a "witness motel." Some prosecutors reported never using the same motel twice; others used the opposite approach, placing endangered witnesses among regular out-of-town witnesses whose transportation had been arranged by the district attorney's travel agent.

the box "Special Security for Moving Witnesses") because the evacuation of witnesses and their family members can be a dangerous and logistically difficult process. For example, Baltimore City sheriff's deputies commanded by Captain G. Wayne Cox, who had received special tactical training from the Prince Georges County (Maryland) Sheriff's Office, were called on to evacuate a witness and her 13 children who were being pursued by several intimidators. The sheriff's deputies coded the children by the color of the cars in which they were to be transported and then shielded them as they ran to the vehicles. The evacuation took only 30 seconds.

Short-Term Relocation With Out-of-Town Family Members or Friends

For many prosecutors, the first—and sometimes only—short-term relocation option is to offer a witness a bus or plane ticket out-of-town. Victim services advocates, prosecutors, and police investigators often inquire about out-of-town friends or relatives with whom the witness or his or her family might stay before discussing more costly alternatives. The advantages of using friends and relatives as safe havens are that the relocated witnesses are

- less likely to return to the jurisdiction due to the expense and difficulty of travel,
- less likely to endanger themselves by contacting old associates or local family members due to loneliness or boredom (as is common with witnesses housed in hotels or motels),
- generally less of a financial burden to the program, even if a stipend is given to the sponsoring family (in the majority of cases no further financial assistance is offered), and
- unlikely to be the victims of violent intimidation attempts, because prosecutors and police investigators agree that when the location of the witness is a secret, no further police protection is needed until the witness returns to testify.

Because they often do not have the self-restraint to avoid their old neighborhoods and need constant family support, "relocating witnesses with out-of-State relatives is especially important if you need to protect juveniles," says Lieutenant Earl Sanders of the San Francisco Police Department. "We sent one young witness to live with an aunt in Memphis. We spent only $250 for a bus ticket and $300 for a couple of months to help the aunt with the kid's living expenses."

In short, witnesses staying with friends or family members are provided with the sort of social and emotional support that the prosecutor or victim services advocate cannot furnish. In addition, the witness's travel to and from the jurisdiction to testify is usually paid out of the prosecutor's witness travel fund, instead of the typically limited witness security budget.

In San Francisco County, the district attorney's office relocates approximately 20 people per year, about a third of whom are sent to stay with family or friends. Prosecutor Alfred Giannini gave the example of a case in which the witness, a mother, was housed in a hotel, while her teenage son was sent to live with relatives in Alabama. With the permission of her mother, Lieutenant Earl Sanders sent a 14-year-old witness to live with her grandparents in Samoa at a cost of $800 for airfare. The juvenile was essential to securing the conviction of two murderers.

> ***"Relocating witnesses with out-of-State relatives is especially important if you need to protect juveniles. We sent one young witness to live with an aunt in Memphis. We spent only $250 for a bus ticket and $300 for a couple of months to help the aunt with the kid's living expenses."***
>
> —Lieutenant Earl Sanders, San Francisco Police Department

Police officers and prosecutors offered the following advice regarding family- and friend-based relocation:

- Advise witnesses not to choose to stay with a close friend or family member who is known to the defendant and may therefore be contacted by the defendant or his or her associates.
- Check to make sure that the witness is not engaging in any criminal activity at the new site.
- Before buying the ticket, check with the friend or relative to confirm the person is willing to receive and keep the witness until trial.
- Screen requests for relocation with distant family members carefully around Christmas and Thanksgiving, to

eliminate people who try to exploit the system to obtain free holiday travel.

- Arrange to send any support payments for minors directly to the out-of-town relative, and provide the first month's support payment immediately.

- Reevaluate each placement every six months and end support after one year, unless there is a continuing threat.

- Check with the witness and host family member or sponsor on a regular basis to make sure that the witness is still available to testify and has not revealed his or her whereabouts to anyone in the old neighborhood (such as receiving phone calls or visits from a former girlfriend or boyfriend).

- Notify the local law enforcement agency of the witness's relocation—innocent witnesses may need protection if their location is discovered, while witnesses with criminal records may pose a danger to the new community.

Social Services and School Enrollment

Many intimidated witnesses receive social service benefits such as Aid to Families with Dependent Children (AFDC), food stamps, Medicaid, Medicare, Social Security, or disability payments. Because the prosecutor or investigator becomes responsible for maintaining a relocated witness for

Who Pays the Rent?

A few witness security efforts operate according to strict well-documented guidelines and are adequately funded entirely or in part by State appropriations, the prosecutor's budget or the police department budget (see appendix A2 for sample program guidelines). One program's financial officer reported that his State's witness security fund was never fully expended. But the majority of witness security efforts are not centrally administered or financed. Most are the product of necessity, cobbled together with makeshift funding, one-time grants, borrowed administrators, and personal favors. Across the country, prosecutors and police investigators told of small "pots of money" or "special funds," reserved for loosely defined purposes, from which they were able to draw limited amounts to protect witnesses in key cases.

Resourceful prosecutors and police officers found funding not only in their own offices but also in places like a "Friends of Victim/Witness Fund" maintained by a victim services agency or in State agencies with the authority to make small grants. Others managed to protect witnesses by sharing costs with other interested agencies on an ad hoc basis. A handwritten addendum to a funding request to one prosecutor promised that the police department had agreed to fund half of the $600 cost of relocating a witness to a new apartment (first and last month's rent). Prosecutors and police officers told of jointly funding bus or plane tickets.

Prosecutors and police investigators have used their own credit cards or cash to pay for food, lodging, or transportation for witnesses. Most were reimbursed, but one police officer who purchased a bus ticket with his own money simply charged an equivalent amount of overtime and marked it "bus ticket." Many witness protection efforts depend on funding of as little as a few thousand dollars a year—as much as a number of larger jurisdictions spend on an average hotel stay for only a single witness. Respondents in some jurisdictions were reluctant to discuss the precise source or size of their funding. One simply did not know: the prosecutor had been told by the mayor that the funding was "there" for witness security without any indication of the limits or duration of the funding or its source.

some period of time, it may be necessary to assist the witness in transferring all his or her social services to the new location as soon as possible and in a secure manner. Prosecutors also report assisting witnesses with children to transfer school records to the new district in a confidential manner.

Some prosecutors, such as the Philadelphia and Manhattan district attorneys, have specially assigned coordinators who assist with the transfer of services; other prosecutors, and some police investigators and victim advocates, have liaisons within the various agencies involved who assist with the confidential transfer of benefits.

For example, in the newly organized Baltimore Witness Security Program, the State's Attorney's Office is seeking a memorandum of understanding with the Department of Social Services to ensure the speedy and confidential handling of social service transfers for intimidated witnesses. Gary Balzer, former director of social services for the City of Baltimore, noted that this department has a particularly important role to play in witness protection because "so many intimidated people are already on public assistance." In fact, all 11 witnesses who participated in the witness security program in its first year of operation were covered by Aid to Families with Dependent Children (AFDC). The Department of Social Services arranges the transfers of benefits—including AFDC, food stamps, Medicaid, and emergency food— through the agency's executive office to help maintain confidentiality. In the first few cases, the State's Attorney's Office has called the contact person in the department with the new addresses of witnesses; the department disguises this information in its computerized records so that it will not be available to the hundreds of workers who use the system.

Although the Baltimore program is new, Balzer offers the following advice for working with social service agencies:

- *Cross-training is essential*. The prosecutor's office or police investigator responsible for managing the witness must have a working knowledge of social services eligibility requirements and the bureaucratic process.

- *Cooperative agreements at the highest level are essential*. For security reasons, one person should be assigned to witness services transfers, and that person needs high-level authority to disguise or hide data and to expedite requests for services.

- *Whenever possible, use electronic means to transfer benefits*. Some jurisdictions now have technology that allows social services recipients to draw their benefits directly from automatic teller machines (ATMs) throughout the area, thereby avoiding the need for time-consuming changes of address when witnesses move.

Drug Treatment for Addicted Witnesses

Many prosecutors reported struggling to meet the needs of addicted witnesses who had been relocated. Addicted witnesses are more likely than others to endanger themselves by returning to their old neighborhoods, recontacting dangerous gang members to buy drugs, and failing to manage support money appropriately. The U.S. attorney in Washington, D.C., had in the past occasionally placed addicted witnesses in residential drug treatment facilities but now feels that 12-step programs such as Alcoholics Anonymous and Narcotics Anonymous can stabilize most witnesses for testimony. The prosecutor believes that self-help groups are available at a lower cost than residential treatment programs and that residential programs are frequently unsuccessful in creating long-term behavioral change.

In another jurisdiction, when a homicide detective needs to find treatment for a witness who is also a drug addict, he has to negotiate for a bed in an inpatient program, usually through a *quid pro quo*. On one occasion, the detective was able to place a witness with the Salvation Army because he had previously helped its director to get some city property rehabilitated that had been a blight in the neighborhood. On another, he was able to get an addicted witness placed at the top of a waiting list for an inpatient program run by a local minister; previously, the clergyman had called the detective for help with traffic jams that arose each year when the minister distributed Easter and Christmas baskets, and the detective had called the traffic department to request that officers be assigned to direct traffic during those two days.

How Long Must a Witness Remain Relocated?

There is a significant difference of opinion concerning the importance of permanent versus short-term witness relocation. A majority of prosecutors and police investigators interviewed for this report testified to the effectiveness of programs that seek to compel witnesses to remain relocated only for the minimal period necessary to ensure their safety. Advocates of short-term relocation estimate that most intimidated witnesses can return to their communities within a year, or after the relevant trial is completed and the defendants are incarcerated. Prosecutors in Los Angeles disagree, stressing that the risk involved in testifying against an established gang in their city requires witnesses to move perma-

nently and to sever all ties with former friends and family members from their old community.

These differences of opinion are probably attributable to the differences in the types of gangs that operate in these jurisdictions. For example, while the gangs—or "crews"—in Washington, D.C., have a record of ruthless witness intimidation, most are not large or nationally well-connected organizations. As a result, once crew members and their associates are incarcerated, there is probably little need for witnesses to fear further retribution; in fact, as of the end of 1995, no witnesses who had participated in the District of Columbia's short-term Protection Program had been killed following the conclusion of a successful prosecution. On the other hand, in California some gangs have multigenerational memberships and connections throughout the State, the prison system, and much of the rest of the country. In Los Angeles, retribution against witnesses and their families continues past trial. For witnesses testifying against such well-established national gangs, permanent relocation may be the only safe alternative.

Permanent Relocation

Permanent relocation by local prosecutors is more a matter of program objectives than a particular procedure. Any relocation beyond a short-term stay in a hotel or safe house can be permanent if the witness is willing to stay in the new location and abide by the program rules regarding communication with friends and relatives from the former neighborhood. As noted above, Los Angeles prosecutor Michael Genelin strongly advocates the permanent relocation of all intimidated witnesses in gang cases (although most prosecutors in other jurisdictions use short-term alternatives). In New York City in 1994, the Queens District Attorney's Office permanently relocated half a dozen witnesses, using new identities. In Rhode Island, where local relocation offers little safety, the State's attorney general (who acts as a district attorney due to the size of the jurisdiction) has reimbursed the U.S. Government for the cost of participation of State witnesses in the long-term Federal Witness Security Program (see box).

Permanent relocation need not cost more than short-term relocation. The primary expenses in each are the move itself, initial housing costs (first and last month's rent, and security deposit), and any initial support necessary until social services benefits can be transferred or a job can be found by the witness. A worthy program objective might be for witnesses to achieve financial independence following an initial adjustment. From the standpoint of the prosecutor, it may be much easier to obtain witness cooperation if the relocation is not expected to be permanent because witnesses are understandably reluctant to abandon friendships and break family ties. However, Michael Genelin points out that prosecutors must act responsibly toward witnesses, which means that witnesses who are intimidated again after they return to their neighborhoods, or are discovered due to their own carelessness, must be relocated again at additional expense. Genelin considers it to be safer for witnesses and more efficient financially for the government to insist on permanent relocation from the beginning.

To relocate intimidated witnesses on a permanent basis, a few prosecutors and police investigators make occasional use of the Federal Witness Security Program. Lieutenant Earl Sanders of the San Francisco Police Department has used the Federal program a few times in his career as homicide inspector and reports that on those occasions it has been beneficial. However, Sanders adds that "short-term relocation and assistance is usually more effective than the Federal program. Witnesses don't want to give up so much [such as their names, homes, jobs, friends], and they really don't have to." Instead, most prosecutors and police investigators interviewed for this report rely primarily on public housing transfers for permanent relocations because many intimidated witnesses either are currently in public or subsidized housing or are on the waiting list to receive these benefits. (This is not surprising since most serious gang and drug crime is concentrated in the poorest inner-city neighborhoods and housing projects; residents of these neighborhoods are the most likely to witness gang- and drug-related crime.)

In general, prosecutors found that within a large city permanent transfer to another public housing development within the city was often sufficient to provide the witness with security. In smaller jurisdictions, or in jurisdictions where gangs are well organized and in communication with other local gangs, it may be necessary to relocate witnesses outside the city. In San Francisco, Lieutenant Sanders has found it necessary to work with housing officials in neighboring Oakland and beyond in order to protect witnesses from defendants in cases involving large, highly structured gangs with good communication networks.

Public Housing Programs

The U.S. Department of Housing and Urban Development (HUD) offers two principal subsidized housing programs to

The Federal Witness Security Program

The Federal Witness Security Program is a long-term relocation program created by congressional statute in 1970 and revised by the Witness Security Reform Act of 1984, which broadened the scope of cases for which the program may be used to include the following:

(1) Federal organized crime and racketeering offenses,

(2) Federal drug trafficking offenses,

(3) other serious Federal felonies for which a witness may provide testimony that may subject the person to retaliation by violence or threats of violence,

(4) any State offense that is similar in nature to these above, and

(5) certain civil and administrative proceedings in which testimony given by a witness may place the safety of that witness in jeopardy.

Whenever a State witness is accepted into the program, it is with the stipulation that the State will reimburse the U.S. Government for expenses incurred. States are expected to reimburse expenses for both relocated and incarcerated witnesses placed in the Federal program.

Within the U.S. Department of Justice, the Criminal Division's Office of Enforcement Operations (OEO) oversees the Federal Witness Security Program. The OEO makes the final decision as to whether program services will be authorized or denied for each individual witness. The U.S. attorney in whose jurisdiction the witness's testimony will be used must request the services. Strict criteria determine who can and will be admitted into the program, including the following:

- The conviction of the defendant against whom charges are brought must be of such significance that it will further the administration of criminal justice and help meet the overall goals of the Attorney General.
- There must be a clear indication that the witness's life is, or will be, in jeopardy as a result of his or her testimony, such that there are no alternatives to using the program.
- The witness must be able to provide significant and unique testimony.
- The need for the testimony of the witness must outweigh the risk of danger to the public.

Participation in the program is considered a lifetime commitment on the part of the U.S. Government. Witnesses and family members are given new legal identities, including birth records and driver's licenses, and they are given assistance with civilian employment in their new location. The program provides witnesses and their families with temporary lodging and expenses, and free medical and psychological care, until a permanent residence in another jurisdiction has been arranged. No witness who has followed the security rules has been killed.

qualified individuals, both of which can be used in structuring a witness relocation program.

- *The Public Housing Program* provides Federal funds to local housing authorities for the purpose of developing and maintaining publicly owned residential property for housing eligible families (and, in certain cases, individuals) at assisted rents reflecting low-income families' ability to pay.

Letter From the HUD Assistant Secretary Explaining the Preference Rule for Relocating Intimidated Witnesses, September 1, 1994

Dear Housing Authority Chairperson:

This past February, Secretary Cisneros, Attorney General Reno, (Treasury) Secretary Bentsen, and ONDCP Director Lee Brown launched Operation Safe Home, coordinating the anti-drug, anti-crime efforts of those agencies in public housing. One of HUD's contributions has been a regulatory change to encourage public housing residents to participate as witnesses in criminal prosecutions. Recent experience has shown public housing residents to be reluctant to serve as witnesses because of fear of reprisals and the inability to relocate away from threats.

In response, HUD has eased the ability of housing authorities (HAs) to move residents who are willing to serve as a witness. In the recently released Final Rule for "Preferences for Admission to Assisted Housing" (24 CFR 880.615) HUD has made "Displacement to avoid reprisals" a federal preference for involuntary displacement, allowing HAs to quickly accept and/or move residents who have:

a) provided information on criminal activities to a law enforcement agency:

b) based on a threat assessment, been determined by a law enforcement agency to be at risk of violence as a reprisal for providing such information.

All HAs, and especially those developing or administering comprehensive anti-crime programs, should incorporate this new preference in their preferences for admission and relocation.

Relocation of public housing residents willing to serve as a witness or informant requires more than revision of preferences, however. HAs should also begin coordination with law enforcement agencies to develop policies and procedures for residents to approach HA management or law enforcement, for conducting "threat assessments," and for maintaining confidentiality of all information regarding residents and their addresses.

Questions regarding the new preference, recommended policies and procedures, and guidance on Operation Safe Home should be directed to the Public Housing Division Director at your local HUD Field Office.

Sincerely,

Joseph Shuldiner
(Assistant Secretary Public and Indian Housing)

Some "Witnesses" May Try To Abuse the System

Some prosecutors initially had concerns about witnesses coming forward with false claims of intimidation in order to accelerate a housing transfer request. While prosecutors and witness services workers do hear from people who are trying to manipulate the system, no one considers this problem to be insurmountable. Most prosecutors quickly discern which witnesses have genuine information, and they are able to weed out those witnesses who are not valuable to the case. In addition, few witnesses who are not in fact intimidated are willing to undergo the inconveniences imposed by witness security procedures (including losing contact, if only temporarily, with family and friends) and are thus likely to withdraw their relocation request voluntarily before a housing transfer can be effected.

- *The Section 8 program* provides qualified individuals with certificates and vouchers entitling them to a Federal rent subsidy, which can be used to assist with rent payment for a privately owned house or apartment. Under tenant-based Section 8, the U.S. Government provides local housing authorities (PHAs) with funds, with which the PHAs in turn make payments to private property owners on behalf of eligible tenants. The certificate or voucher makes up the difference between 30 percent of a tenant's "adjusted" income and an approved "fair market rent," adjusted for family size and local cost levels. Section 8 housing certificates and vouchers are particularly useful for local witness relocation because they allow police investigators and prosecutors to place witnesses outside neighborhoods frequented by gangs and drug dealers; Section 8 certificates and vouchers can be used in middle-class areas of a city, where neighborhood-bound gangs are less likely to venture.

There are serious barriers to relocating anyone, including intimidated witnesses, under the Section 8 program. Section 8 certificates are usually in extremely—and often increasingly—high demand. (In Baltimore, with a total population of only 600,000, there are 21,000 families on the waiting list for Section 8 housing.) In addition, many landlords will not accept tenants who rely on Section 8 assistance. Above and beyond the problems associated with increasing demand and the unwillingness of some landlords to accept individuals with Section 8 vouchers, local PHAs lack the money to pay for relocated tenants' moving expenses, first month's utilities, rental deposits, and other expenses of moving. (To address this obstacle, HUD is in the process of creating a centralized dedicated fund and procedures through which to pay for emergency relocations of intimidated witnesses under the Section 8 program.)

PHA Discretion in Assigning Housing Units

The Department of Housing and Urban Development authorizes PHAs to permit certain categories of individuals who are already in one of their programs or on one of their waiting lists to move to the top of the waiting list. These categories include victims of hate crime and domestic violence; applicants who have been or will be involuntarily displaced due, for example, to disaster (such as fire or flood) or government action (such as code enforcement or public improvement); and tenants whose physical impairment prevents them from using critical elements of their current housing unit. Intimidated witnesses are another group that now qualifies for receiving preference if

- "[f]amily members provided information on criminal activities to a law enforcement agency," and
- "[b]ased on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information."[3]

"HUD has eased the ability of housing authorities (HAs) to move residents who are willing to serve as a witness . . . HUD has made 'Displacement to avoid reprisals' a federal preference for involuntary displacement, allowing HAs to quickly accept and/or move qualified residents."

— Joseph Shuldiner, Assistant Secretary Public and Indian Housing, U.S. Department of Housing and Urban Development

This local discretion applies both to HUD's Public Housing Program and to its Section 8 program.

Alameda County Housing Authority Proposal To Give Intimidated Witnesses Preferential Treatment

The discussion in the text addresses providing relocation preferences to intimidated witnesses who are already in public housing or have Section 8 certificates, or who are already on the waiting list at a public housing authority to be placed in public housing or to obtain a Section 8 certificate. However, Ted Schwartz, Program Integrity Administrator for the Housing Authority of Alameda County in Hayward, California, has written a proposal, in collaboration with John Dupuy, a special agent with the Office of the Inspector General in the regional HUD office, to establish a Victims of Violence (VOV) Program which will enable intimidated witnesses who are *not* currently on a waiting list or in a HUD program to *bypass*—not jump—the list. According to the VOV proposal:

> "The Housing Authority recognizes that, in most cases (of intimidated witnesses), time is of the essence . . . For the purposes of participants not currently on HUD Section 8 or Public Housing, staff will review the participant's ability to meet program requirements. If those requirements are met and space is available, staff will place that person in appropriate housing as soon as possible . . . As the above procedure is for non-program participants and will bypass the Housing Authority's waiting lists, the number of placements will be limited to an aggregate total of 25 participants (per year)."

The VOV program will accept only participants recommended by housing authority staff themselves, the Alameda County District Attorney Office's Protection Unit, or the HUD Office of the Inspector General. Under the new program, after 30 days' notice the housing authority will have the right to revoke the housing of any witness who refuses to testify. The proposal is currently being reviewed by the HUD regional Public Housing Office in San Francisco and by HUD's Office of Housing in Washington, D.C., which must approve any plan by PHAs to allow individuals who are not already on their waiting lists to bypass the list.

As shown in the box "Letter from the HUD Assistant Secretary," administrators at HUD have sought to clarify to PHAs that they have the legal authority to move intimidated witnesses to the top of the waiting list and have encouraged PHAs to do so. Notice PIH 94-51 (HA), which the assistant secretary sent to all local PHAs on August 3, 1994, also emphasized the eligibility of intimidated witnesses for preferential treatment and included a copy of the *Federal Register* of July 18, 1994, which incorporated the law. Furthermore, administrators at HUD, including G.L. Isdell, National Coordinator of Anti-Drug/Violent Crime Initiatives (Operation Safe Home), Elizabeth Cocke of the Office of Community Relations, and Richard Trebelhorn of the Office of Public and Assisted Housing Operations, have made clear that local PHAs have the discretion to set aside a designated number of units (under the Public Housing Program) or certificates (under the Section 8 program) for the exclusive use of intimidated witnesses who are on the waiting list for public housing or Section 8 certificates or who are already participating in these programs. Finally, HUD's Anti-Drug/Violent Crime Initiatives, known as Operation Safe Home, which makes an array of HUD resources available to local law enforcement to fight violent and white-collar crime, is another demonstration of HUD's policy to encourage PHAs to make units available, even on a priority basis, for witness relocation purposes.

Local PHAs have discretion about whether to move intimidated witnesses to the top of the list—or whether to move any tenant in *any* one of the preference categories to the top of the list. As a result, intimidated witnesses who need to be relocated swiftly must compete with other tenants in the other preference categories who may also merit priority handling. Furthermore, HUD officials warn that competition for relocation among preference categories is likely to increase. As the number of individuals approaching or falling

below the poverty line in the country rises, the number of tenants who fall into one of the preference categories will also grow. As a result, PHAs will have to allocate a fixed or even decreasing number of available units among an increasing number of tenants eligible for preferential treatment.

The Federal Housing Administration, as authorized under the National Housing Act of 1934, allows HUD-owned single-family and multi-family properties that have been taken off the market to be made available temporarily by local HUD offices for temporary occupation by intimidated witnesses. Prosecutors in the District of Columbia, Maryland, and Virginia have used this option several times. The witness enters into a lease and pays a low rent to HUD through a property management company. This program has the advantage of making relocation available to individuals who are not currently receiving public housing or are not on a waiting list for it. However, only 100 such units are available for this purpose in the country. Furthermore, there have been instances in which witnesses who have been provided the option have damaged the property, demanded constant repairs, or been unwilling to move out once the house is ready for sale. For these reasons, this option is available only as a last resort. Further information about the program is available from Ann Sudduth, Director, Single-Family Property Disposition Division, at HUD's Washington, D.C., offices, (202) 708-0740.

Some PHAs Provide Expedited Processing

The Housing Authority of Alameda County (Hayward, California) has been able to relocate witnesses on Section 8 in only two weeks. In Baltimore, cooperative arrangements between the prosecutor's office and the public housing authority have occasionally reduced the time needed to transfer witnesses to between one to two weeks (although the wait is often longer for large housing units).

The New York City Housing Authority distributed a detailed set of instructions to all district directors, district supervisors, and project managers in 1991, setting out emergency transfer procedures for intimidated victims and witnesses. The memorandum (see appendix E) reviews the joint emergency transfer policy established among the housing authority's management department, the city's victim services agency, and the regional HUD Office of the Inspector General (OIG). The memorandum requires that "*the processing of all requests* [for transfer of victims of domestic violence, intimidated victims, and intimidated witnesses] *must be given the highest priority* [emphases in the original]." The procedures in the agreement include immediate processing once the referral is received from the district attorney's office, manager approval or disapproval of the transfer request within two working days (unless additional information is needed), and hand delivery of all transfer requests to the city housing authority's inspector general's office within two working days. The agreement provides that, after the completion of the rental interview, the tenant must be advised not to state on the move-out notice either the name of the new project or the address of the new apartment and that the Command Center for Relocated Families is to be given as the tenant's forwarding address.

For intimidated witnesses participating in all these programs, HUD has instituted security procedures to ensure that witness locations cannot be discovered by anyone accessing a central file or data base. In the HUD field office in Washington, D.C., a designated staff that handles all transfers (approximately 45 in 1994) keeps all the files coded and locked up. The HUD rules for witness protection in public housing published in the *Federal Register* explicitly make provision for establishing appropriate safeguards to protect the identity of threatened witnesses who have been relocated.

Suggestions for Working With PHAs

Delays in securing public housing transfers can jeopardize the safety of intimidated witnesses, compromise the police investigator's and prosecution's case, and increase the cost of witness management if in the meantime witnesses are housed for weeks or months in hotels at public expense. These are compelling reasons for expediting the process. It is critically important that prosecutors and investigators, or the jurisdiction's victim/witness program coordinator, learn about HUD's guidelines for witness relocation and try to secure cooperative agreements with PHAs (such as the one arranged in New York City and discussed above), including endorsement of the agreements from top State housing officials. For assistance in this collaborative effort and with the relocation of individual witnesses on an *ad hoc* basis, observers offer the following suggestions:

- **Defuse the waiting list barrier**. If a witness needs to be relocated from one public housing development to another development within the same jurisdiction (city or county), the waiting list issue should not be a problem. Relocating a witness to another development automatically makes the unit that the witness is vacating available to the next person on the list. As a result, relocating the witness to another development does not extend the wait for the family currently at the top of the list.

- **Ask about floating vouchers.** If it is a Section 8 voucher that is being sought, ask the housing authority how many "floating vouchers" it has. Every public housing authority has some floating vouchers because vacancies are not filled immediately as tenants go off Section 8. Ask if the witness could be given one of these vouchers.

- **Advocate with landlords.** Point out to landlords who accept Section 8 tenants that intimidated witnesses are likely to make better than average tenants because they have shown they are willing to do their civic duty even at some personal risk.

- **Become informed about HUD requirements.** Familiarize yourself with the documentary requirements of the various HUD programs and look for ways to expedite the acquisition of these documents for witnesses. Housing authority officials have observed that they may experience delays in moving witnesses who do not have the appropriate documentation—for example, birth certificates or Social Security numbers.

- **Get additional information.** For clarification of the preference rule for intimidated witnesses, contact G.L. Isdell, National Coordinator, Anti-Drug/Violent Crime Initiatives (Operation Safe Home), at (202) 708-0390, by fax at (202) 708-1354, or by mail at:

  Office of the Inspector General
  U.S. Department of Housing and Urban Development
  451 7th Street, SW, Suite 8280
  Washington, DC 20410.

Conclusion

Most investigators and prosecutors consider it essential to have the option to relocate selected witnesses on an emergency or short-term basis. However, since it frequently involves a considerable commitment of monetary resources and staff time, as well as negotiation and frustration, relocation is not used as often as officials would like. While some of these barriers may be inevitable, police administrators and county attorneys can reduce them significantly by increasing the funding available for relocation activities and by negotiating personally for permanent assistance from the other agencies that this chapter has identified as sources of help with relocation activities, including local housing authorities, social services agencies, and out-of-jurisdiction law enforcement agencies.

Endnotes

1. "Prosecutors Paying Millions To Protect Cowed Witnesses," *New York Times*, May 30, 1995.

2. A few jurisdictions were interested in establishing safe houses to use in place of hotels and motels in emergency situations—and to use as secure debriefing sites for witnesses—but none currently had a safe house in operation.

3. Preferences for Admission to Assisted Housing, Final Rule, 24 CFR Parts 880 et al., *Federal Register*, vol. 59, no. 136, July 18, 1994, pp. 36622, 36623, 36654.

Chapter 4
Preventing Intimidation in Courtrooms and Jails

Key Points

- Gang members and associates of defendants often show up in court with the express intention of discouraging witnesses from testifying.
- Courtroom intimidation can be very subtle and, partly as a result, can be missed by judges, bailiffs, and prosecutors. Even when they observe intimidation, judges often feel that preserving the constitutional entitlement to a public trial prevents them from removing the intimidator from the court.
- Nevertheless, there are actions that judges can legally take—and have taken—to prevent intimidation in the courtroom, including
  - — removing gang members or other intimidating spectators from the courtroom,
  - — segregating them in the courtroom, and
  - — closing the courtroom.
- Prosecutors can also take action to prevent intimidation in the courtroom.
- Many intimidated witnesses in gang- and drug-related cases who are incarcerated (either as codefendant or in connection with other crimes) require special protection.
- Providing security for incarcerated witnesses requires a good working relationship between investigators or prosecutors and correctional administrators.
- Incarcerated witnesses are usually protected using one or more of the following three approaches:
  - — separation of the witness from the defendant within the same correctional facility,
  - — separation of the witness and the defendant by transferring the witness to a nearby correctional facility, and
  - — separate transport of incarcerated witnesses and defendants to testify.

Intimidation in the Courtroom

Gang associates, family members, or friends of defendants often show up in court with the express intention of intimidating the witness—coercing the person through fear into "forgetting" or denying what happened, or refusing to testify at all. As a result, most professionals contacted for this report agree that preventing intimidation in the courthouse is an essential component of any witness security program. To be sure, the chief burden for preventing intimidation during hearings and trials rests with the court; however, prosecutors and police can also help prevent courtroom intimidation.

While intimidation can, of course, result from actual violence in the courtroom, no violence need take place for intimidation to occur—and be effective. The mere presence of gang members or friends or family of the defendant is often sufficient to frighten witnesses, and threatening insignia on clothing or the use of threatening gestures can intensify a witness's apprehension. The discussion below addresses ways of dealing with these more subtle forms of intimidation, which are reported to be the most common means of frightening witnesses in court and the most difficult to prevent. Courtroom security designed to control actual violence, while essential, is something most courts already pay very close attention to and is therefore given little emphasis in this section (see the box "Extra Security Measures Are Sometimes Needed").

Why Many Judges Are Reluctant To Act

When judges fail to respond to courtroom intimidation, most observers agree it is because they must balance the constitutional requirement of a public trial against the need to prevent interference with the judicial process, and judges may give priority to avoiding any actions that might result in a successful appeal. As a result, unless spectators say or do something that is patently intimidating—and sometimes not even then—many judges will not remove them from the courtroom. However, as discussed in chapter 7, "Legal Issues," case law supports limited courtroom closure or spectator exclusion to prevent witness intimidation.

There are other reasons judges may fail to act to address intimidation in the courtroom. According to some prosecutors, judges may be aware of the intimidation spectators engage in but not see it as the court's problem unless it interrupts or delays the proceedings. Judges in Minneapolis and Oakland pointed out that the small size or particular arrangement of their courtrooms makes it difficult both to separate spectators from witnesses by any significant distance and to keep an eye on spectators, the witness, and jurors all at the same time.

Some judges are unfamiliar with gang colors, insignia, or signals that intimidate witnesses. According to Charles Grant, former chief of the homicide unit of the Philadelphia District Attorney's Office, "Intimidation—the signals and mouthed words—usually isn't obvious or can be understood only in context. 'Do you want some heat?' said by a gang member to a witness in the courthouse really means, 'I'm going to blow your brains out if you testify.'" In Washington, D.C., a silent, hard stare by a group of gang members seated in court—a practice called "gritting" on the witness—is tantamount to a death threat. According to Mike Berry, former security specialist in the Washington, D.C., U.S. Attorney's Office, "Gritting means, 'When you get off the witness stand [if you testified against us], you're dead.'"

> ***"If they [gang members] come in with insignia, it's a free speech problem. If you try to get them out through other means, you could be reversed. You have to feel it out on a case by case basis and know the criminal law."***
>
> — Judge Stanley Golde, Superior Court, Alameda County, California

In Alameda County, homicide prosecutor Jim Anderson reports that the defense does, indeed, object whenever the judge removes a spectator from the courtroom who is friendly to the defense, but "the objection is just for show—a *pro forma* part of every appeal counsel files in every capital case." The appeals court, he adds, treats the objection as just that—a *pro forma* complaint—and routinely rules against it. A judge in another jurisdiction, however, observed that defense counsel never objects when he removes someone because "if they did, I might rule against their objections, deny their requests for delays, and so forth whenever I had some legitimate leeway in how to respond."

Actions Judges Can Take

On their own, or if approached properly by the prosecutor or police investigator, some judges will remove gang members or other intimidating spectators from the courtroom, segregate them in the courtroom, or, in extreme cases, close the courtroom.

Remove intimidators from the courtroom. Prosecutors and police investigators in almost every jurisdiction studied

for this report said that, although they are the exception, at least one or two judges in their court systems do remove gang or family members who try to intimidate witnesses. According to Victoria Villegas, Chief of the Major Violators Unit in the Clark County (Las Vegas) Attorney's Office, "Judges [here in Clark County] *will* remove gang members. In my first gang case, the judge and bailiff were unaware of the intimidation that was taking place, so I went up and told them that the jurors were getting nervous because of the spectators' behavior. And they did remove the offending gang members from the room." In another jurisdiction, one judge tells the bailiff to ask offending gang members for identification and, if the documents are insufficient, to eject them. Another judge calls a recess if he observes or is told about a gang member who is intimidating a witness, has the bailiff bring the spectator to the bench, conducts a warrant check, and tells him to leave.

> ***"Judges [here in Clark County]* will *remove gang members. In my first gang case, the judge and bailiff were unaware of the intimidation that was taking place, so I went up and told them that the jurors were getting nervous because of the spectators' behavior. And they did remove the offending gang members from the room."***
>
> — Victoria Villegas, Chief, Major Violators Unit, Clark County (Las Vegas) Attorney's Office

Whenever gang members are expected in the courtroom, one judge has the bailiff confront *all* would-be spectators as they walk in the courtroom, requesting identification and asking why they are present, so that gang members cannot say they are being singled out; typically, this alone discourages about half the gang members from remaining.

Lieutenant Teresa Lesney, Commander of the Las Vegas Police Department's Gang Investigation Section, says the best approach she ever saw to preventing intimidation was when a judge had a police officer in the court announce loudly to a gang member who had been directing threatening gestures at a witness, "You're under arrest *for intimidation*," whereupon the police officer escorted him out of the courtroom.

Segregate intimidators in the courtroom. Some judges keep all spectators out of the first and second rows of the courtroom, leaving these benches empty or allowing only police officers and the media to occupy them. This at least puts some distance between potential intimidators and the witness.

Can the Prosecution *Benefit* From Witness Intimidation?

Some observers feel that intimidation in the courtroom actually *benefits* the prosecution because jurors usually deduce what is going on and become less sympathetic toward the defendant. Homicide prosecutor Jim Anderson tells about a case in Oakland in which several gang members came to court during his closing argument and sat right behind the defendant; after the trial, some jurors reported that *they* felt intimidated, and Anderson concluded that the gang members' presence "sure didn't hurt my case and probably solidified it because it increased the credibility of my claim that the defendant was a gang member." San Francisco prosecutor Alfred Giannini had a very weak case against a gang member who had machine-gunned a crowd of people, killing 2 and injuring 14. Because there were gang members in the back of the courtroom, a key witness balked in front of the jury, saying he could not remember anything, but the jury convicted. Later, jury members told the press, "We could figure out what was going on—he was scared to testify." Victoria Villegas, a Clark County (Las Vegas) homicide prosecutor, reports that in one case she tried, the defendant's attorney also wanted the gang members removed because, by making the jurors nervous, they were hurting the defendant's case.

By contrast, Judge Stanley Golde in Oakland feels that gang intimidation in the courtroom works against the prosecutor because jurors will feel that "if the judge cannot prevent intimidation in his or her own courtroom, and if the witness is scared, *I* sure ought to be scared, too." But if the judge stops the intimidation, Golde believes, that helps the prosecutor because jurors not only then feel secure, they also conclude that anyone who has such menacing associates must be guilty.

Close the courtroom. On occasion judges will close the courtroom to spectators during the examination of a prosecution witness who is afraid to testify in front of gang members.

- An Illinois trial judge closed his courtroom during the testimony of an eyewitness to a murder allegedly committed by the defendant. The witness was afraid to testify because he had received threatening phone calls,

shots had been fired at his front porch, and his automobile had been vandalized.[1]

- A New York State trial judge cleared all the spectators from the court after the State's sole identification witness became speechless when 30 or 40 people in the audience leaned forward and grinned and grimaced when he was sworn.[2]

The actions of both of these judges were upheld on appeal. Moreover, legislation in a few States, such as Arizona, California, and Indiana, expressly permits judges under certain circumstances to exclude some or all spectators from the courtroom in order to prevent witness intimidation. Prosecutors and law enforcement administrators may work to have similar statutes introduced in their own legislatures. The section "Preventing Courtroom Intimidation" in chapter 7, "Legal Issues," discusses existing statutes and case law on the exclusion of the public from the courtroom.

Miscellaneous strategies some judges use. Some judges make use of other strategies for protecting witnesses or giving them confidence to testify.

- Many judges make a special effort, often in conjunction with the local victim/witness assistance program, to *provide safe waiting areas*, away from any possible intimidator, where witnesses can remain until called to testify. However, space in courthouses is often at a premium; A. Franklin Burgess, Deputy Presiding Judge of the Criminal Division of the Superior Court of the District of Columbia, commandeers an empty jury room or even the jail elevator for witnesses to wait in.

- Two judges reported that they *tell defense counsel not to inform their clients of the dates when intimidated witnesses will be testifying*. "If five gang members show up tomorrow when Mr. X comes to testify," one judge tells counsel, "I'll know it's because *you* told your client that Mr. X was scheduled to testify." While defense attorneys are free to ignore these warnings, they may lose some of a judge's goodwill by being defiant. These two judges also avoid giving defense counsel any more advance notice than necessary of the date when each prosecution witness who might experience intimidation will be testifying.

- In some jurisdictions, the court administrator *makes additional judicial resources available to expedite cases* involving witness intimidation. Prompt disposition of cases not only reduces the opportunity for intimidation before and during trial but also conserves witness protection resources, allowing more witnesses to benefit from short-term relocation or security services. For example, in New York City, one judge handles all gang cases involving multiple homicides in an effort to expedite these cases and limit the number of jurors vulnerable to intimidation. The Rhode Island statute establishing that State's witness protection program contains a subsection authorizing the State's attorney general to request that cases involving witness intimidation be expedited (see chapter 7, "Legal Issues," and appendix C1).

- When a spectator smirks, laughs, or tosses a hand indicating a witness's testimony is nonsense, some judges immediately *announce they will not tolerate such behavior*, and it usually stops. A study by the Victim Services Agency in New York City suggested that admonishments by judges might be associated with reductions in the recurrence of intimidation.[3] As one judge says, "You have to *watch* and *listen* at all times."

Whatever judges do, one judge warns, they need to put their actions on record in case there is an appeal.

Manage the Witness

"You need to take time to talk to and even coddle reluctant witnesses; they're touchy and hostile," one judge advises. If needed, this judge holds a hearing with witnesses before they are called to the stand. If the witnesses are coming from jail or prison, he tells them that he will not let the jury see the handcuffs, and he tells the bailiff to remove the cuffs when the witness is about to testify. When a witness recants in obvious reaction to the presence of gang members in the courtroom, he calls a recess and talks to the witness in chambers, explaining the law of contempt and making clear that the witness's previous testimony will come into the record anyway. He may also tell the witness, "We'll protect you." The same judge sometimes takes the opposite tack, becoming very hardnosed with a recalcitrant witness. On one occasion, he leaned over and whispered to a witness brought in to testify from the State prison, out of the jury's earshot, "Smarten up . . . You *need* to testify."

Extra Security Measures Are Sometimes Needed

Sometimes judges request, or police investigators offer, extra security measures when it appears that real violence might occur in the courthouse or courtroom. In a rape case in a jurisdiction in which gang members had threatened the lives of two witnesses, the judge had police authorities provide several armed officers in the courtroom, set up metal detectors at the entrance, place a video camera in the courtroom, and install an alarm system whereby he or his bailiff could summon a SWAT team concealed in a room across the corridor. The prosecutor wore a bulletproof vest. In other high-profile cases, special measures are needed for transferring witnesses to and from the court, including the use of decoy vehicles, back or basement entrances, and service elevators. See the description of Prince Georges County (Maryland) Sheriff's Office five-day course for forming a special witness protection team in the box "Special Security for Moving Witnesses," in chapter 3.

The Role of Bailiffs

Several observers point out that bailiffs (who may be retired police officers or deputy sheriffs on active duty) can be the weak link in preventing intimidation in the courtroom. If bailiffs are not careful to face and watch the spectators at all times, they may fail to spot intimidating gestures, yet they often have to turn their backs to the spectators to let the jury into the room, keep a close eye on witnesses being transported from jail or prison to testify, or pay attention to a request from the judge. In addition, as with judges, bailiffs may not be familiar with what the gang members' gestures mean. Finally, not all courts have bailiffs, although judges can usually request one in potentially dangerous cases.

The importance of the bailiff was underscored by one judge who is able to interview and handpick bailiffs for his court because he is on good terms with the sheriff. He reports that he chooses only bailiffs who are careful, firm without being provocative, and, above all, smart. He also looks for individuals who appear to be fit and capable of moving quickly to respond to dangerous situations. He tells each new bailiff, "I know your job is to protect me and the jury, but I also want you to protect witnesses against intimidation."

Colonel Gerry Powers, Assistant Sheriff of the Prince Georges County Sheriff's Office, who provides a five-day training course for law enforcement agencies on witness security (see the box "Special Security for Moving Witnesses" in chapter 3), argues that since "bailiffs often end up out of position with their back to the spectators or have their attention diverted doing something for the judge," they are unable to monitor intimidating behavior or prevent violence from occurring. He recommends that whenever security is a concern, a deputy sheriff should also be present to provide it.

Motivating Judges To Act

Prosecutors and police investigators report they have found several ways of motivating at least some judges to become more aggressive about protecting witnesses from intimidation in the courtroom.

Ask the judge's permission. Often the judge does not need to take any action other than approving the efforts of prosecutors, police officers, or victim advocates for countering intimidation. For example, a prosecutor, police investigator, or victim advocate may only need to ask the judge for permission to allow an advocate to accompany and sit next to the witness in the courtroom (except when the person is testifying), to authorize the sheriff's department to use metal detectors or pat-down searches for anyone entering the courthouse or courtroom, or to authorize police officers or sheriff's deputies to arrest anyone in the courtroom with an outstanding warrant against them.

Bring courtroom intimidation to the judge's attention. When a prosecutor or police investigator observes intimidation in the courtroom that the bailiff and judge have not noticed or have misinterpreted as innocuous, he or she can bring the matter to the court's attention and ask that action be taken. If spectators are trying to intimidate the witness but are, in the process, also frightening jurors, emphasizing the impact of their behavior on the jury may be more effective than singling out its effect on the witness. Judges know that a frightened jury cannot render an impartial verdict—and allowing this fear to go unchecked suggests they are not in control of their own courtrooms.

Make clear that the court is empowered to remove intimidators. Prosecutors can make judges aware of pertinent statutory authority and case law to make clear that the

court *can* remove intimidators from the courtroom, or close the court entirely, without violating the guarantee of a public trial in State criminal courts embodied in the Sixth and Fourteenth Amendments. (See below and chapter 7, "Legal Issues," for a discussion of pertinent case law.)

Arrange for seminars and workshops. Prosecutors and sympathetic judges can arrange for seminars and workshops for court personnel on protecting intimidated witnesses. Victoria Villegas arranged for two experienced judges and two police officers from Los Angeles to help her lead an all-day seminar on courtroom security, gang signs, and measures for protecting witnesses. Several judges attended the voluntary session along with a number of bailiffs.

All of these steps, of course, require tact: judges may resist efforts to provide information or training as an attempt to undermine their impartiality or as a potential infringement on their autonomy.

Court-Related Actions Prosecutors and Police Can Take on Their Own

Prosecutors and investigators report that they can sometimes reduce courthouse intimidation without involving the court itself.

Discourage gang members from entering the courthouse or courtroom. Some professionals believe that the best intimidation prevention strategy is to keep those individuals who seem likely to threaten the witness from ever entering the courtroom.

- Prosecutors and police can *arrest gang members with outstanding warrants who come to court*. In one case, a prosecutor found outstanding arrest warrants on several gang members who had been attending the trial and had some of them arrested in the courthouse; the next day the others stopped coming to court. Another prosecutor arranges for gang-savvy street officers to come to court and take into custody any gang members who have outstanding warrants against them, even if their only offense is a traffic violation. When possible, Alfred Giannini in San Francisco also takes out new warrants on other gang members and has them arrested at the courthouse. "That way," he says, "you arrest people you wanted to catch anyway, and you give the impression that law enforcement controls the courts."

- Los Angeles has found that it can be effective to *videotape gang members* coming into the courtroom because individuals who are on probation want to avoid documentary evidence of their association with other known gang members—typically a violation of probation conditions that could land them in jail.

- In several jurisdictions, sheriff's deputies *use metal detectors or pat-down searches* at the entrances to the courthouse or the courtroom. Often gang members will walk away rather than face these procedures.

- In the company of a law enforcement officer, one Texas prosecutor asks intimidating gang members in the courtroom or courthouse their names and, on occasion, photographs them. The prosecutor then has subpoenas drawn up to *call the intimidators as witnesses*. In the prosecutor's view, if the gang members are there to intimidate a witness, they must know something important about the case. Turning intimidators into witnesses makes it possible to exclude them from the courtroom during the testimony of other witnesses—including that of anyone targeted—without asking for the judge's approval.

Escort and accompany witnesses. This report has already pointed out that victim/witness program advocates are sometimes available to accompany frightened witnesses to court and even to sit next to them during the proceedings (see chapter 2, "Traditional Approaches to Witness Security"). Prosecutors and police investigators can also arrange for sworn officers, either in or out of uniform, to escort and stay with witnesses in the courtroom. (Of course, care must be taken to avoid having police officers who are going to testify in a case be present in the courtroom except when they are giving testimony.) Even if this show of force does not

Making Arrests in the Courthouse Requires Care

Police and prosecutors need to be careful about the timing of courthouse arrests. One judge was infuriated when the sheriff's department executed warrants during an afternoon recess in a case, creating a commotion in the corridor, complete with cursing and shoving between deputies and the gang members they were trying to arrest. Because the jury had not yet been dismissed and was within earshot, he had to conduct a hearing with each juror to make sure that what he or she had heard would not affect his or her ability to judge the case fairly.

The Witness's Own Associates or Family Members Can Be a Problem

Prosecutor Alfred Giannini in San Francisco sometimes tells the *victim's* family and friends not to show up in court. "If you come in with your gang insignia yelling (profanities)," he tells them, "you and I will both lose the case because the jury won't like you and then they won't like your son. They'll decide your son started the problem, just as the defendant's lawyer is claiming." Or, after telling a mother or father that some family members can come, he might add, "But I don't want to hear a word from them, and I don't want 20 of your dead son's friends talking garbage outside the courtroom within earshot of the jury."

discourage gang members from trying to intimidate a witness, it may give him or her a feeling of security that makes it possible for the person to testify as planned. Officers can maintain eye contact with the witness as a form of reassurance, surround the witness when he or she enters or leaves the courthouse, mingle in the corridors with gang members, or sit right next to known gang members in the audience. In San Francisco, one officer helped a witness's neighbors form a community support group, who attended the trial so that the witness would see friendly as well as intimidating faces in court.

> ***[By executing arrest warrants for gang members in the courthouse,] "you arrest people you wanted to get anyway, and you give the impression that law enforcement controls the courts."***
>
> — Alfred Giannini
> Deputy District Attorney, Homicide Unit, San Francisco County District Attorney's Office

Be creative. Once when Victoria Villegas had her police gang expert on the stand in Clark County, Las Vegas, he brought photos of members of the gang that was alleged to be involved in the case. When the expert realized that a gang member happened to be seated in the front row of the audience, he answered a question from Villegas about how the gang could be identified by saying, "Well, they wear red bandannas, have a tiger insignia on their right sleeve, and have crew cuts—you know, just like that guy in the front row." According to Villegas, the jury was able to figure out that the spectator being referred to was the leader of the gang trying to intimidate the witness. No gang members showed up in court the next day.

Prosecutor Jim Anderson in Oakland tells witnesses who report that they can no longer recall what they saw or heard that they are free to take the stand and say, "I don't remember." That way the witness will not be held in contempt, Anderson can introduce the person's previous sworn statement from the preliminary hearing into evidence (see chapter 7, "Legal Issues"), and the jury can decide whether the discrepancy is based on fear of retaliation—all of which benefits the prosecution. In one of Anderson's cases, a man had hired two men to kill his former wife, but the witness, who had identified the killers at the preliminary hearing, had since been arrested himself and, afraid of retaliation if he testified at the trial, told Anderson he could no longer remember what he saw. Anderson told him he could answer questions at trial by saying, "I don't remember." Then Anderson had the police officers who audiotaped the witness's previous testimony take the stand and play the tape for the jury (evidence the defense had already obtained through discovery). The jurors decided that fear was preventing the witness from repeating his earlier testimony. Both defendants were found guilty and sentenced to death.

Intimidation in Jails and Prisons

A significant number of intimidated witnesses will be behind bars either as codefendants in the same case or for an unrelated crime. "Witnesses in custody are a real problem," according to Alfred Giannini of the San Francisco District Attorney Office. "They demand attention now and will in the future . . . A witness is in more danger of running into a friend or relative of the defendant in a California jail or prison than he is walking the entire city of San Francisco except for the defendant's own neighborhood." To secure the cooperation of incarcerated witnesses, some assurances must usually be given that they will be protected from retaliation. In addition, nonincarcerated witnesses may be afraid that jailed relatives will be harmed by other inmates who are gang or family members of the defendant.

Typical protective custody arrangements are described below.

- *Separation of the witness from the defendant within the*

same correctional facility by placing the defendant and the witness in different areas of the facility's general population or by placing the defendant in a special protective custody unit. In some correctional systems, such as New York City's, witnesses may prefer to remain in the general population due to a prison culture that encourages attacks on any incarcerated informant who is in protective custody. For this reason, prosecutors work quietly with prison officials to separate witnesses and defendants without formal separation orders (that are easily discovered evidence of a prisoner's cooperation with the prosecutor) and without the use of protective custody. Prosecutors also work with prison officials to avoid high concentrations of gang members in particular facilities.

"Witnesses in custody are a real problem; they demand attention now and will in the future . . . A witness is in more danger of running into a friend or relative of the defendant in a California jail or prison than he is walking the entire city of San Francisco except for the defendant's own neighborhood."

— Alfred Giannini, Deputy District Attorney, Homicide Unit, San Francisco County District Attorney's Office

- *Separation of the witness and the defendant by transferring the witness to another correctional facility*, sometimes on a reciprocal basis. A few jurisdictions occasionally use Federal prisons on a cost-reimbursement basis to hide particularly endangered witnesses. Prosecutors in Washington, D.C., reported that incarcerated witnesses prefer to be transferred to suburban jails, where families and friends can still visit, or to a distant facility near out-of-town family members. Working to arrange such a transfer is one way the prosecutor can show goodwill toward an incarcerated witness who is willing to cooperate. If local gangs have affiliates in local jails or throughout the State prison system, it may be necessary to relocate a witness to an out-of-State facility.

- *Separate transport of witnesses and defendants to testify.* If arrangements have not been made to ensure the separate transport of incarcerated witnesses and defendants who are housed at the same correctional facility, witnesses may refuse to testify once they arrive in court—the ride to and from the courthouse provides ample opportunity for a defendant to intimidate a witness.

Security for incarcerated witnesses hinges on good cooperative relationships among police investigators, prosecutors, and corrections officials, preferably as defined in a memorandum of understanding between the prosecutor's office or police department and the department of corrections. More commonly, however, cooperation is based on personal contacts and ad hoc arrangements: a deputy county attorney or police investigator calls a corrections administrator on a case-by-case basis for help in protecting key witnesses. Victoria Villegas calls the 12-story jail in Las Vegas to request that the administrator not house a witness on the same floor with a known family member or gang associate of the defendant and not transport them to court together. Alfred Giannini in San Francisco calls the jail watch commander in the sheriff's department and asks to have a witness who needs protection placed on the seventh floor with Federal detainees or in maximum security. When Giannini requests a transfer for an inmate to another jail or to San Quentin Prison, he must get a court removal order so that one warden will release the inmate and the other will accept him. Giannini has the declarations on his computer ready for him to fill in the blanks, and no judge has ever refused to sign an order. Nevertheless, he follows up with the watch commander to make sure the transfer happens. Giannini also arranges with the watch commander for district attorney investigators or police inspectors, instead of sheriff's deputies, to transport jailed witnesses to court to ensure their safety. In Iowa, since some inmates from Polk County's overcrowded jail in Des Moines are routinely housed in other county jails, prosecutor Daniel Voogt goes to the sheriff when an inmate witness needs to be protected and says, "You might as well do me a favor and select my witness as one of the inmates you transfer."

Police inspectors, too, sometimes make their own jail arrangements. When Lieutenant Earl Sanders in San Francisco needed to protect an inmate who had provided information about a defendant who was trying to kill a witness, the inspector went upstairs to the corrections department and talked to the captain in charge of the jail about having the inmate placed in another county jail; she arranged an inmate exchange with her counterpart in the San Mateo County jail, a few miles away. Sanders coordinates the movements of informants and witnesses who are incarcerated in the State

Taking Innovative Action Against Inmate Intimidation

Prosecutors in some jurisdictions have taken aggressive action against inmates intent on intimidating a witness.

- A prosecutor in one city developed an agreement with the regional telephone company to trace inmate telephone calls upon request so that charges could be brought against inmates for harassment by telephone. The prosecutor has on several occasions threatened inmates with having their phones removed and, working with the jail, arranged for phones to be removed on two occasions.

- In Washington, D.C., prosecutors have cooperated with corrections officials to execute search warrants in the jail to discover correspondence or other documentation of witness intimidation conspiracies. The U.S. attorneys were able to use the jailhouse correspondence of one gang member accused of murder to help convict him and an associate of intimidation and homicide charges.[4]

- Prosecutors in Los Angeles also make use of jailhouse searches when witness intimidation is suspected. In one case, the defendant had written witness information on his cell wall—in Arabic. The writing was photographed, translated, and used to prove intimidation.

prison system with fellow investigators he knows in the California Adult Authority's Corrections Investigations Division (CID), which deals with gangs. Sometimes Sanders calls to have an inmate transferred to the "safe yard" where everyone is a government witness or informant, but when one incarcerated gang member offered to finger 10 other shooters in a gang slaying if Sanders could protect him, the inspector arranged to have the inmate serve his time in the Nevada State Prison. Sanders has also been able to arrange to send inmates to Federal prisons for nonviolent offenders.

Conclusion

Although preventing intimidation in the courtroom and in jails and prisons may appear to be beyond the control of prosecutors and police investigators, as this chapter makes clear, there are a variety of ways in which they can work with courts and correctional systems to significantly enhance the security of witnesses who will testify if they feel they can be protected against retaliation. Ultimately, however, correctional administrators and judges need to be made aware that it is *their* responsibility to prevent intimidation—jail and prison administrators because they have a legal duty to protect inmates, and judges because they are constitutionally mandated to ensure a fair trial. Prosecutors and investigators can help further this educational process.

Endnotes

1. *People* v. *Rufus* (1982, 1st Dist) 104 Ill App 3d, 60 Ill Dec 190, 432 NE2d 1089.

2. *United States ex rel. Bruno* v. *Herold* (1969, CA2 NY) 408 F2d 125, cert den 397 US 957, 25 L Ed 2d 141, 90 S Ct 947.

3. Connick, E., and R.C. Davis, "Examining the Problem of Witness Intimidation," *Judicature* 66 (1983): 439–447.

4. "Letters From Gang Members Leave a Trail of Violence," *Washington Post*, May 24, 1995.

Chapter 5
Reducing Community-wide Intimidation

Key Points

- Community-wide intimidation poses as serious a threat to the ability of police officers and prosecutors to obtain witness testimony as does an explicit threat against a witness in a specific case.
- Community-wide intimidation can be reduced in part through community outreach, including
  - — community-based policing and prosecution strategies,
  - — vertical prosecution of cases involving gangs or drug crimes,
  - — matching language skills and cultural knowledge of police officers, prosecutors, and outreach personnel to the communities they serve,
  - — community education and empowerment (including legal assistance in using civil remedies to combat gang and drug crime), and
  - — public relations (including publicizing witness security program options).
- Following a high-profile gang or drug crime, intensive policing and prosecution tactics may help to reduce community-wide intimidation.

Community-wide intimidation is the fear, shared by a whole neighborhood, that the criminal justice system cannot protect residents from the gangs and drug dealers who dominate their community. This implicit but highly insidious form of intimidation frustrates prosecutors and police investigators because, while there is no specific threat or intimidator they can investigate, a community member who witnesses a crime may nevertheless be extremely fearful about testifying—and justifiably so. In fact, the most dramatic examples of community-wide intimidation concern not reluctant witnesses who need to be convinced to testify but the absence of *any* cooperative witnesses in crimes where both the victims and the perpetrators are well known to the community:

- In the Pittsburgh case cited in chapter 1, no witnesses were willing to testify after a drug-related shooting at a softball game left three players dead in full view of dozens of spectators.
- In San Francisco, although there were more than 50 witnesses to a homicide that took place at a public concert, including a woman identified as having stood next to the known shooter, no one was willing to identify the murderer in court.

Does Community-wide Intimidation Require Attention?

In some jurisdictions, prosecutors and police investigators consider claims of nonspecific fear arising from community-wide intimidation a legitimate justification for witness relocation and security. In Washington, D.C., the U.S. Attorney's Office has proposed a new pilot program—separate from its participation in the Short-Term Witness Security Pilot Project (see chapter 3, "Relocating Intimidated Witnesses")—called the Citizens Assistance Program, to provide limited funding

Community Outreach Strategies

The following outreach strategies were recommended by police and prosecutors interviewed for this report:

- ✔ **policing and prosecution strategies, such as**
  - — community policing,
  - — assigning prosecutors to specific communities or police units,
  - — vertical prosecution of cases involving gangs or victim intimidation—that is, one prosecutor or team of prosecutors assumes responsibility for a case from start to finish,
  - — matching the cultural knowledge and linguistic skills of law enforcement officers and outreach personnel to the characteristics of the communities they serve (especially in Asian communities);
- ✔ **community education and empowerment** through, for example, speaking to civic groups and at schools or providing residents with legal assistance in bringing civil drug or gang abatement lawsuits;
- ✔ **public relations** concerning witness security options and about program successes such as the fact that no witnesses have been harmed or the number of gang members convicted as a result of testimony by intimidated witnesses.

to relocate citizens who have witnessed crimes and are afraid of retaliation by neighbors—not just by the defendant—if they testify. In contrast, in some smaller jurisdictions prosecutors and investigators do not feel that witnesses who have nonspecific fears need relocation or other protection, in most cases because the incidence of actual violence against witnesses is extremely low. However, Alfred Giannini, an assistant district attorney in the San Francisco District Attorney's Office, reports, "I focus on what will be necessary to help the witness to testify. It doesn't matter if there's a real threat or just a perception, because in either case I'll lose the witness."

> ***"I focus on what will be necessary to help the witness to testify. It doesn't matter if there's a real threat or just a perception, because in either case I'll lose the witness."***
>
> — Alfred Giannini, Assistant District Attorney, Homicide Unit, San Francisco District Attorney's Office

While official attitudes toward community-wide intimidation may differ from one jurisdiction to another, *every* community in which witness intimidation is an issue will benefit from community outreach. Respondents reported that, by building confidence in the justice system's ability to understand and prevent crime in their community, community outreach demonstrates to residents that witnesses are a valued civic resource, helps to defuse exaggerated apprehensions about gang power, and encourages civic participation by law-abiding community residents. Most importantly, outreach is the only way to reach "invisible" witnesses who are otherwise never known to investigators or prosecutors and to prevent the further spread of community-wide intimidation. Finally, outreach is an important adjunct to witness security programs, which must limit the number of witnesses receiving personalized security services due to limited resources. Community outreach assures residents of intimidated neighborhoods that, although funding may not be available to relocate or counsel *all* witnesses (especially those in "quality-of-life" crimes as opposed to homicides or major gang and drug cases), police investigators and prosecutors are aware of the burden of fear and general intimidation in neighborhoods dominated by gangs and drugs and are attempting to reduce it. As discussed below and summarized in the box, respondents use a number of outreach strategies.

Community Policing and Prosecution Strategies

Community policing and prosecution strategies are critical to developing better working relationships with witnesses and potential witnesses in gang- and drug-dominated neighborhoods.

Police and Prosecution Tactics That May Reassure Communities and Witnesses

Prosecutors and police investigators interviewed for this report recommend a variety of policing techniques they have used to increase community confidence in law enforcement:

- ✔ Use mobile precincts to increase police visibility in gang-dominated areas where community-wide witness intimidation is intensifying following a high-profile crime.
- ✔ Establish storefront precincts in underserved neighborhoods or areas where police officers have difficulty making contacts with residents and business people. Experts consider storefront precincts to be a valuable tool in establishing better cooperation in many Asian communities in particular, by increasing residents' familiarity with the police and allowing officers to gather the intelligence necessary to combat Asian gang crime.[1]
- ✔ Give potential witnesses beeper numbers to contact police investigators or prosecutors, and avoid using formal business cards so that potential witnesses are not compromised if the telephone numbers or cards are found in their possession—one police agency gives out cards that read, "Don't talk to me here, call me."
- ✔ Arrange for the prosecutor to be present when police officers plan to arrest alleged intimidators so that the community will see that the district attorney is involved and able to protect witnesses.
- ✔ Interview witnesses discreetly, either in large groups that include uncooperative witnesses or secretly at a secure place, such as motel rooms, boats, and rarely frequented parking lots.
- ✔ Use intensive policing and prosecution tactics to demonstrate that law enforcement can be effective following a gang or drug crime that is contributing to community-wide intimidation.

Perhaps one of the most valuable ways in which prosecutors and police investigators can decrease residents' hesitance to speak with them is to be a constant presence in the neighborhood and to be seen speaking frequently with a wide range of residents—not just those involved in investigations. Prosecutors also have a better chance of developing cooperative relationships with witnesses if cases are prosecuted *vertically*, that is, with one prosecutor or team of prosecutors handling a case from start to finish.

While exact definitions differ, community policing is generally considered to have three ingredients: an orientation to problem solving within the community; police partnerships with neighbors, community groups, code enforcement agencies, and other resources; and the delegation of considerable decision-making authority within the law enforcement agency. Community-based prosecution, used in several jurisdictions interviewed for this report, involves pairing prosecutors with community policing units to provide similar problem-solving and partnership services to a neighborhood. In particular, certain prosecutors make themselves visible in the local community and may be assigned to litigate all the cases within a specific neighborhood. Community-based prosecutors interviewed for this report emphasized the need to be seen by the community at the scene of the crime whenever possible and to collect as much information about potential witnesses as possible at that time.

The advantages of community policing and prosecution are many:

- Prosecutors and police are able to build long-term relationships with tenant and other community groups,

and these contacts may lead to increased witness cooperation.

- A combined and consistent police and prosecutor presence can help to build a greater sense of trust and accountability between the community and the criminal justice system.

- Community-based police investigators and prosecutors are more likely to see links among related cases or to detect new crime trends before they have the opportunity to develop fully.

- Community-based investigators and prosecutors typically become attuned to the needs of victims and witnesses in their jurisdictions and can work with victim/witness advocacy programs to design responses tailored to local concerns.

Community Education and Empowerment

Another approach to decreasing community-wide intimidation involves the empowerment of community groups to fight back against drug and gang crime and to reclaim their buildings and neighborhoods. Prosecutors and police officers can help empower community groups in a number of ways, including

- providing legal and clerical assistance to community groups interested in bringing civil suits under local drug nuisance statutes or gang nuisance laws (see chapter 7, "Legal Issues," and appendix B6, "Helping Communities With Nuisance Abatement Suits"),

- assisting tenant groups in organizing gate checks at public housing developments (a practice intended to discourage entry by outside gang members or drug-selling organizations), and

- organizing neighborhood support groups for crime victims or families of homicide victims (in Baltimore, a support group which the prosecutor's office originally brought together at a bereavement center went on to become an independent, activist group dedicated to preventing violence).

Efforts to aid a community need not be formal. A police inspector in San Francisco reported that he had helped organize an ad hoc neighborhood support group for an intimidated witness; as mentioned in a previous chapter, members of the group attended the trial each day so that the witness would see friendly as well as intimidating faces among the spectators.

Public Relations

Almost every respondent emphasized the need for better public relations concerning witness security and assistance efforts. In general, prosecutors in smaller jurisdictions felt that, as bad as witness intimidation is, the public's perception of the danger involved in testifying is exaggerated and that public relations efforts to minimize irrational community-wide fears would be helpful. Most prosecutors in larger urban jurisdictions considered witnesses' fears to be well founded, but they too saw a need for aggressive public relations once a workable witness security program was in place in order to notify the community that the criminal justice system is prepared to protect them.

Prosecutors, police officers, and victim/witness program directors reported seeking or accepting speaking engagements with PTAs, teachers' groups, guidance counselors, community groups, and high-risk groups, like elderly Asian immigrants, to increase the community's awareness of the criminal justice process. Some victim services programs distribute printed material, sometimes in two or more languages, describing the prosecutor's programs and policies, the rights of the victim or witness, and support groups or other services available. While some speakers address the issue of intimidation directly, others feel that discussing it openly may raise fears rather than allay them, and so they attempt only to familiarize people with the law enforcement process and to make friendly contacts in the community. If they do discuss witness security issues, they are careful not to promise a level of protection they are not absolutely sure they can provide.

Police investigators and prosecutors from all parts of the country emphasized the need for special public relations efforts (combined with community outreach) to give Asian and other immigrant communities information about the American criminal justice system and immigration law. Asian communities are said to be particularly vulnerable to threats if they testify, because intimidation is often an institutionalized element of Asian gang extortion activities. The ability of Asian gangs to operate with impunity in many Asian communities depends on a lack of trust in the criminal

The Private Sector Becomes Involved in Community Outreach

Founded in 1993, the Wichita/Sedgwick County Neighborhood Initiative is a public-private effort to coordinate grassroots community organizations; public agencies including law enforcement, city government, and the schools; and interested for-profit and nonprofit private sector businesses, labor groups, and civic organizations to reduce gang-related violence. The Neighborhood Initiative is a process, not a structured organization. It supports goals and activities that emerge from neighborhoods rather than programs that are introduced by local government. For example, when there was a drive-by shooting in which a two-year-old child died, the Initiative responded to community requests for assistance by trying to arrange a truce among the rival gangs.

The Initiative's project director, Pat O'Donnell, is on loan to the community for three years from the Boeing Company. O'Donnell's goal is to assist neighborhoods to obtain needed resources to deal with gang violence by bringing *all* parties to the table regularly, including community police administrators, the city and county management representatives, the mayor, a former State legislator, grassroots anti-gang groups, and gang members themselves. In the past, O'Donnell writes, "communities have been accustomed to working with agencies or departments to get something done. The Initiative is successful only when collaborative efforts and nontraditional partnerships are formed to connect a neighborhood's need or request for service with existing community resources."

In addition to the International Brotherhood of Electrical Workers Local 271, Beeson Carpet Cleaning, Star Lumber, the Junior League of Wichita, and several other private sector organizations, the Initiative involves professional associations in its activities. The local chapter of the American Society for Quality Control, a professional organization whose members work in manufacturing, has volunteered to help develop evaluation measures to monitor levels of violence in neighborhoods and program impact; one society member devotes 10 to 15 hours per week to program evaluation. The American Society for Training and Development, an organization of professional trainers, has sent members to the community to ask what kind of training would be helpful. Three training focuses were developed in response to the expressed community needs:

- how to hold a community/tenant meeting,
- how to approach and communicate effectively with school administrators, and
- how to approach city hall.

Project manager O'Donnell emphasizes that these groups volunteered what *they* thought they could do best. O'Donnell advises, "If a group offers help, let it define its own involvement. Give it ownership."

The Neighborhood Initiative's office is a storefront space in a local mall, donated by Simon Property Management. The space is shared by the Neighborhood Initiative, community police, and another grassroots community organization. The shared space has fostered communication between community police officers and grassroots organizers, as well as with community residents who drop in to voice concerns about local issues.

O'Donnell's goal before he returns to Boeing is to hand over the leadership of the Neighborhood Initiative to the grassroots organizations that the program was founded to support. His advice to others organizing similar efforts: "Emphasize inclusivity and don't give up."

Too Many Witnesses?

Some prosecutors who undertake witness security with extremely limited resources were concerned that positive publicity of any sort would result in a deluge of cooperative witnesses requesting assistance. Rather than face the task of determining which witnesses were most valuable and most in need of assistance, they prefer to keep information concerning witness protection resources and successes relatively quiet. Other police investigators and prosecutors consider the prospect of "too many witnesses" an attractive scenario. San Francisco Lieutenant Earl Sanders supports publicity and is ready to cope with any overflow of witnesses: "You should let the public know you will protect them—I would love to be inundated with witness offers to testify. I would just screen the ones I would protect."

justice system, residents' unfamiliarity with the English language and American law, and law enforcement's difficulty in overcoming these cultural and linguistic barriers. As a result, speakers fluent in Asian languages and dialects, and good translations of information pamphlets, are important adjuncts to outreach efforts in these communities. For example, police officers in Las Vegas found it difficult to make contacts in the Asian community because there was no centralized vehicle—no newspaper, radio station, or community group—through which to do publicity and outreach. A gang officer who speaks Thai has helped forge some bonds with intimidated Asian witnesses, but the lieutenant in charge of gang investigations still feels that the department's outreach is hobbled by the diversity of Asian cultures and dialects, and by an absence of one-on-one relationships with community members.

Philadelphia's prosecutor-based victim services program hired a Vietnamese staff member to conduct outreach to the Vietnamese community. The advocate visits schools to talk about emergency services—how to call 911, for example, and how to use the Bell Telephone Language Line (which can detect a Vietnamese accent) to speak to someone who knows Vietnamese. He explains to students how to contact the victim services unit, provides them with a program brochure that he himself translated into Vietnamese, and arranges presentations to interested parents. The advocate also gives presentations several times a year—over 50 to date—to community-based organizations, often bringing with him a police sergeant who is a Vietnam veteran and speaks the language. The program director reports that as a result of these efforts more Vietnamese have been reporting crimes. The advocate provides Vietnamese victims with standard victim assistance services, such as explaining court procedures and encouraging them to testify, and, whereas other victims and witnesses are passed from advocate to advocate as they move through different court divisions, he remains with each Vietnamese victim from beginning to end (a case management approach similar to that of vertical prosecution).

The International Association of Asian Crime Investigators is sometimes able to assist police and prosecutors who are seeking advice concerning Asian gang crime and outreach to Asian communities (see chapter 8, "Sources of Help"). More generally, it is important for law enforcement agencies and prosecutors' offices to have a culturally diverse workforce, so they will be able to reach all types of minority citizens in the effort to protect victims and witnesses.

Prosecutors and police investigators emphasized that their most effective public relations activity is to remove powerful local gang or drug figures from the streets, even if the defendant's initial absence from the community is for only a few days. Respect for law enforcement—and willingness to testify—is further increased if the gang or drug leaders are successfully prosecuted and jailed.

- Polk County prosecutor Daniel Voogt had an Asian gang leader arrested on the Friday of Thanksgiving Day weekend and asked that no bond be generated, charging that the defendant had already intimidated a witness. The judge agreed, and the man spent the long weekend in jail. A bond reduction hearing on Monday enabled him to post bail; however, the fact that the defendant was kept in jail for three days during a holiday period—when judges normally do their best to allow defendants to spend the weekend with their families—began the process of convincing the Asian community that this gang leader was not as all-powerful as many had assumed. As a result, more witnesses have come forward from the community, allowing the police—for the first time—to make arrests in other cases, including home robberies, that might otherwise have gone unreported. Police officers attending an Asian community gathering were told, "Those gangsters have been a real problem, and we're glad you got the leader."

- In order to clear an intimidated neighborhood of gang activity, Walter Arsenault, chief of the Manhattan District Attorney's Homicide Investigation Unit, indicts the largest number of gang members possible in each gang-related multiple homicide case. "The most important thing to do," he says, "is to bring down as many gang members as possible—you must take out the whole thing." According to Arsenault, large cases "tend to reduce the anger of ordinary citizens because large numbers of gang members are taken down at once," showing that the police are effective and that the streets can be cleared—at least temporarily—of gang activity. Arsenault and other prosecutors feel this approach can decrease witness intimidation because it both bolsters the image of law enforcement in the community and provides a pool of indicted co-defendants from which coopertive witnesses may emerge. By using co-defendants as government witnesses in gang cases, the prosecutor can avoid the need to ask—or depend on—innocent neighborhood residents to testify and thus subject *them* to potential intimidation.

In each gang-related multiple homicide case, "[t]he most important thing to do is to bring down as many gang members as possible—you must take out the whole thing . . . so you can show that the police can control the street—and because you can get a pool of indicted co-defendants who may decide to testify against each other."

—Walter Arsenault, Unit Chief, Homicide Investigation Unit, Manhattan District Attorney's Office

Conclusion

Community-wide witness intimidation is one of the most frustrating and seemingly intractable problems for police and prosecutors. However, some jurisdictions report that community outreach efforts, especially community-based policing and prosecution, can improve relations between citizens and the criminal justice system and thereby increase witness cooperation. All of these efforts attempt to break down the community's isolation and increase the confidence of its residents in the ability of the criminal justice system to represent and protect them.

Endnote

1. Hannum, P., "Police Storefronts Should Be Implemented in the East," *International Association of Asian Crime Investigators (IAACI) News* (January/February 1995): 3.

PART II
DEVELOPING OR IMPROVING THE PROGRAM

Chapter 6
Developing a Comprehensive Witness Security Program

Key Points

- Comprehensive witness security programs
  - — maximize use of shared resources,
  - — reduce the involvement of prosecutors and law enforcement investigators with time-consuming witness management tasks,
  - — lower per-witness security costs,
  - — produce an optimal distribution of existing funding to eligible witnesses, and
  - — minimize the civil liability of the prosecutor's office and the police department.
- A comprehensive witness security model includes
  - — an *organizing committee*, composed of policy makers in key stakeholding institutions;
  - — an *operational team*, including members of the key institutions involved in the day-to-day work of the witness security program;
  - — a *program administrator*, often a victim services director or civilian with law enforcement background in the prosecutor's office;
  - — *case investigators*, district attorney investigators, or a specially trained law enforcement investigations unit; and
  - — *point people in cooperating agencies*, such as the police or sheriff's department, the public housing authority, HUD, the courts, the victim services program, and social services agencies.
- Formal interagency cooperation is essential to an effective witness protection program. There are several keys to successful cooperation:
  - — Gain public and written support from the administrator of each cooperating agency to make sure teamwork occurs and endures.
  - — Develop written memorandums of understanding among all participating agencies.
  - — Identify a point person within each cooperating agency who can ensure teamwork.
- Cooperation is especially critical with the corrections system, local public housing authorities, and a variety of local and Federal social services agencies.

The chapters in part 1 of this report present a range of traditional and innovative program options available to law enforcement officers and prosecutors for providing witness security. This chapter provides guidance for establishing a comprehensive and formal witness security program that can combine several or all of the previously described approaches.

While most of the witness security efforts examined for this report operate without explicit endorsement at the highest levels and without written guidelines, needs assessments, evaluations, or formal cooperative agreements with other agencies, new programs—as well as reorganized ones—will benefit substantially from a more formal structure that emphasizes interagency cooperation and efficient use of resources. Furthermore, although not every jurisdiction possesses the resources to establish the full-fledged formal program recommended in this chapter, even partial implementation of the suggestions below should contribute significantly to improved witness protection at reduced cost.

Why a Formal Structure Is Preferred

Prosecutors and police officers interviewed for this study recommended structured programs for five reasons:

(1) *To avoid inefficiencies.* A program that is structured can involve all key stakeholders in the planning process and thereby avoid breakdowns in cooperation, gaps in services to witnesses, and inefficient or ineffective procedures.

- Programs that do not cooperate with the local public housing authority typically rely on effective, but very expensive, methods of relocation, such as short-term (or even long-term) placement of witnesses in hotels or motels.

- Police officers and prosecutors frequently spend considerable time managing witnesses. Under the auspices of a formal program, most of these management activities can be conducted by nonprofessional or civilian personnel, such as victim services advocates or program case workers.

(2) *To ensure the secrecy of witness security arrangements.* When social services or housing placement is transferred locally using unsecured data bases or other computerized records, new witness addresses may be available to anyone who has access to the system. A formal system can provide bureaucratic procedures designed to shield witness information from easy discovery. In Baltimore, where the department of social services cooperates formally with the prosecutor's office to shield witnesses, one staff member in the director's office handles all transfers of services for intimidated witnesses and keeps all witness files in a secure location separate from the general files.

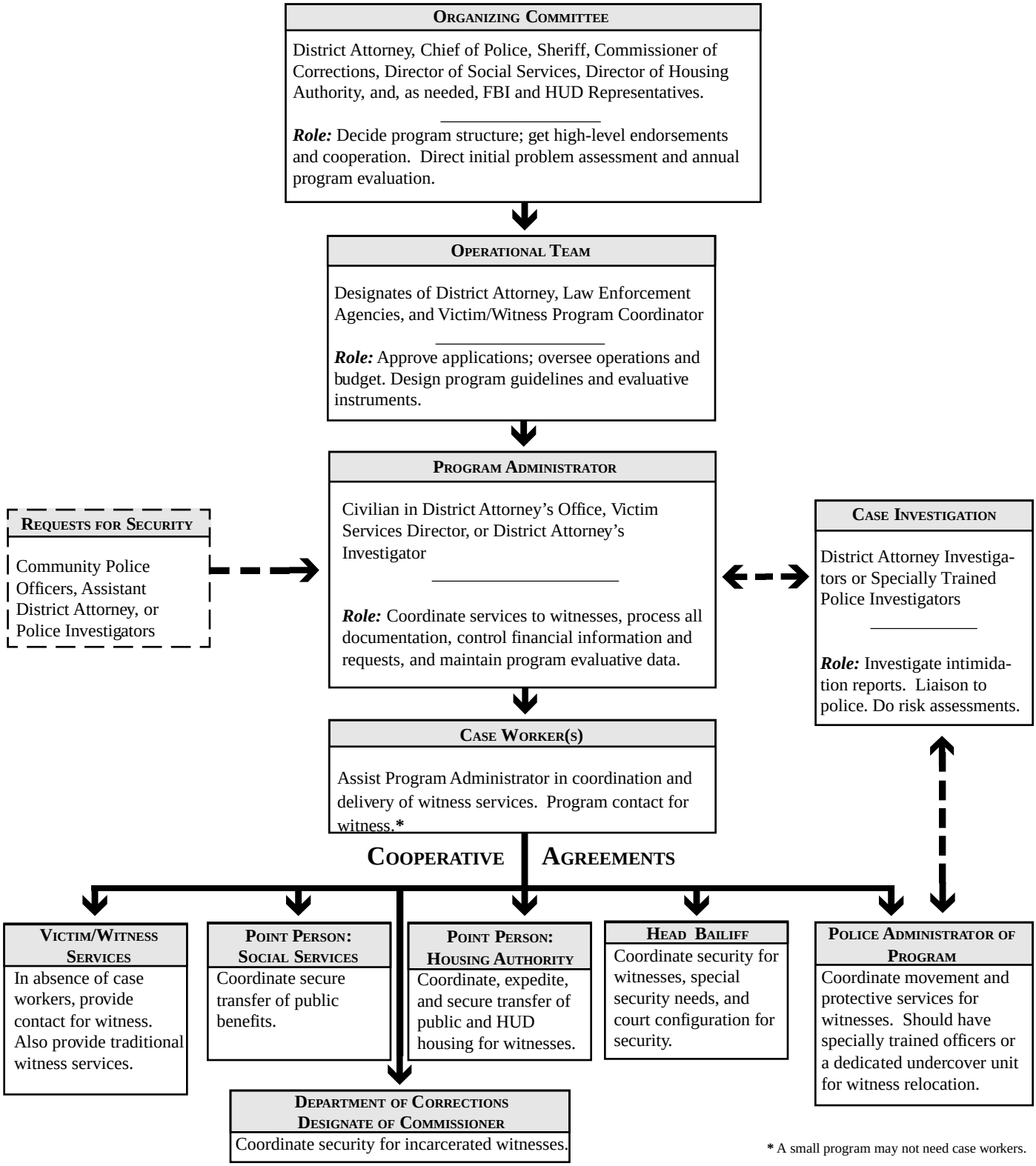
(3) *To maintain a constant commitment to program objectives by all cooperating agencies.* Ad hoc witness protection efforts are vulnerable to changes in personnel within the cooperating agencies and within the program. In one jurisdiction, a victim services advocate, recognizing the need for special services for witnesses in gang crimes, had implemented a witness protection effort with strong backing from the head of her department. However, because there was no formal program, when the department head left the job and the position was not filled, the effort was suspended.

(4) *To provide a consistent contact person for intimidated witnesses.* A structured program assigns witnesses a single contact person (other than the police inspector or prosecutor in the case) who can provide the type of consistent, around-the-clock support that is most likely to encourage the witness to testify.

(5) *To facilitate evaluation.* Well-planned evaluations are critical to monitoring program efficiency and success. Regular evaluations allow program administrators to fine-tune program operations and correct oversights in initial program planning. In addition, reliable data concerning the use of funds and program effectiveness are important in securing, renewing, or increasing funding. By arranging for access to records from every involved agency—and making it clearly understood what data each agency will collect—formal programs facilitate keeping track of at least such basic information as how many people have received assistance, whether any witnesses have been harmed, and whether convictions were obtained in cases in which witnesses received assistance.

The developmental steps described below and summarized in figure 6-1 are based on discussions with prosecutors, police investigators, and witness services directors, and represent an attempt to draw together the best aspects of

Figure 6-1
Comprehensive Witness Security Program Model



current witness security efforts and to provide approaches for remedying common program deficiencies.

1. Getting Started: The Organizing Committee

Program organization should begin with at least one meeting among the highest-ranking officials of all the agencies that will be involved with protecting witnesses. The district attorney, sheriff, or chief of police may take the lead in recruiting the organizing committee, scheduling the meeting(s), and preparing preliminary materials for the first meeting. Committee members should include

- the district attorney (and possibly the heads of the gang and homicide units),
- the chief of police,
- the sheriff (or the head of another law enforcement agency responsible for security in the courts), and
- directors of local corrections facilities, social services, and the public housing authority.

Other individuals who might be invited to join the committee or attend its meetings include HUD's special agent in charge for the regional office of the Inspector General (see chapter 8, "Sources of Help") and representatives from any other agencies whose cooperation is likely to be important to the program's success, such as the local FBI office, the public schools department, the mayor's office, and the State legislature.

The organizing committee, or its core members, may need to meet several times to accomplish the initial tasks discussed below.

Conduct an Assessment of the Problem

Before the organizing committee can begin to design the program, members need to understand the special characteristics of the local witness intimidation problem. In most jurisdictions studied for this report, prosecutors or police inspectors conducted a problem assessment informally without consulting with a wide range of agencies. However, police investigators, prosecutors, victim services counselors, corrections personnel, and social services and housing officials are all likely to have different—and valuable—perspectives on the problem. As a result, a formal problem assessment by the organizing committee is likely to produce more thorough and accurate information than relying on the perspective of one or two agencies. Discussion points for the organizing committee's problem assessment are listed in the box "Assessing the Problem."

Identify Appropriate Program Features

The organizing committee should begin to match the local needs identified in its initial assessment with appropriate program responses. For example, a smaller jurisdiction that needs to relocate witnesses only once or twice a year might plan to move them out of the jurisdiction, providing bus or plane tickets and temporary accommodations, whereas a large jurisdiction, where 20 or more witnesses are expected to be moved each year, might favor procedures focused on relocating them within public housing whenever possible. In a smaller jurisdiction, community outreach needs might be met by greater attention to community-policing tactics alone; in a larger jurisdiction, a number of public relations approaches might need to be combined to reach intimidated residents. Figure 6-2 lists respondents' suggestions concerning possible matches between program components (described in part 1 of this report) and a range of witness security needs.

The organizing committee's recommendations concerning program content should be referred to the operations team (see below) as a guide for program design. If organizing committee members do not wish to delegate this task, they should choose a knowledgeable subcommittee rather than attempt to select or design precise program responses in a large committee setting.

Identify Needed and Available Resources

Once committee members understand the nature of the local problem and have tentatively chosen program components, the group will need to identify existing and needed staff and funding resources to implement the program. A crucial question is the availability of long-term renewable funding. Talking points concerning resources are listed in the box "Where Will the Resources Come From?" (See also chapter 8, "Sources of Help," for a listing of possible resources, relevant literature, and the names of individuals knowledgeable about witness security and gang issues.)

The committee also needs to find an appropriate home for the program. The majority of the witness security efforts contacted for this report are housed in the prosecutor's office under the direction of a victim services advocate or other

Figure 6–2
Respondents' Perceptions Concerning the Effectiveness of Principal Approaches to Witness Security by Type of Intimidation

The matrix below suggests the general effectiveness of the principal approaches to addressing different types of witness intimidation. The assessments reflect conversation will over 100 prosecutors, police investigators, judges, and victim/witness advocates. However, the assessments are generalizations which may not reflect all local conditions (such as local statues, bail schedules, or jail overcrowding), or the nature of a particular case which may enhance or weaken a particular approach in a particular jurisdiction, with a particular witness, or with a particular intimidation threat. Nevertheless, the assessments provide suggestions of which approaches may help either to prevent intimidation or to provide witnesses with enough reassurance to enable them to testify.

	Type of Intimidation					
Type of Anti-Intimidation Strategy	Overt	Implicit	Imagined	In the Courtroom	In the Jail	Committed by Juveniles
high bail for defendant	poor	fair	poor	fair	poor	poor
vigorous prosecution of intimidators (including vertical prosecution	fair	fair	poor	fair	poor	poor
conscientious witness management	good	good	excellent	good	poor	good
victim/witness assistance programs	poor	good	good	fair	poor	poor
temporary relocation	excellent	excellent	excellent	NA	NA	excellent
permanent relocation	excellent	excellent	excellent	NA	NA	excellent
courtroom protection	excellent	good	good	good	NA	good
jail protection	NA	NA	NA	NA	good	NA
communitywide outreach (including community-based policing and prosecution)	fair	good	good	fair	poor	fair

Assessing the Problem

The following questions can help focus discussion on the nature of the local witness intimidation problem.

- How serious is gang-related witness intimidation in our jurisdiction? Do we have well-organized and culturally entrenched gangs, neighborhood-based gangs, or loosely allied groups that have little structure and frequent changes in membership?
- Is witness intimidation linked with a specific type or types of crimes? For example, is intimidation common in gang- or drug-related crimes?
- Are important cases being lost due to witness intimidation?
- Are homicides going unsolved or unprosecuted due to lack of cooperative witnesses?
- Are there neighborhoods in the jurisdiction where noncooperation of witnesses is the norm?
- Are any other agencies currently providing services to intimidated witnesses? What advice and information can they offer?
- Are inmates or prison gangs engaging in intimidation from behind bars against witnesses outside or within correctional facilities?
- How many times per year do police investigators and prosecutors anticipate they will need to relocate intimidated witnesses? How far would the witnesses need to go—across town to another housing development or outside the jurisdiction? Would relocations need to be permanent?
- How could intimidated witnesses be reassured without being relocated? How many witnesses would be satisfied with this sort of witness management approach?
- Would witnesses need to leave their neighborhoods permanently or only for a period before and during the trial?
- What resources are at our disposal to reduce the problem?
- What should the first steps in our action plan be?

nonprosecutor with a law enforcement background. There are two common explanations for this approach:

- Prosecutors have the greatest stake in encouraging witness cooperation. While police departments are also concerned with witness cooperation in order to investigate crime, their agencies are not always secure or appropriate places for a witness security program since people in the police station or on the streets might observe a witness in the company or under the protection of the police and betray his or her identity or whereabouts to the defendant or to gang affiliates of the defendant.
- Many prosecutor offices already house victim services units which can be used as bases for extending services to intimidated witnesses. Victim services locations are natural places for conducting witness security efforts

Where Will the Resources Come From?

The organizing committee can use the following talking points to help guide its discussion of cooperative funding solutions, the sharing of resources among agencies, and the identification of other important resources, such as key personnel and needed legal or administrative reforms.

- What sort of financial and bureaucratic resources will be needed to serve all intimidated witnesses in important cases? For example, will the program rely on public housing and HUD resources for witness relocation, or will it expect to fund some or all relocations itself? What sort of emergency relocation will be used?
- Are sufficient resources available from the agencies represented on the committee or from other known State or local funding sources? What sources could supply long-term renewable funding?
- Are there key agencies or individuals that are not represented on the committee that might be willing to assist with witness security efforts? Can the committee find a way to involve these agencies and individuals?
- Are there personnel in the police department, prosecutor's office, or victim/witness services agency who are qualified to administer the program, or must a leader be hired from the outside?
- Are there police officers or outreach personnel who can speak the language and understand the culture of every significant group of potential witnesses in the community? Can qualified individuals be found to act as liaisons to these communities?
- Is legislative reform or program funding needed from State legislators or local officials? Who will be responsible for seeking any needed legislative support?

because of staff experience assisting victims and existing contacts with social services agencies and community groups. In Washington, D.C., the witness security program is a section of the victim services unit and is overseen by the chief of the victim/witness assistance unit.

Witness security programs might also be run by an independent victim/witness services agency or cooperatively with the police department if adequate protection arrangements can be instituted.

Decide on the Composition of the Operational Team

The organizing committee should invite the core agencies that need to manage the day-to-day operation of the program (see below) to participate on the operational team. At a minimum, the team should consist of a senior prosecutor familiar with gang or homicide cases and an experienced member of law enforcement with expertise, if possible, in security operations. The operational team may also include the director or other senior personnel of the victim/witness services program if that program is going to be the principal provider of witness security services. Representatives of other agencies should be made members of the operational team only if they will play a significant and frequent role in witness security. The team that approves security applications and determines the level of security to be provided in Baltimore includes, at a minimum, the division chief of the prosecution unit involved, the deputy State's attorney for administration, and the chief of the community services/ victim witness unit. The teams also expect assistant State's attorneys in charge of narcotics, violent crimes, and trial divisions to be routine participants.

After completing these initial tasks, the remaining responsibilities of the organizing committee involve meeting at least annually to renew the memorandums of agreement (MOUs), review program evaluations, consider funding issues, and air

Which Witnesses Receive Security Services?

Witness security efforts around the country use very similar criteria in selecting witnesses for security services. In general, prosecutors emphasized that due to limited resources, the primary goal of witness security programs must be to obtain *key* witness testimony in *major* cases, not to provide security for *all* witnesses in *all* cases. In addition, as discussed in chapter 5, the limitations on resources available for witness security make it especially important to devote attention to community-wide tactics, such as community-based policing and prosecution, so that even intimidated witnesses in minor cases receive *some* services.

Common witness selection criteria include the following:

- *The importance of the case*. Most protected witnesses are involved in homicide, multiple homicide, or large drug cases.
- *The importance of the witness's testimony to winning the case.* Many protected witnesses are eyewitnesses to homicides or are expected to provide other essential testimony.
- *A risk assessment suggesting that the threat to the witness is real or, if the witness is frightened by non-explicit, community-wide intimidation, that the gang or drug trafficking organization involved has a history of violent behavior.* Most programs accept automatically the assertion that a witness is intimidated in cases where the defendant or the defendant's associates are suspected of murdering other witnesses. More difficult are cases where threats have been made and seem credible but the defendant or gang involved has no history of violent behavior. In such cases, program staff rely on the judgment of program administrators and the risk assessment prepared by police investigators or district attorney investigators.
- *A personal assessment of the witness's suitability for the program, including whether the person's testimony is credible and whether the person is emotionally stable, a substance abuser, or likely to engage in criminal activity while in the security program (such as engaging in drug use or sales, prostitution, or gang crimes).* One program requires a psychological evaluation of witnesses seeking protection.

concerns about the design or operation of the program. After the program has been in operation for a year, the organizing committee may wish to consider publicizing the program's services and evidence of its success.

2. Program Oversight: The Operational Team

Initially, the operational team will need to draft program guidelines and memorandums of understanding for signature by cooperating agency directors. The operational team will also be responsible for any applications or other documents needed to secure program funding (as proposed by the organizing committee).

The operational team has three ongoing responsibilities:

- to review all requests for witness security services,
- to oversee program operations, and
- to monitor program expenditures.

Reviewing Witness Security Requests

The speed with which applications for witness protection can be approved is critical to program effectiveness. In some programs studied for this report, the administrator in charge of approving witness security applications or requests is on call 24 hours a day, while in programs utilizing a team-style authorization procedure, mechanisms exist to provide for the emergency security needs of witnesses based on the approval of one team member until the entire team can meet to review the application. With either arrangement, a protocol will be needed to provide for emergency *temporary* authorization of expenditures for witness security services and a prompt review (ideally within 48 hours) of the application by the operational team. (See appendix A3 for the Baltimore program guidelines concerning various approval

processes.) As part of the program guidelines, the operational team also needs to develop written *selection criteria* for participation in the program. In general, programs studied for this report apply the selection criteria highlighted in the box "Which Witnesses Receive Security Services?"

Overseeing Program Operations

To monitor program operations effectively, the operations team must have a wide range of program information, including

- information pertaining to cases prosecuted with the assistance of protected witnesses (see the box "Evaluation Criteria");
- program expenditure information, including an accounting of all costs borne by other departments and shared resources used by the program;
- witness evaluations concerning the effectiveness, professionalism, and accessibility of the program; and
- data regarding the severity of witness intimidation, its manifestations, and its impact on communities.

If an independent evaluator will be used to assess the program, the operations team should consult with the evaluator *before* program operations begin to identify the data to be collected for the purpose of evaluation.

The operational team should also obtain the opinions of all point people or liaisons among the cooperating agencies concerning the program's actual operation (as opposed to how it was designed to operate), weaknesses of the program in terms of procedures and personnel, and further assistance program staff may need to do their jobs better. These perceptions should be summarized in a report submitted to the organizing committee for discussion at the annual meeting (at which the heads of all the cooperative agencies should be present).

The views of program point people are a very important part of the evaluation process. Often program administrators are aware of the faults in a system but feel powerless to change program policy or to influence policy or procedures outside their own agency—even when the policies of another agency are hampering their ability to do their jobs. For example, staff members in the Baltimore public housing authority were frustrated in their efforts to speed Section 8 housing transfers for intimidated witnesses by policies in the department of social services that disallowed third-party verification of specific social services information necessary to process the housing relocation applications; these policies forced intimidated witnesses to appear at the department of social services in person to acquire certain documents—a situation that was objectionable to social services department staff as well, because they were afraid to be near threatened witnesses. Had the concerns of the housing authority staff been brought to the attention of the heads of the two departments—both of whom were committed to assisting the State's attorney to protect intimidated witnesses—a more efficient method of handing social service verifications for intimidated witnesses might have been possible.

3. Coordinating Services: The Program Administrator

The program administrator is at the heart of the witness security program model. Depending on where the effort is housed, the program administrator may be the director of a victim/witness services program, a non-attorney in the prosecutor's office (usually someone with a law enforcement or investigations background), or a police officer. Program staff at several sites felt that choosing a program administrator with a law enforcement background would help to bridge the gap between police departments and prosecutors and help in dealing with the majority of witnesses, who themselves have been involved with the criminal justice system as suspects, defendants, or convicted offenders.

The program administrator is responsible for

- receiving and processing requests for security, and
- coordinating services to witnesses from the cooperating agencies.

In addition, the program administrator is likely to be involved with processing program documentation, controlling the day-to-day disbursement of project monies for witness security needs, and maintaining and compiling evaluation data (except for the year-end interviews with agency point persons—see above).

Initially, the program administrator will need to write a manual for the assistant prosecutors, police investigators, and point people in other agencies, outlining program procedures, providing sample forms, and listing telephone numbers of the liaisons. Appendix A provides examples of

Evaluation Criteria

The district attorney's office in Manhattan reports semiannually on a wide range of measures concerning its witness protection program (see appendix D1 for the complete set of measures), including the following:

Program Effectiveness for Prosecutors

- number of witnesses protected
- number of cases receiving funding
- number of dispositions reached
- number of convictions by plea (to top and lesser charges)
- number of dismissals
- number of convictions by trial (to top and lesser charges)
- number of acquittals
- number of sentences
- overall conviction rate for witness protection cases
- trial conviction rate for witness protection cases

Program Expenses

- witness living expenses (food and other necessities)
- lodging expenses
- transportation
- protective custody
- other costs

A significant percentage of witness expenditures in Manhattan—23 percent—fell under the catch-all category "other." To avoid a similar vagueness, after a program has been operating for a short period it may be useful to readjust the expenditure categories being tracked to match typical expenses incurred.

program materials several jurisdictions have developed describing their witness security efforts, and appendix B contains sample program forms. For smaller programs, the "manual" might consist of a few pages of summarized procedures, sample forms, and contact numbers.

Witness Security Requests

The program administrator should receive and process all requests for witness security services. In the jurisdictions studied for this report, requests typically originate with a police investigator or prosecutor's office investigator. In some jurisdictions, requests for participation in the witness security program require the approval of an assistant district attorney, an endorsement that cannot usually be obtained until an arrest has been made. In other jurisdictions, police investigators either request security directly from the program administrator in the prosecutor's office or bypass the prosecutor entirely and use their own department's witness security resources. Occasionally, witnesses contact a program administrator or victim/witness advocate directly.

Whatever intake procedure is used, it is important that participating agencies route *all* requests for witness security resources through the program administrator. When it became known in one jurisdiction that intimidated witnesses were receiving priority housing transfers, the local housing authority was inundated with requests for transfers from other "witnesses." (The housing authority eventually required that a police report accompany each request.) If a formal witness security program had existed, all requests could have been processed centrally by the program admin-

istrator, not the housing authority, ensuring that only the most essential and endangered witnesses received priority. (See appendix B for sample witness intake forms.)

Coordination of Witness Services

The primary job of the program administrator is to coordinate the delivery of appropriate services to intimidated witnesses. After the operational team accepts a witness into the program, the program administrator designs a service plan for the witness, using the risk assessment provided by the police or district attorney investigator (see below). The service plan should specify which agencies need to be contacted, what services each is to provide, and what these services will cost. The program administrator then needs to contact the agencies to arrange for the appropriate services.

In one jurisdiction, the program administrator was sent to serve internships in various social service agencies whose cooperation the program would need. In another jurisdiction, the director of social services said he wanted someone from the prosecutor's witness security program to intern with his agency long enough to become familiar with the documentary requirements for the various social services available. Although time-consuming, the internship approach offers two significant advantages: not only will the administrator come to understand the needs and culture of the cooperating agencies, he or she will also have the opportunity to establish personal contacts within that agency, which may be critical to the program's future success if high-level support for the program wanes. In a large jurisdiction, the program administrator may need the assistance of one or more case workers who can serve as additional contact persons for intimidated witnesses and share the responsibility of coordinating the delivery of witness services.

4. Case Investigation: Police Unit or District Attorney Investigators

Each witness security program will need assistance from investigators to perform risk assessments, validate witness claims, and locate potential witnesses. In many jurisdictions, police investigators perform these tasks on an as-needed basis. There are a number of reasons why both police investigators and prosecutors prefer that witness security investigations be handled either by an experienced witness security investigations unit within the police department or by independent, armed investigators from the district attorney's office.

- Witness security programs rely on secrecy. Whether it is the location of the witness or the names of the witness's family or friends, the fewer people with access to witness information, the more secure the program will be. As a result, many police officers and prosecutors do not consider it safe either to use an inexperienced investigator, who might unintentionally betray witness information, or to involve a series of investigators, which expands the pool of people who have access to sensitive information.

- Some prosecutors use their own investigators to obtain independent witness risk assessments in order to have another perspective on the witness's claims in addition to the opinions of the police department.

- In other jurisdictions, police investigators are too burdened with other duties to provide full assistance to the prosecutor, so county attorneys augment police services with their own investigators.

5. Law Enforcement: The Indispensable Partner in the Witness Security Effort

Because law enforcement support is critical to any witness security effort, the program administrator needs to consider police investigators as indispensable partners. The chief executive of the participating law enforcement agency should designate a point person (preferably a law enforcement witness security specialist) to coordinate the agency's internal witness protection activities and to coordinate them with the witness security program administrator and any district attorney investigators. The police department point person should oversee

- the escort and transportation of witnesses in a secure manner,

- the swift response of officers to calls for help from intimidated witnesses, and,

- in extreme cases, the guarding of witnesses for short periods.

Law enforcement officers and investigators support witness security programs in several other ways. First, as participants in community-policing efforts, police officers not only help to deter community-wide intimidation but also may be

Cooperation Between Police and Prosecutors To Curb Intimidation

Cooperation between the Polk County Attorney's Drugs and Gang Unit prosecutors and the Des Moines Police Department's Special Investigations Unit is very close when it comes to protecting witnesses. Assistant County Attorney Daniel Voogt has asked police investigators to call him at any time of the day or night for any gang-related crime, so he can go to the scene immediately. Voogt periodically sends a memo to the chiefs of every law enforcement agency in Polk County to inform their officers and dispatchers about his interest in going on scene. He gives them his home telephone number as well as his pager number. While not every officer calls him, the inspectors in the Des Moines Police Department's Special Investigations Unit almost always do because they find he is invariably of assistance; police investigators call the unit of three drug and gang prosecutors three to five times a week, sometimes three or four times in a single day.

Voogt may interrogate witnesses on the scene in conjunction with police officers, but usually he is just present while the officers lead the questioning. (However, Voogt has to be careful to make sure he does not let himself become a witness. In fact, the Hennepin County (Minneapolis) Attorney's Office has a rule forbidding assistants from going to the scene of the crime while it is still hot, but Michael Freeman, the county attorney, feels such a blanket prohibition may be too strong.) Voogt's presence gives him an opportunity to size up potential witnesses and affords witnesses a chance to recognize his concern and availability. Voogt may suggest individuals the investigators should interview, or he may identify evidence to collect—people or materials that may seem unimportant to the police but that Voogt knows he will need in order to win the case later on.

Most of all, Voogt familiarizes himself with the case—and possible witnesses—from the ground up. This makes it unnecessary for the inspectors to fill him in later and provides him with a "feel" for the case that no amount of subsequent verbal or written information from the police can provide. When the investigators send their notes and paperwork to Voogt months later, he does not have to interpret them: he was there at the scene. With murder cases, even the county attorney gets involved from the start: he is called by dispatchers whenever a murder occurs, and he sometimes beats the police officers to the scene.

the first people contacted by intimidated witnesses seeking protection. Police officers can supply information on neighborhood gangs, gang leaders, and drug dealers that investigators need for preparing risk assessments for witnesses, and they can also reduce gang intimidation by disrupting gang operations with intensive, interdictive policing tactics. By establishing field precincts in empty apartments or storefronts or by bringing in a mobile precinct, police officers have been able to counter gang members' claims that the police cannot respond quickly enough to protect intimidated witnesses in gang-dominated housing developments.

Police investigators and prosecutors strongly prefer that officers assigned to guard and transport witnesses be experienced personnel in a dedicated unit. Officers who guard and transport witnesses need to be highly professional, well trained, and discreet. Several prosecutors recommended that to avoid any appearance of impropriety, whenever possible female officers should be used to guard female witnesses.

Witness security programs can foster cooperation between prosecutors and police by

- taking reports of intimidation seriously (for example, issue arrest warrants against individuals who engage in intimidation and, if there is preventive detention legislation, seek revocation of bail for defendants accused of witness intimidation),
- making sure that search warrants are properly drafted, and

- designing procedures for the protection of potential witnesses in cases where an arrest has not yet been made but police investigators are confident that a witness has critical information in a serious case.

6. Cooperation: Coordinating Services With Other Agencies

Witness intimidation requires coordinated and confidential services from a broad range of providers. Interagency cooperation among these providers should begin with the organizing committee but is the ongoing responsibility of the program administrator. While the model witness security effort presented in this chapter relies on formal cooperative agreements, the degree of formality of these cooperative arrangements may in practice vary widely among jurisdictions.

- Urban jurisdictions may find it helpful to have written memorandums of understanding to which they can refer, while smaller jurisdictions may rely successfully on more informal, personal guarantees of cooperation among agency heads.

- The level of involvement for each agency should be commensurate with the significance and frequency of the assistance the agency will provide. Depending on local conditions, some agencies, such as the jail and the local public housing authority, should be made an integral part of the program through a written memorandum of agreement and public support from top administrators. Other agencies, such as the school system or the FBI, whose contribution may be less important or less frequent, can be involved as part-time "associates" on the basis of a verbal agreement.

Prosecutors and police officers identify a number of important elements in establishing and maintaining effective interagency cooperation.

Identify a Point Person Within Each Agency

It is extremely helpful to have a point person within each cooperating agency who is in a position to take or initiate action each time cooperation is requested. In some agencies, it may be important to establish several liaisons because a single contact person may be on vacation or sick leave, may be transferred to another position or retire, or may find it a burden to be the only person prosecutors and police investigators ask for assistance.

There appear to be three approaches to identifying contact persons:

- a systematic approach in which pertinent agency heads (or their representatives on the planning committee) formally designate contact persons within their respective agencies;

- the designation of a witness security coordinator who, in turn, identifies contact persons within each participating agency; or

- ad hoc relationships established by individual deputy county attorneys and police investigators with individuals in other agencies.

An example of the systematic approach can be found in Washington, D.C. The program's structure involves the cooperation of a number of Federal and local agencies. Within each cooperating agency there is a "head" of the witness security program; these point people are formally responsible for coordinating witness services. As an example of the second approach, one prosecutor's office hired a single person to act as case manager for all witness intimidation cases, and, before putting the person to work, sent him on internships to various city, county, and Federal agencies to learn what it takes to cut through bureaucratic red tape and to establish relationships with liaisons for the future. As a result, this case manager has developed relationships with at least one person in every agency from whom he can expect cooperation.

Most of the jurisdictions studied follow the third, ad hoc, approach—prosecutors and police investigators have on their own initiative established personal relationships with individuals in other agencies whom they can telephone for assistance.

- A police inspector who knew the executive director of the local housing authority personally could write him a letter about the need to relocate a witness and "it was a done deal."

- An advocate in one prosecutor-based victim/witness assistance program had a friend who was the secretary of the local school district; the secretary would arrange the transfer of juvenile witnesses, or the children of adult witnesses, to other school systems when relocation was required.

Reasons for Using Memorandums of Understanding

- Administrators, like point people, come and go. One prosecutor-based victim/witness program director had established a good working relationship with a person in the local public housing authority, but when the agency's administrator was replaced, the contact would no longer cooperate until he knew what to expect from the new head; as a result, the program director says, "we are now at an impasse in terms of getting help in relocating witnesses." A written agreement might have committed the new administrator to the arrangement and given the contact a basis for continuing to cooperate.

- When they make a commitment in writing, administrators are less likely to shirk their responsibilities later on because they will have been careful to agree to perform only those actions they are truly prepared to undertake.

- If a document is available for public inspection, it is more difficult for signatories to deny their obligations than if the agreement is merely verbal.

- A written agreement can assure administrators that their agency will *not* be responsible for any duties or costs to which they have not formally agreed.

- Administrators can use a written document to explain that their hands are tied if third parties object to the new arrangement.

- A written document reduces misunderstandings and uncertainty about each party's role and responsibilities.

- Documentation can also be used to explain the agreement to new staff and authenticate the importance of the arrangement.

- One police inspector reported that she is able to call on the local housing authority director to move witnesses between developments because she had "greased the skids based on the working relationship I had with some housing cops"; the director puts the family that is currently at the top of the waiting list into the apartment that the relocated family vacates. (See chapter 3 for information concerning relocation of witnesses within public housing.)

Gain Support From the Top

In order to avoid the instability and possible appearance of impropriety that may result from relying on a point person system that is based on favors and personal relationships, it is important to gain support for the witness security program from all key agency heads. Micky Cook, Director of the Hennepin County (Minnesota) Victim Witness Program, observes, "We work with public housing by making inroads with individuals there, but they change, so we really need an agreement from the top down about how we can cooperate."

> ***"We work with public housing by making inroads with individuals there, but they change, so we really need an agreement from the top down about how we can cooperate."***
>
> — Micky Cook, Director, Hennepin County (Minnesota) Victim Witness Program

Develop Memorandums of Understanding

One means of promoting ongoing cooperation among agencies, especially when personnel within agencies may change, is to prepare a formal written understanding about each organization's responsibilities. These agreements can help

Developing Memorandums of Understanding for Witness Security in Baltimore: A Case Study

In Baltimore, a comprehensive set of memorandums of understanding (MOUs) was drawn up by the State's attorney to serve as the backbone of a new witness security program. The memorandums provided in appendix A3 list the agencies involved—the State's Attorney's Office, Sheriff's Office, Police Department, Department of Corrections, Department of Housing, and the Department of Social Services. The MOUs detail each agency's duties and financial responsibilities. The memorandums are contained in a general program description that includes procedures for witness relocation, transportation, witness fees, and the allocation of other program costs. The program description also lays out the responsibilities of the *witness.*

By combining the MOUs with the program description, Baltimore has made it easy for participating agencies to

- understand their role in the program,
- understand the overall scope and goals of the program, and
- see that the program has broad institutional support from each participating agency (for example, II.D.1).

Baltimore's MOUs (see appendix A3) illustrate three other important ingredients of the most effective possible witness protection program:

- providing for a single witness protection coordinator (see II.A 5 of the MOU)
- providing for a contact person or liaison within each participating agency (for example, see II.D.1)
- providing an arrangement for furnishing emergency services when the important participants cannot meet or be reached (see II.A.4)

Because Baltimore's witness security program was begun only in 1994, institutional awareness of the program outside the State's Attorney's Office was still limited. The challenge facing the witness security program administrator was to build contacts in each of the cooperating agencies and ensure that the actual program structure matched that of the agreements in the memorandums.

speed and coordinate emergency services for victims and witnesses, and place a broader array of resources at the disposal of prosecutors and police. In the organizing committee model, these memorandums would be prepared by the operating team for signature by the key agency heads. While some observers feel they retain more flexibility if agreements are not committed to paper so they may adapt the arrangements to changing resources and needs, most observers agree that in the long run a written document promotes cooperation and provides support for the individual point people within each agency (see the box "Reasons for Using Memorandums of Understanding").

The specific agencies with which agreements are needed will vary from jurisdiction to jurisdiction, but all agreements should identify

- the services each agency will provide,
- the staff and funding each agency will make available to the effort, and
- the allowable expenses or services.

It is also a good idea to reevaluate each agreement periodically to make sure that all parties are still comfortable with their commitments in light of changes in personnel, resources, political conditions, and the number of witnesses for whom services are needed. Finally, it is essential that the terms of any executive-level agreement be communicated clearly to all those who will be responsible for program implementation.

Examples of program coordination with other agencies are provided in chapter 3 (cooperation with local public housing authorities and HUD, and cooperation with social service providers), and in chapter 4 (cooperation with judges, bailiffs, and correctional officials).

Conclusion: Putting the Pieces Together

This chapter has provided a road map for setting up a new witness security program or restructuring an ad hoc effort (see figure 6-3, "Program Implementation Checklist"). In practice, the specific role and responsibilities assigned to each management level may be very different from the ones described here, depending on a jurisdiction's needs and the talents of the individuals filling each position. However, with interagency cooperation and an efficient use of existing resources, most jurisdictions should be able to provide at minimal cost an increased level of security for witnesses in gang- and drug-related cases.

Figure 6-3
Program Implementation Checklist

1. *Form the Organizing Committee*

   - ☐ Perform problem assessment
   - ☐ Identify appropriate responses
   - ☐ Identify needed and available resources
   - ☐ Get high-level endorsements from all key agencies
   - ☐ Name point people in all cooperating agencies
   - ☐ Decide on the composition of the operational team

2. *Convene the Operational Team*

   - ☐ Prepare memorandums of understanding
   - ☐ Draft program guidelines and expense forms
   - ☐ Identify and prepare to collect program evaluation data

3. *Name a Program Administrator*

   - ☐ Notify all agencies of procedures for initiating requests for witness security
   - ☐ Coordinate with investigating agency or unit (dedicated police unit or district attorney investigators)

4. *Review Program Operations and Renew Memorandums of Understanding Annually*

Chapter 7
Legal Issues

Key Points

- While laws and rules of evidence vary from State-to-State, prosecutors are concerned about many of the same legal issues.
- Some prosecutors are able to take advantage of State statutes to prevent intimidation.
  - — Intimidators can be excluded from the courtroom if their presence compromises witness testimony.
  - — One jurisdiction is allowing hearsay testimony by police officers at preliminary hearings—a practice that shields witnesses from intimidation.
  - — Some jurisdictions permit prosecutors to impeach their own witness if the person's testimony changes between deposition or preliminary hearing and the trial—a practice that allows prosecutors to highlight possible intimidation.
  - — A number of individual prosecutors and jurisdictions have developed procedures that safeguard witness information until trial.
- Gang suppression legislation is considered a useful adjunct to the witness protection efforts by some prosecutors.
- A number of jurisdictions have passed new, or strengthened old, witness intimidation statutes.
- Community-wide intimidation can be combated with several types of civil remedies.
- Some jurisdictions have used RICO prosecutions of highly organized drug-selling gangs to remove large numbers of gang members from a neighborhood—an approach that also decreases community-wide intimidation.
- Local governments and police departments may be liable for the safety or misconduct of witnesses participating in witness security programs. To prevent successful suits, police investigators, prosecutors, and victim advocates should never promise any protection they cannot actually provide and should screen witnesses carefully before providing security.

While witness tampering statutes, obstruction of justice laws, and rules of evidence vary from State to State, prosecutors across the country expressed interest in the following legal issues related to dealing with witness intimidation:

- legal barriers to preventing courtroom intimidation, including
  - — exclusion of the public from the courtroom,

— using hearsay testimony from law enforcement officers,

— impeaching inconsistent witness testimony, and

— keeping witness and jury information confidential;

- anti-intimidation legislation;
- gang suppression statutes;
- laws to combat community-wide intimidation; and
- liability issues.

The following discussion summarizes these issues and highlights innovative legal approaches some States and individual prosecutors are using to address witness intimidation.

Preventing Courtroom Intimidation

Prosecutors are using a number of approaches to prevent witness intimidation in the courtroom by defendants or their associates. The approaches attempt to balance the constitutional right of the defendant to a fair, public trial with the right of a witness to testify without fear of retaliation. Balancing defendant and witness rights is often difficult because the legal system gives the highest priority to the rights of the accused and lesser weight to the rights of victims and witnesses. The greater number of rights afforded defendants compared with those given to witnesses concerns many prosecutors and police officers. Lieutenant Earl Sanders of the San Francisco Police Department observes, "The accused has the right to face his accuser. If witnesses are intimidated out of the justice equation, our justice system is left with what amounts to a wagon with only three wheels." The following legal approaches have been used in some jurisdictions to give greater security and reassurance to witnesses while not infringing on the rights of the defendant.

Exclusion of the Public From the Courtroom

Because the Sixth and Fourteenth Amendments to the Constitution (and often State constitutions or statutes) guarantee the defendant's right to a public trial, judges are understandably reluctant to exclude individuals from the courtroom or to close it entirely. However, case law supports *limited* court closure or the *temporary* exclusion of specific individuals if adequate evidence is shown that an open court would endanger a witness or compromise the court's ability to elicit full and accurate testimony from a witness.[1] The practice of closing the court or restricting attendance to prevent intimidation has been upheld on appeal where

- the witness has been threatened or harassed outside the courtroom, especially when the witness becomes upset or refuses to testify in the presence of the intimidator;[2]
- the witness has been or feels threatened, and the defendants have a history of violent retaliation against witnesses;[3]
- the witness feels intimidated by the presence of the defendant's family in court, especially when an explicit threat has been made and is reported to the court;[4] and
- the witness asserts the privilege against self-incrimination to avoid giving testimony in public because he or she fears the defendant's associates will retaliate (see below).[5]

Prosecutors—and judges—who wish to close the courtroom or exclude specific individuals from the courtroom can diminish the likelihood that a higher court will find that the defendant's right to a public trial has been violated by

- establishing for the record that a legitimate threat or fear of reprisal exists for a specific witness (this may include establishing a history of violent intimidation by the defendant or his or her associates),
- limiting the number of witnesses requesting exclusions,
- limiting the percentage of time that court proceedings are conducted before a restricted audience,
- establishing that the level of exclusion requested is the *minimum* necessary to reassure the witness and that no other available security measure would suffice, and
- using closed court and audience exclusion selectively—that is, only for witnesses who are intimidated, and no others.

As discussed in chapter 4, "Preventing Intimidation in Courtrooms and Jails," because some of the intimidation that gangs practice in the courtroom is subtle, judges and prosecutors need to learn how to identify gang members in court and understand the nonverbal meaning of their hand signs,

clothing colors, posture, and stares. Prosecutors need to be able to identify and enter nonverbal intimidation in the court record so that it can form the basis of a request for excluding the intimidating gang members.[6]

In a few jurisdictions, legislation explicitly permits removing spectators who intimidate witnesses or closing the courtroom to prevent witness intimidation. For example, in California the court may, after holding a hearing, order the removal of any spectator who is intimidating a witness if it finds clear and convincing evidence that

- the spectator to be removed is actually intimidating the witness,
- the witness will not be able to give full, free, and complete testimony unless the spectator is removed, and
- removal of the spectator is the only reasonable means of ensuring that the witness will give complete testimony.[7]

This statute may not be used to exclude the press or the defendant from any part of the trial.

As of 1997, California prosecutors will also be able to request that a courtroom be closed during a witness's testimony if public testimony would endanger the person's life and if no other precautions—such as disguises, weapons searches, or exclusion of individual spectators—are sufficient to minimize the perceived threat.[8]

The North Carolina State Code allows presiding judges to "impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of the courtroom proceedings or the safety of the persons present."[9] The judge may also order spectators to be searched for weapons and their belongings inspected.

Using Hearsay Testimony From Law Enforcement Officers in Lieu of Direct Witness Testimony

In addition to expanding the use of the grand jury, the California public initiative Proposition 115 (the Crime Victims Justice Reform Act of 1990) also authorized experienced or specially trained police officers to testify in criminal preliminary hearings in lieu of victims and witnesses who are unavailable to testify. This legislation enables prosecutors to use the statements of witnesses in gang cases—especially witnesses who are reluctant to confront the defendant—to establish probable cause.[10] The use of hearsay at preliminary hearings—including the use of "multiple level" hearsay, such as an officer reading the statement of a victim from a police report which that particular officer did not prepare—has been upheld in a number of appeals.[11] However, the California Supreme Court expressed particular concern about the use of "officer readers" who had no involvement in the case except to read the report of another officer into the court record. In one such case, the trial court was frustrated because the officer reading the report was unable to explain apparent discrepancies in the investigating officer's report.[12] As a result, the court and the district attorney discourage the use of hearsay testimony by police officers not directly involved in the case being heard.[13]

In a memorandum concerning the proper use of hearsay testimony in preliminary hearings, the Los Angeles chief deputy district attorney advised his staff *not* to use hearsay testimony to

- perpetuate the testimony of a witness who might be unavailable for trial,
- memorialize testimony of a witness who might change his or her testimony at trial,
- test the credibility of a witness whose story might be open to question,
- present a witness or officer who has some special knowledge of complicated facts to which the investigating officer might not be able to testify adequately,
- obtain the testimony of a witness given immunity,
- test the witness's ability to identify a defendant rather than waiting for trial, or
- obtain testimony that may encourage a favorable disposition.[14]

Obviously, most intimidated witnesses are likely to fall into one or more of these categories. As a result, a prosecutor who is considering using officer testimony to shield a witness at a preliminary hearing would need to decide which is more important to winning the case—reassuring the witness by sparing him or her confrontation with the defendant, or eliminating the possible danger that an intimidated witness might later recant his or her testimony or be unavailable to testify.[15]

A Vermont statute permits depositions to be used as substantive evidence at trial if the deponent is unavailable or if the witness gives inconsistent testimony at trial, including forgetting previous testimony (see below).[16]

Impeaching Inconsistent Witness Testimony

A number of prosecutors reported that, due to pretrial intimidation, witnesses often alter their testimony between the pretrial hearing, grand jury appearance, or deposition, and trial; in many cases, witnesses claim to have forgotten their previous testimony. In response to this problem, some jurisdictions have amended their rules of evidence so that prior inconsistent testimony given by the witness under oath at a hearing, deposition, or other proceeding can be admitted at trial as substantive evidence. This change allows inconsistent statements to be admitted as evidence of the matters stated, not merely as evidence of the witness's unreliability.

For example, the District of Columbia Code was recently amended to permit any party to impeach the witness, including the party calling the witness. In addition to allowing the introduction of prior inconsistent statements as substantive evidence, the code also allows witnesses to introduce prior *consistent* statements to rebut allegations that they had recently been influenced improperly to give testimony or identify a defendant.[17] California law has permitted the introduction of inconsistent statements by witnesses as substantive evidence since 1967. At that time, the California Law Review Commission observed that permitting the introduction of inconsistent statements by witnesses posed no real threat to the fairness of the trial process; in particular, the commission noted that the witness is in court and available for cross-examination, and that in many instances earlier statements by witnesses are more likely to be true than are later ones (which may be influenced by controversy surrounding the trial).[18] The latter observation is even more cogent today, as witness intimidation becomes ever more common as an additional factor that may render later testimony less credible.

Keeping Witness and Jury Information Confidential

A number of prosecutors and investigators expressed concern about defendants obtaining the names, addresses, and testimony of witnesses before trial and using the information to intimidate them. In some jurisdictions, prosecutors have found ways of avoiding this danger. New York State criminal procedure rules allow the prosecutor in extraordinary circumstances to withhold the names of witnesses until they take the stand. The courts have permitted this exception in cases involving violent gang- and drug-related crime. Prosecutors in New York City also reported that jurors are required by State rules to provide only the part of Manhattan in which they live, not their precise address. In Hennepin County, Minnesota, in cases involving intimidation the district attorney routinely asks for indictments, grand jury presentations, wiretap applications, complaints (until served), and search warrants to be sealed until trial. While judges do not consider such motions unusual, only some of them give approval. When they have secretly relocated a witness, some district attorneys use their own offices as the witness's mailing address or arrange to have his or her mail forwarded to a secure post office address. Many prosecutors say that addresses need not be disclosed as long as the witness can be made available to the defense. In a trial in Des Moines involving seven defendants charged with murder and terrorism, Polk County prosecutors kept the names of several witnesses secret until deposition and even then revealed only their names, keeping their addresses secret until trial.

In 1994, prosecutors in Montgomery County, Maryland, took the unusual step of providing a witness's name to the defense but obtained a protection order barring the defense attorney from revealing the identity of the witness to the defendant, his brother, or their acquaintances. According to the prosecutors, the witness—who was listed only as John Doe in court documents but whose identity was known to the defense—had solid evidence connecting the defendant to a double murder that had been witnessed by more than 300 other people, none of whom were willing to testify because they feared retaliation from the defendant and his associates. Because the one cooperative witness was also terrified of reprisal, the prosecutor asked the court to allow him to testify under a pseudonym and to clear the courtroom of spectators during his testimony.[19] David Schertler, chief of the U.S. Attorney's Office's homicide unit in Washington, D.C., reported that his unit had used similar witness protection orders in two drug-related murder cases.

In California, Proposition 115 restored to the grand jury the authority to indict without a subsequent preliminary hearing. Because witnesses and testimony are kept secret, some prosecutors favor grand jury indictment over a preliminary hearing in organized crime cases, murder cases that need to be expedited, and cases where the identity of a victim or witness needs to be protected temporarily. However, evidence given by a witness in a preliminary hearing, unlike evidence presented before a grand jury, can be used during

trial because of the opportunity afforded the defense during the hearing for cross-examination.

In Washington, D.C., preliminary hearings, witnesses are often identified by number only. However, because the defendant has access to the descriptions of each witness's testimony, the defendant is often able to deduce who that witness is. In one case, a witness who had been shielded in this manner was assassinated the day after the preliminary hearing.

Legislation Designed To Prevent Intimidation

Most gang-related witness intimidation occurs in connection with violent crimes such as attempted murder or homicide, which carry potentially long prison sentences. In a number of jurisdictions, statutes against witness tampering, suborning perjury (encouraging perjury by threats or inducements), or obstruction of justice do not carry high enough penalties to either deter or substantially punish witness intimidation in cases that already involve a serious violent crime. As a result, defendants are reported to feel they have little to lose—and a great deal to gain—from even the most violent attempts at witness intimidation (for example, attempting to murder anyone even suspected of cooperating with the police in a homicide case). The following statutes are examples of legislation which address some of the concerns most frequently voiced by prosecutors about this type of legislation: the need for stronger sanctions, the need to be able to prove intimidation using hearsay evidence and to get the intimidator off the streets quickly, and the need to contain witness protection costs and limit witness risks by expediting trials involving intimidation.

- After the gang execution of a police officer in 1993, the prosecutor in Hennepin County (Minneapolis) deliberately introduced a somewhat archaic accomplice-after-the-fact bill into the legislature rather than a "modern" obstruction of justice bill. Because the latter type of statute applies to people who impede an ongoing investigation, the possible penalties are relatively light; however, someone who is an accessory after the fact to any felony crime of violence (which, by statutory definition, includes drug crimes in Minnesota) is considered in effect to have aided in the commission of the crime, a considerably more serious offense. As a result, under the Minnesota accomplice-after-the-fact statute, the punishment is up to one-half the statutory prison sentence or fine that could be imposed on the principal offender for the original crime of violence. Furthermore, the accomplice-after-the-fact statute is broader than the obstruction-of-justice statute because it includes such activities as destroying evidence, accepting proceeds of the crime, and providing false information to a law enforcement officer (see appendix C4).

- The Council of the District of Columbia amended the Theft and White Collar Crimes Act of 1982 to raise the maximum penalty for obstruction of justice from 10 years' imprisonment to the maximum penalty for the underlying offense.[20] The changes quadrupled the maximum sentence for obstruction of justice and made it easier for prosecutors to show that a witness might have been intimidated.

- The District of Columbia's criminal code also permits the pretrial detention of defendants who, among other things, pose a danger to any other person in the community. If the hearing judge finds clear and convincing evidence that there is a serious risk that the person will intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror,[21] and no conditions of bail will reasonably ensure the safety of others in the community, then the defendant may be detained before trial. In conjunction with similar detention provisions for defendants accused of crimes of violence, defendants with pending felony actions against them, and defendants on parole or probation, pretrial detention can serve as a potent disincentive for potential intimidators. (Of course, pretrial detention of a defendant does not deter intimidation by that defendant's gang or associates.)

- Nevada has an intimidation statute whose effectiveness is increased when used in combination with the State's gang enhancement statute. The gang membership statute doubles the punishment for intimidation. While the punishment for intimidation is one to six years, if the defendant can be shown to be a gang member, another one to six years are added, to be served consecutively. In addition, with only limited exceptions, the court may not grant probation or suspend the sentence of a person convicted of a gang-related felony.[22]

- The Pennsylvania victim and witness intimidation statute (see appendix C2) authorizes any criminal court, following a hearing, to issue a protection order directing that the defendant and any other named persons not violate the statute, keep a prescribed distance from the witness, and have no unauthorized communication with

Arizona's Statewide Gang Suppression Initiative

In response to a dramatic escalation in gang activity in Arizona, the State legislature provided $6 million to the Department of Public Safety in 1994 and $9 million in 1995 to set up and run the multiagency, statewide Gang Intelligence Team Enforcement Mission (G.I.T.E.M.), intended to bring together law enforcement agencies in a coordinated approach to dealing with gangs. The team supplements local gang enforcement efforts, which are frequently ineffective because of lack of adequate resources, by sending in teams to assist in cases and by training local personnel to deal with their gang problems on their own. An advisory group of agency heads from a cross section of the partnership agencies develops policy and establishes priorities for the use of G.I.T.E.M. assets in response to requests for assistance from law enforcement agencies statewide.

The program established a core group of trained gang investigators, deployed from two locations in the State, that responds to calls for service from any law enforcement agency in the State with both planned responses and crisis intervention . The team consists of 85 Federal, State, county, municipal, and Indian tribal officers from 41 jurisdictions. Personnel from other law enforcement agencies are assigned for a one-year commitment to the team, with the program reimbursing the agencies for the officers' salaries, equipment, overtime, training, and travel. In addition to the full-time year's commitment, local law enforcement agencies can assign an officer to the task force for intensive 30-day field training in gang recognition and intervention techniques (the program reimburses agencies for personnel costs). The Federal Bureau of Investigation; Bureau of Alcohol, Tobacco, and Firearms; Bureau of Immigration and Naturalization; and Drug Enforcement Administration have all contributed personnel or other assets to the effort.

A major focus of the team is the gathering of intelligence on gang members and gangs in order to target them for enforcement most effectively. The team includes full-time personnel who analyze gang data and disseminate them to other law enforcement agencies, using a data base that catalogs over 700 gang sets statewide and several thousand gang members and associates.

Another G.I.T.E.M. focus is rural areas, where law enforcement officers often lack the personnel or skills to respond effectively to gang problems. Four G.I.T.E.M. squads are stationed in rural counties where, according to Captain David Gonzales, the team coordinator, "We get good cooperation because the communities are closely knit and because, having seen the increased gang activity in Phoenix and Tucson, residents say,'We don't want that coming *here*.'" Distance is not a problem because the task forces officers live in the local communities. The program also brings rural officers into Phoenix for training in gang enforcement and observation of the types of gangs and gang activities present in the city. In each of the four counties, an advisory board of local law enforcement administrators and the county attorney meet monthly with the G.I.T.E.M. squad to discuss trends and strategies so that the local task squad can determine how best to address each gang problem and share information on new gangs and gang members.

The program also targets witness intimidation. Team personnel establish ties with community leaders to encourage them to make clear to youngsters that it is all right to testify against gang members—they will not be violating any street code of silence—and that the community will support them if they do, including accompanying them to court to testify. Team members also meet with youngsters themselves to encourage them to report gang activity and testify against gang offenders. Since July 1, 1995, G.I.T.E.M. has responded to 228 service requests from 72 different agencies and participated in the arrest of 2,251 individuals and the seizure of 472 firearms.

For additional information about G.I.T.E.M., contact the coordinator, Captain David Gonzales, at 2828 North Central Avenue, Suite 1060, Phoenix, Arizona 85004, (602) 223-2561, fax (602) 223-2588.

the witness. If the order is violated, the defendant and other persons named in the order can be prosecuted for the underlying activity if it is a separate crime (such as threatening the witness), be held in contempt of court, or have their pretrial release revoked. The statute also makes compliance with laws relating to witness intimidation and retaliation against witnesses a condition of any release.[23]

- The Rhode Island witness protection statute stipulates that, at the request of the State's attorney general (the prosecuting authority for Rhode Island), cases with protected witnesses must be given priority on the criminal trial calendar.[24]

Prosecutors and police investigators can determine whether their States have similarly useful legislation and, if not, work with their legislatures to have such statutes enacted.

Gang Suppression Initiatives

Efforts to limit gang-related witness intimidation cannot be undertaken in isolation from the broader issue of gang suppression. A growing number of States have enacted legislation that increases penalties for crimes committed by gang members as part of gang-related criminal activity (so-called gang enhancement statutes),[25] permits the prosecution of juveniles as adults in certain gang-related cases,[26] or creates a separate offense of membership in a criminal street gang.[27] In the absence of such special legislation, the admissibility in court or at sentencing of evidence of gang membership and gang practices varies from jurisdiction to jurisdiction.[28]

The California Street Terrorism Enforcement and Prevention Act has served as a model for some of the most stringent anti-gang legislation nationally.[29] The act creates, as a separate felony offense, the crime of membership in a criminal street gang if the gang member has knowledge of a pattern of criminal activity by the gang and willfully promotes or assists in felonious crimes by other gang members. The act provides for sentence enhancements for participants in gang crimes, authorizes gang nuisance abatement lawsuits, and regulates weapon possession by gang members. Prosecutors in California report that they have made effective use of the gang membership, gang enhancement, and nuisance abatement provisions of the act.

At the urging of Michael Freeman, Hennepin County Attorney, the Minnesota legislature enacted legislation authorizing counties to establish standard curfews, replacing a patchwork of municipal curfews. According to Freeman, a county-wide curfew makes it impossible for teenagers from communities in Hennepin County to claim in Minneapolis (a popular destination), "But in *my* town there's no curfew," or "In my town I can stay out *until midnight*." In addition, the legislation funded curfew and truancy centers to act as liaisons between law enforcement and parents of teens with curfew or truancy violations. These centers are expected to provide an early warning for parents and law enforcement officers concerning potentially delinquent or neglected youths. A number of other prosecutors emphasized that added attention to the enforcement of truancy laws and curfews could significantly hinder gang participation by minors. Prosecutors should be aware, however, that the use of curfews is controversial and might not find support in every community.

Legal Barriers to Relocating Some Witnesses

Some prosecutors encounter legal difficulty relocating minors whose noncustodial parent refuses to agree to the relocation. Parental objections are especially vehement when the proposed relocation is part of the Federal Witness Security Program, because noncustodial parents stand to lose all contact with their children permanently. However, parental rights can complicate any plan to relocate a juvenile outside the jurisdiction. In particular, no juvenile can be relocated without the permission of an adult guardian, but when the adult custodian of a juvenile witness is a foster parent, step-parent, or a single parent, the juvenile's natural mother or father may be especially likely to object.

Some jurisdictions, such as Washington, D.C., have residency requirements for probationers and parolees which do not allow intimidated witnesses on probation or parole to relocate outside that jurisdiction. These requirements preclude participation not only in the Federal Witness Security Program but also in any local relocation program utilizing out-of-town relatives or safe houses.

For a thorough review of past and current gang research and a discussion of related policy issues, see the literature recommended in chapter 8, "Sources of Help." For a sample gang information form for police use, see appendix B2.

Statutory Aids to Combating Community-wide Intimidation

Using Civil Remedies: Nuisance Abatement

The use of civil remedies to combat gang-related criminal behavior is becoming more common because civil remedies can be easier to use than criminal sanctions, may provide swifter punishment, and often do not require victims to testify.[30] As discussed below, several types of civil actions have been used to decrease the impact of gang- and drug-related crime on specific neighborhoods.

Nuisance Abatement Orders Against Street Gangs

The newest and perhaps most controversial civil approach is nuisance abatement lawsuits against entire street gangs as opposed to charging individual gang members with specific illegal activities. A number of California municipalities, including Los Angeles, Van Nuys, and Santa Clara, have attempted to use nuisance abatement lawsuits, authorized under the California Street Terrorism Enforcement and Prevention Act, to eliminate gang presence and gang intimidation on the streets of specified areas or neighborhoods (one preliminary injunction prohibited gang assembly in a 180-square-block zone).[31]

The list of activities prohibited to gang members in nuisance abatement orders varies but often includes some acts that are already illegal, such as possession and showing of illegal weapons, intimidating or battering residents, and trespassing, as well as a number of otherwise noncriminal acts, such as possessing a glass bottle or carrying a pager, marker, undocumented car part, or screwdriver. In general, abatement orders attempt to limit the possession of deadly weapons, fighting, and aggressive gang behaviors such as blocking streets, forcibly entering apartments and intimidating residents, defacing property with graffiti, and drinking in public. Some orders impose curfews on underage gang members. Most importantly, most gang abatement orders forbid members from gathering on the streets for any purpose, without any determination of individual misconduct.

Baltimore's Anti-Drug Project/Nuisance Abatement Task Force

In Baltimore, the Community Anti-Drug Project provides support and training for community groups that are interested in filing nuisance abatement lawsuits against drug-dealing tenants or their landlords. The project's staff—which consists of a project director, paralegal, and *pro bono* attorneys—helps community members to assemble cases against drug-dealing neighbors, which are then filed by the State's attorney in district court. Nuisance abatement actions generally receive expedited trial dates and are heard within 15 days. In 1994, its second year of operation, the program handled almost 300 applications, of which 133 were closed for lack of evidence or support, 78 were still actively being assembled, 68 were resolved through landlord action, and the rest were filed and pending. Donald Todd, chief of the General Services Division of the Baltimore City State's Attorney's Office, praised the effect of the nuisance abatement project on community-prosecutor relations, saying that it empowers the community and gives it more faith in government.

T.R. Boga, a legal analyst who has reviewed the effect of gang abatement injunctions in these communities, reports,

> In those communities where an abatement injunction has been in effect, authorities consider it an unqualified success. [For example,] law enforcement officers report a total cessation of gang incidents in the 100 block of West Elmwood Avenue six months after [the city of] Burbank's *Acosta* injunction was issued. Whether these court orders actually reduce the incidence of criminal gang activity or merely replace it to other neighborhoods is unclear.[32]

Despite anecdotal evidence of the effectiveness of nuisance abatement orders, Boga expresses reservations about the constitutionality and legal necessity of gang abatement or-

How Gang Members May Exploit the Legal Process

Prosecutors reported that gang members have learned to exploit the legal process in a number of ways that make getting witness testimony more difficult.

- **Asserting privilege against self-incrimination.** Both gang members and some intimidated witnesses use their Fifth Amendment right against self-incrimination as a means to avoid testifying. Some judges suggested that granting a witness immunity was one method of compelling testimony. In cases in which the witness is cooperative but genuinely intimidated, clearing the court or excluding gang members may solve the problem.

- **Anonymously hiring attorneys for inmates who are potential witnesses.** U.S. attorneys in Washington, D.C., reported that gangs had hired attorneys to represent inmates who were codefendants or incarcerated on unrelated charges and who might be interviewed about or called to testify in a gang case. By providing its own attorney, the gang hopes to control access to the witness, deprive the inmate of privacy in his or her discussions with the U.S. attorney, or influence the nature of the witness's testimony. While nothing improper may occur under these circumstances, the mere presence of the gang's lawyer during an interview with the prosecutor may dissuade the witness from cooperating. U.S. attorneys noted that inmates are often unaware that the gang lawyer is claiming to represent them. In such cases, it is useful to speak directly to an inmate to determine what counsel, if any, he or she would like.

- **Attending court.** Gang members may take advantage of the constitutional guarantee of an open trial to attend trials in groups or individually in the hope of influencing testimony or frightening witnesses. As discussed in chapter 4 and elsewhere in this chapter, a number of interventions, such as excluding gang members or closing the courtroom to the public, videotaping or photographing spectators, searching spectators for weapons, and increasing the presence of uniformed officers or gang detail officers in the courtroom, may prevent or dilute this form of witness intimidation.

- **Using discovery to identify witnesses for intimidation.** Several jurisdictions reported that defendants use witness information in court documents made available to the defense during discovery to target key witnesses for intimidation. Even when witnesses' names are not included in these documents, descriptions of the testimony to be given may be sufficiently specific to identify the source. With free access to phones and private correspondence, even incarcerated defendants can use such information to arrange the murder or intimidation of key witnesses. In Washington, D.C., U.S. attorneys successfully used the jailhouse correspondence of a murder defendant to help convict him and a fellow gang member of the murder of a government witness who was scheduled to testify against him.[33] Prosecutors also searched jail cells in order to uncover suspected intimidation plots; one search produced confidential court documents with the name of a person handwritten next to each anonymous description of key witness testimony.

ders that prohibit innocent association and assembly among gang members, arguing that only criminal gang activity should be prohibited and that other more limited civil and criminal justice tools are adequate to combat gang and drug crime. Drug loitering ordinances, discussed below, are among the more focused measures Boga favors over gang abatement orders.

Nuisance Abatement Orders Against Drug Dealers or Their Landlords

A number of prosecutors and community groups have used nuisance abatement lawsuits to remove drug dealers from gang- and drug-dominated neighborhoods.[34] These evictions aim to bolster community confidence in the justice system, foster ties between the prosecutor's office and local residents, and empower law-abiding residents to reclaim an

interest in their neighborhood. All of these goals are also useful for breaking the cycle of noncooperation in intimidated communities. In Baltimore, the State's attorney established the Community Anti-Drug Project to help educate community organizations about how to use the local drug nuisance abatement law and to offer training, assistance, and legal support to organizations interested in filing suits. (See appendix B6, "Helping Communities With Nuisance Abatement Suits.")

Drug Loitering Ordinances

Drug loitering ordinances have also been used to help disperse gangs and drug dealers in gang-dominated neighborhoods. These ordinances usually include a list of noncriminal activities that may be indicative of illicit purpose as a guide for law enforcement officials, and they have the advantage of permitting purely social assembly by gang members while discouraging criminal drug-related activity in public.[35]

RICO Prosecutions

Some jurisdictions have begun to bring charges against large numbers of gang members under the racketeering and conspiracy provisions of the Federal Racketeer Influenced and Corrupt Organizations Act (RICO).[36] In Washington, D.C., and Chicago, Illinois, Federal prosecutors and investigators have cooperated with local authorities to prosecute gangs using RICO. In Chicago, Federal prosecutors obtained convictions against 52 members of one gang.[37] Prosecutors in Kansas City have used the State RICO act to indict multiple defendants in cases concerning gang-controlled drug operations.[38]

Liability Issues: Witness Safety and Witness Misconduct

Many witness security programs are just beginning to address the complex issues of liability associated with caring for intimidated witnesses. Only a handful of witnesses or their families have sued municipalities, the police, or prosecutors in relation to witness security.[39] However, these early cases—some of which involved large court-ordered awards—suggest that liability for the safety and conduct of witnesses in local witness security programs should be considered carefully when structuring a program and training prosecutors and police officers to work with witnesses.

Governmental Responsibility To Protect Threatened Victims and Witnesses

There is no consensus among courts concerning the liability of government entities for failure by law enforcement agencies to provide adequate protection to the public as a group. Many courts have held that, where there is no statute to the contrary, government entities are *not* liable for injuries caused by the negligence of its law enforcement agencies.[40] However, exceptions to this general standard of governmental immunity exist when courts have found, by an examination of the facts of individual cases, that a "special relationship" had been created between the injured individual—often a threatened victim or witness—and the governmental entity.

A special relationship may arise from

- a report to the police agency by a third party of a specific threat to the witness,
- a promise by the prosecutor or a police officer to provide added security to a threatened victim or witness,
- a promise by the police department to alert the victim to the release from jail of a known intimidator, or
- in some cases, a request for protection directly from the intimidated victim or witness.[41] (Requests from frightened individuals are sometimes not considered sufficient by the courts to create a special relationship between the government entity and the potential victim.[42])

Given these criteria, it seems likely that participation in a witness security program—whether it is managed by a law enforcement agency or by a prosecutor's office—is likely to create the very sort of special relationship between the threatened victim or witness and the government entity that may make the agency or office liable if the program does not handle the case conscientiously.

In Los Angeles, witness protection lawsuits have reached the courts. *Carpenter* v. *the City of Los Angeles*[43] concerned a robbery in which a police officer was aware that a defendant had contracted to have Carpenter, a prosecution witness, killed but did not inform the witness of the potential danger or provide security. Carpenter was subsequently wounded by the defendant (and the police officer who had failed to warn Carpenter was fatally shot by the defendant following his own testimony in the case). The court awarded Carpenter

Tips That May Help To Limit Liability

A number of prosecutors and police investigators who are undertaking witness security efforts offer the following suggestions that may help to limit liability:

- ✔ Take reports of witness intimidation seriously and perform timely risk assessments.
- ✔ Share risk assessment data with the witness—make sure he or she has a realistic understanding of dangers and security options.
- ✔ Never promise more security than you expect to provide, and clear any promises first with whoever has the authority to comply with the promises.
- ✔ Document all offers of assistance and all efforts to protect the witness, as well as the witness's acceptance or refusal of security and assistance.
- ✔ Insist on strict adherence to program rules for relocated witnesses.
- ✔ Make sure the witness understands the circumstances under which any provided security will be withdrawn (for example, if the witness returns to his or her old neighborhood, contacts friends, takes drugs, or breaks the law), and document any decision to withdraw protection.
- ✔ Maintain training records of program staff, especially those of police officers, that document the department's efforts to instill in officers the need to adhere closely to the guidelines listed above along with other departmental policies governing contact with witnesses.

Of course, even taking all these precautions is no guarantee that a prosecutor, police investigator, victim/witness advocate, or agency can be sure of avoiding a lawsuit.

$1.2 million in damages. *Wallace* v. *the City of Los Angeles*[44] concerned a young woman who had been enlisted to testify in a homicide case that the district attorney subsequently declined to prosecute. The woman received no warning and no security services despite death threats from the defendant, the defendant's known history of witness intimidation, and his suspected involvement in two other homicides. The witness was killed before she could testify. The court awarded the plaintiff, the murdered witness's mother, $750,000 in damages, ruling that a special relationship had been created between the detective and the witness by her cooperation and that a duty to warn her of danger arising from that special relationship had been breached. The court established a duty to protect a witness once the person has been enlisted to testify even if the case is later declined.

Early experience suggests that, if police investigators and prosecutors are conscientious about the protection they are offering and promising to victims and witnesses, they can avoid liability even where a special relationship has been established. For example, in a case in Washington State, the City of Seattle was held not to be liable for the death of a female victim with whom the police investigator had established a special relationship but who had refused an offer to be taken to a safe location. The court ruled that although a special relationship had existed between the police department and the woman, it had been terminated when she refused its offer to take her to a place of safety.[45] Similarly, Lieutenant Earl Sanders in San Francisco reported that a drug-addicted witness who had helped the police identify gang members in her project and who was to testify against them in an upcoming trial had been murdered after refusing

protection and drug treatment. Because the police department had audiotaped its offers of protection and assistance, and her refusal to accept them, her family did not sue the department.

Police investigators and prosecutors in smaller jurisdictions often observed that intimidation attempts rarely escalate into actual physical violence. In such jurisdictions, prosecutors and police should exercise special care in their risk assessments and subsequent discussions with witnesses, so they can identify cases in which the threat is genuine rather than simply assuming that all claims are exaggerated.

It is also important to note that these early liability cases do not involve witnesses who were receiving protection from police investigators or prosecutors but were nevertheless harmed; rather, they concern decisions by investigators or prosecutors not to inform witnesses of a threat or not to provide security to a threatened witness who had been promised protection. The U.S. marshals interviewed for this report emphasized that no witness enrolled in the Federal Witness Security Program who has obeyed the rules has ever been killed. Similarly, prosecutors reported that no witnesses relocated under their protection had been harmed unless they themselves had breached security. In short, a well-run program that includes careful ongoing risk assessment should have little exposure to liability awards arising from failure to protect intimidated witnesses, even though claims of liability by witnesses alleging improper termination from such programs can be frequent and time-consuming to defend against.

Governmental Liability for Actions of Protected Witnesses

The U.S. Government has had extensive experience with liability issues arising from misconduct by protected witnesses because it administers the Federal Witness Security Program (see the box in chapter 3).[46] These cases are of interest to local prosecutors and police investigators because they highlight issues that are likely to arise as the provision of witness security becomes more common at the local level.

The most serious liability issue the U.S. Government has faced resulted from the relocation of children without the consent of noncustodial parents (see above).[47] While local police departments and prosecutors are unlikely to change a witness's name or ask the person to not contact relatives on a permanent basis, administrators of local programs must be aware of parental rights, including court-ordered visitation rights, when relocating an intimidated family or juvenile witness and guardian.

There have also been suits against the U.S. Government alleging negligence in its supervision or selection of participants in the Federal Witness Security Program who committed crimes (including murder and fraud) while under U.S. Government protection. In general, courts have rejected these claims citing the discretionary function exception to the Federal Tort Claims Act (FTCA) (28 USCS s. 2680[a]).[48]

A number of local prosecutors and police investigators expressed concern about crimes committed by their own

State-Level Liability Issues

When drafting funding legislation, several States have included clauses limiting State or administrative liability in relation to locally administered witness security programs. For example, a Minnesota statute that funds and coordinates security services for victims and witnesses includes the following immunity clause:

> This section does not create a civil cause of action. Persons authorized to act pursuant to this section are not liable for damages resulting from a decision to provide or not to provide protective services. This section does not impose liability upon the state, the commissioner, the director, or other persons acting pursuant to this section for the death, injury, or other losses to a witness or victim receiving protective services under this section.[49]

Because legislation designed to grant the State immunity confers immunity only on fund–granting agencies, it continues to be important for local administrators to consider taking steps to shield themselves from civil actions in witness protection cases, such as the steps highlighted in the text.

protected witnesses. Given the common observation that today's witness is often tomorrow's defendant, local programs need to consider carefully whether and how to protect the community from government witnesses. Investigators and prosecutors reported an array of crimes committed by witnesses under their care, including destruction or theft of property from hotels and motels where witnesses were housed; engaging in prostitution out of a motel room rented by the prosecutor; destruction of temporary housing or illicit use of housing for drug buying, dealing, and use; shoplifting; and assault. One prosecutor reported that protected witnesses had robbed the motel in which they had been placed for safety. While courts have generally not held the U.S. Government responsible for the actions of relocated witnesses (because, among other reasons, it is the U.S. Marshal Service's statutory responsibility to protect the witness, not the public), State and local programs have the *dual* responsibility to protect both witnesses *and* the public in their jurisdictions.

The possibility that a protected witness may engage in conduct that will leave the prosecutor, police department, or city or county vulnerable to tort claims reemphasizes the need for clear guidelines for participation in any witness program, strict application of program rules, and excellent documentation of any agreements with witnesses—including the decision to terminate services. In Washington, D.C., as part of the witness protection approval process, witnesses are required to undergo a psychological examination to help assess their suitability for inclusion in the program. While this step slows the approval process, it may help to limit prosecutor and police department liability by alerting them to potentially violent, addicted, or severely unstable witnesses. (See chapter 6 for a complete discussion of admission criteria.)

Conclusion

There are a growing number of legal approaches to combating witness intimidation. Stronger anti-intimidation statutes may be helpful in some jurisdictions, but of equal interest are laws that make it easier to admit hearsay testimony by police officers in order to shield intimidated witnesses, civil remedies that can be used to fight community-wide intimidation, and gang suppression statutes that may discourage or raise the stakes in gang crimes. Legislators, prosecutors, and community outreach workers need to look at the full spectrum of legal tools available to them in the fight against witness intimidation.

Endnotes

1. See 55 ALR 4th 1196 (1987 and 1994 Supp.).

2. *People* v. *Angel* (1989, Colo App) 790 P2d 844; *People* v. *Ortiz* (1991, App Div, 1st Dept) 569 NYS2d 81; *Commonwealth* v. *Penn* (1989) 386 Pa Super 133, 562 A2d 833, 16 Media L R 2439.

3. *People* v. *Simpson* (1989, 2d Dept) 153 App Div 2d 596, 544 NYS2d 381, app den 75 NY2d 776, 551 NYS2d 918, 551 NE2d 199.

4. *People* v. *Woods* (1989, 2d Dept) 156 App Div 2nd 609,549 NYS2d 116, app den 75 NY2d 971, 556 NYS2d 256, 555 NE2d 628; *People* v. *Baldwin* (1987, 2d Dept) 130 App Div 2d 666, 515 NYS2d 597; *People* v. *Thomas* (1987, 2d Dept) 130 App Div 2d 692, 515 NYS2d 615; *People* v. *Bumpus* (1990, App Div, 2d Dept) 558 NYS2d 553, 562 NE2d 878; *People* v. *Mack* (1991, App Div, 2d Dept) 577 NYS2d 892, app den 79 NY2d 950.

5. *People* v. *Bumpus* (1990, App Div, 2d Dept) 558 NYS 587, app den 76 NYS2d 553, 562 NE2d 878.

6. See two cases concerning exclusions based on "close watching" and "grinning and grimacing": *People* v. *Hargrove* (1977, 2d Dept) 60 App Div 2d 636, 400 NYS2d 184, cert den 439 US 846, 58 L Ed 2d 147, 99 S Ct 144 (where trial court was found in error [harmless under the circumstances] for excluding two spectators who were allegedly harassing a witness by closely watching him from the front row of the courtroom); and *Bruno* v. *Herold* (1969, CA2 NY) 408 F2d 125, cert den 397 US 957, 25 L Ed 2d 141, 90 S Ct 947 (where the courtroom was cleared of all spectators after a "gang" of 40 spectators leaned forward and grinned and grimaced while a witness was being sworn in, causing the witness "mortal dread").

7. California Penal Code s. 686.2 (1990).

8. Title 3, s.868.7 (Examination-Commitment). Section to go into effect January 1, 1997.

9. North Carolina Code, s. 15A-1034 (Maintenance of Order) (1977).

10. California Constitution, sec. 30(b) (adopted by public initiative [Prop. 115] at the June 5, 1990, primary election, operative June 6, 1990).

11. See, for example, *Nollins* v. *Superior Court* (1990) 224 CA 3d 1171; *Meeks* v. *Superior Court* (1991) 230 CA 3d 698; *Martin* v. *Superior Court* (1991) 230 CA 3d 1192; and *Montez* v. *Superior Court* (1991) 91 Daily Journal D.A.R. 10559; but see *People* v. *Gandara* (1991) 91 *Daily Journal* D.A.R. 10722, limiting "multiple level" hearsay relating to chemical analysis of a controlled substance.

12. "Justices Warn to Hearsay Use Under Prop. 115: Questions Raised on 'Reading Officers' in Preliminary Hearings," *Daily Journal*, September 11, 1991.

13. General Office Memorandum 91-27, Greg Thompson, Chief Deputy District Attorney, Los Angeles, May 14, 1991.

14. Ibid.

15. California law also permits police officers to introduce hearsay evidence at the preliminary hearing and trial if the victim or witness who has provided police with a signed, notarized statement is then kidnapped or murdered prior to trial. For hearsay testimony by a police officer to be admissible in such cases, among other requirements there must be clear and convincing evidence that the witness's kidnapping or death was knowingly caused by the party against whom the witness gave the statement and that the statement was not coerced. There must also be corroborating evidence connecting the defendant with the serious felony with which he or she is charged. See California Evidence Code, Article 15, Sec. 1350 (1985).

16. Vermont Rules of Criminal Procedure (V.R.Cr.P.) 15 (h-j) (1991).

17. D.C. Act 10–375, December 27, 1994, amending District of Columbia Code Title 14-102, Impeachment of Witnesses.

18. California Enacted Stats. 1965 ch 299 ss. 2. (Section 1235. Inconsistent statement.)

19. "Identity of Witness Is Shielded: Fear of Retaliation Cited in Murder Trial," *Washington Post*, March 13, 1994.

20. D.C. Act 10-375, December 27, 1994. (Amending D.C. Code s. 22-722; D.C. Law 4–164.)

21. D.C. Code 28-1322 (detention prior to trial).

22. Nevada Criminal Law, 193.168 (1991) (Additional penalty: Felony committed to promote activities of criminal gang).

23. Pennsylvania Public Administration Offenses, Subchapter B. Victim and Witness Intimidation, ss. 4951-56 (1980).

24. Rhode Island Criminal Procedure, s. 12-30-11 (1990).

25. See, for example, Ill.Rev.Stat. ch. 37, para. 805-4 (3.1), et. seq. (1993); Cal. Penal Code S. 186.20 et seq. (West Supp. 1993); Fla. Stat.Ann. s. 874.02, et seq. (West 1993); Ga. Code Ann. s. 16-15-2, et seq. (1993); La.Rev.Stat.Ann. s. 15.1402, et seq. (West 1993); Ariz.Rev.Stat.Ann. ss. 13-2308.F & 13-3102.A.9 (1993); Iowa Code Ann. s. 723A.2 (West 1993),; Minn.Stat.Ann. s. 609.229 (West 1993); Nev.Rev.Stat. s. 193.168 (1993); Okla.Stat.Ann. tit. 21 s. 856.D. (West 1993); S.D. Codified Laws Ann. s. 22-10-15 (1993); Tex. Penal Code Ann s. 71.02 (West 1993); cited in Finlay, Michael D., "Anti-Gang Legislation: How Much Will It Take?", 14 *Journal of Juvenile Law* 47 (1993).

26. Ill.Rev.Stat. ch. 705, para. 405/5-4 (3.1) (1993).

27. Cal. Penal Code s. 186.20 (1988) et seq.

28. See Burrell, S.L., "Gang Evidence: Issues for Criminal Defense," 30 *Santa Clara Law Review*, 739 (1990): 784–790. The article, which focuses on California case law and defense issues, provides a table comparing rulings on the admissibility of evidence of gang membership and practices in gang-related cases.

29. Ibid.

30. See Finn, P., and M.O. Hylton, *Using Civil Remedies for Criminal Behavior: Rationale, Case Studies, and Constitutional Issues*, Issues and Practices, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, October 1994.

31. See *People* v. *Blythe Street Gang*, No. LC20525 (Cal. Super. Ct. L.A. County Apr. 27, 1993) (modified order preliminary injunction), cited in Boga, T.R., "Turf Wars: Street Gangs, Local Governments, and the Battle for Public Space," *Harvard Civil Rights-Civil Liberties Law Review*, 29 (1994): 478–485.

32. Ibid., 485.

33. See Skalitsky, W.G., "Aider and Abettor Liability, the Continuing Criminal Enterprise, and Street Gangs: A New Twist in the Old War on Drugs," *Journal of Criminal Law and Criminology,* 81 (1990): 348–365.

34. See "Letters From Gang Members Leave a Trail of Violence," *Washington Post,* May 24, 1995.

35. For a discussion of related legal issues see LaForte, R., "The Constitutional Implications of Anti-Drug Loitering Ordinances in Ohio," *University of Dayton Law Review,* 18 (1993): 423; and Trosch, W., "The Third Generation of Loitering Laws Goes to Court: Do Laws That Criminalize Loitering With Intent To Sell Drugs Pass Constitutional Muster?" *North Carolina Law Review,* 71 (1993): 513.

36. See Finn and Hylton, *Using Civil Remedies,* 46–50.

37. 18 U.S.C. s. 1961 et seq.

38. Finlay, "Anti-Gang Legislation," 55–56.

39. While litigation is not common nationally, cases were reported in California, New York, and Florida. See *Carpenter* v. *City of Los Angeles,* 230 Cal. App. 3rd 923, 1991; *Wallace* v. *City of Los Angeles,* 12 Cal App 4th 1385, 1993; *Parrotino* v. *Jacksonville* (1992, Fla App D1) 612 So 2d 586, 18 FLW D 61, review gr (Fla) 621 So 2d 432 (certified questions to Supreme Court regarding Office of State Attorney and immunity); and *Greene* v. *New York* (1992) 152 Misc 2d 786, 583 NYS2d 766.

40. 57 Am Jur 2d, Municipal, School, and State Tort Liability, section 27, cited in 46 ALR4th 948, section 2 (Police Protection-Crime Victim).

41. 46 ALR4th 948, section 3.

42. See *Feise* v. *Cherokee County* (1993) 209 Ga App 733, 434 SE2d 551, cert den (Ga) slip op.; *Jane Doe* v. *Calumet City* (1992, 1st Dist) 240 Ill App 3d 911, 182 Ill Dec 155, 609 NE2d 689, app gr 151 Ill 2d 562, 186 Ill Dec 379, 616 NE2d 332; *Morgan* v. *District of Columbia* (1983, Dist Col App) 468 A2d 1306; and *Hartzler* v. *San Jose* (1975, 1st Dist) 46 Cal App 3d 6, 120 Cal Rptr 5 (disagreed with *Whitcombe* v. *County of Yolo* (3d Dist) 73 Cal App 3d 698, 141 Cal Rptr 189.) The majority of these cases concern domestic assaults.

43. 230 Cal. App. 3rd 923, 1991.

44. 12 Cal App. 4th 1385, 1993; 16 Cal Rptr 2d 113, 93 CDOS 757, 93 *Daily Journal* DAR 1399, review den *Wallace* v. *Los Angeles* (1993, Cal) 1993 Cal LEXIS 2944.

45. *Donaldson* v. *Seattle* (1992) 65 Wash App 661, 831 P2d 1098, review pending (Wash) 1992 Wash LEXIS 234 and review dismd 120 Wash 2d 1031, 847 P2d 481.

46. See 98 ALR Fed 545 (1990).

47. See 18 USCS ss. 3524. For a related case, see *Prisco* v. *US,* Department of Justice (1988, CA3 Pa) 851 F2d 93, cert den (US) 104 L Ed 2d 985, 109 S Ct 2428, 98 ALR Fed 533 (Federal Government interfered with noncustodial parent rights by accepting child into the Federal Witness Protection Program/deprivation of relationship with child).

48. 98 ALR Fed 533, p. 563: "[C]ongress has specifically excluded liability for claims based on acts or omissions of governmental agency in the exercise of a discretionary function. In determining whether a particular act or omission falls within the discretionary function exception, the court noted that it must focus on the nature of the act rather than the status of the actor. The court concluded that the selection and supervision of participants in the Federal Witness Protection Program constituted a discretionary function . . . ."

49. Minnesota Statutes, 1994, section 299C.065, subd. 6. See also New York Executive Law s. 837-h, ss. 8 (1987; expired Nov. 1, 1992).

Chapter 8
Sources of Help

Key Points

- Some written materials, organizations, and funding sources are available to provide assistance with witness protection.
- Prosecutors, police investigators, and victim advocates who have extensive experience with providing witness protection can provide useful guidance to other jurisdictions in setting up or improving a witness protection program.

Resources that were identified during this study are summarized below under the headings "Organizations," "Potential Funding Sources," "Literature," and "Individuals."

Organizations

Prince Georges County Sheriff's Office. Offers five-day training course on witness security. See the program description in chapter 3. Call Colonel Gerry Powers, Assistant Chief, (301) 952-4000.

The International Association of Asian Crime Investigators (IAACI). Devoted to the fight against Asian organized crime and Asian gangs. Promotes the exchange of information and intelligence among law enforcement officers, offers network of Asian investigators who will assist agencies, and publishes bimonthly newsletter on cultural issues and articles on cases solved by IAACI members. Write to IAACI, 1333 South Wabash, Box 53, Chicago, IL 60605, or call (312) 413-0458.

U.S. Department of Housing and Urban Development (HUD). Provides assistance in using HUD programs and resources (see chapter 4) through the agency's Office of the Inspector General (OIG). The regional OIG special agent in charge can familiarize prosecutors and police with HUD programs and resources, and assist with cooperative security arrangements with local public housing authorities. A list of regional OIG agents follows.

Massachusetts, Connecticut, Rhode Island, New Hampshire, Maine, Vermont
Mr. Raymond A. Carolan
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
Thomas P. O'Neill, Jr., Federal Building
10 Causeway Street, Room 360
Boston, MA 02222-1092
Office: (617) 565-5293

Iowa, Nebraska, Kansas, Missouri
Ms. Nancy S. Brown
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
Gateway Tower II, 5th Floor
400 State Avenue
Kansas City, KS 66101-2406
Office: (913) 551-5866

New York, New Jersey
Mr. Frank Deconstanzo
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
26 Federal Plaza, Room 3430
New York, NY 10278-0068
Office: (212) 264-8062

Montana, North Dakota, Wyoming, South Dakota, Colorado, Utah
Mr. Joe Haban
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
First Interstate Tower
633 7th Street, 14th Floor
Denver, CO 80202-2349
Office: (303) 672-5449

Pennsylvania, Delaware, West Virginia, Maryland, Virginia, Washington, D.C.
Mr. Robert J. Brickley
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
The Wannamaker Building
Philadelphia, PA 19107-3390
Office: (215) 656-3410

Arizona, California, Nevada, Hawaii
Mr. Daniel G. Pifer
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
450 Golden Gate Avenue, Room 8–5140
P.O. Box 36003
San Francisco, CA 94102-3448
Office: (415) 436-8108

Kentucky, Tennessee, North Carolina, Georgia, South Carolina, Florida, Alabama, Mississippi, Puerto Rico, Virgin Islands
Mr. Emil J. Schuster
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
Richard B. Russell Federal Building
75 Spring Street, SW, Room 740
Atlanta, GA 30303–3388
Office: (404) 331–5155

Washington, Oregon, Idaho, Alaska
Mr. Noel Tognazzini
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
909 First Avenue, Suite 125
Seattle, WA 98140-1000
Office: (206) 220-5380

Minnesota, Wisconsin, Michigan, Illinois, Ohio, Indiana
Mr. Robert C. Groves
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
77 West Jackson Blvd., 26th Floor
P.O. Box 2505
Chicago, IL 60690-2505
Office: (312) 353-4196

Washington, D.C., Metro Area, Northern Virginia, Suburban Maryland
Mr. Kenneth J. Darnall
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
451 7th Street, SW, Room 3162
Washington, DC 20410
Office: (202) 708-0387

New Mexico, Texas, Oklahoma, Arkansas, Louisiana
Mr. Larry D. Chapman
Special Agent in Charge—Investigation
Dept. of Housing and Urban Development
1600 Throckmorton
P.O. Box 1839
Ft. Worth, TX 76101-2905
Office: (817) 885-5561

Potential Funding Sources

- **Victims of Crime Act** (VOCA). The Victims of Crime Act establishes criteria that all programs that receive VOCA victim assistance grant funds must meet. These funds are restricted to costs directly related to providing services to victims of crime and may contribute to an administrator's salary.

- State-level victim/witness assistance funds.

- Local drug-related asset forfeiture programs.

- Cooperative work with the FBI, local U.S. attorney, or Drug Enforcement Administration (DEA).

- Borrowed equipment from the U.S. Marshals Service, the FBI, or the military.

- Cooperative arrangements with a consortium of local agencies to share the cost of providing witness protection (such as prosecutor's office, sheriff's office, corrections, and police and housing departments).

Literature

Witness Security

Connick, E., and R. Davis. "Examining the Problem of Witness Intimidation." *Judicature,* 66 (1983): 439–447.

Finn, P. "Collaboration Between the Judiciary and Victim-Witness Assistance Program." *Judicature,* 69 (1986): 192–198.

Finn, P., and M.H. O'Brien. *Using Civil Remedies: Rationale, Case Studies, and Constitutional Issues*, Issues and Practices. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, October 1994.

Healey, K.M. *Victim and Witness Intimidation: New Developments and Emerging Responses*. Research in Action. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, October 1995.

Henderson, J.D. *Protective Custody Management in Adult Correctional Facilities*. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 1991.

Gangs

Conly, C.H., P. Kelly, P. Mahanna, and L. Warner. *Street Gangs: Current Knowledge and Strategies*. Issues and Practices. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, August 1993.

Curry, G.D., and S.H. Decker. "The Impact of Gang Membership on Participation in Crime and Delinquency: A Review of the Literature"; Curry, G.D. "Responding to Gang-Related Crime and Delinquency: A Review of the Literature"; and Decker, S.H. "Gangs, Gang Members, and Drug Sales." Papers presented to the National Institute of Justice Workshop on Gangs, August 6, 1995, and available from the authors at the Department of Criminology and Criminal Justice, University of Missouri at St. Louis.

Johnson, C., B. Webster, and E. Connors. *Prosecuting Gangs: A National Assessment*. Research in Brief. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, February 1995.

Maxson, C. *Street Gangs and Drug Sales in Two Suburban Cities.* Research in Brief. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, September 1995.

Individuals

The list and matrix below identify individuals—either members of the project advisory board or individuals who were interviewed in the preparation of this report—who have agreed to respond to telephone calls for technical assistance with witness security.

The following people may be contacted for information about both *program evaluation and gangs*:

G. David Curry
Criminology and Criminal Justice Department
University of Missouri at St. Louis
598 Lucas Hall
8001 Natural Bridge Road
St. Louis, MO 63121
(314) 516–5038
(314) 516–5048 (fax)

Cheryl Maxson
Social Science Research Institute
University of Southern California
University Park, MC–0375
Los Angeles, CA 90089
(213) 740–4285
(213) 740–8077 (fax)

Scott Decker
Criminology and Criminal Justice Department
University of Missouri at St. Louis
598 Lucas Hall
8001 Natural Bridge Road
St. Louis, MO 63121
(314) 516–5038
(314) 516–5048 (fax)

Carl S. Taylor
Department of Family and Child Ecology
Director of Community Youth Development Programs
Institute for Children, Youth, and Families
Michigan State University
27 Kellogg Center
East Lansing, MI 48824
(517) 353–6617
(517) 432–2022 (fax)

John Hagedorn
Urban Research Center
University of Wisconsin at Milwaukee
Physics Building, #450
Milwaukee, WI 53201
(414) 229–5332

Kenneth Trump
Assistant Director of Tri-City Task Force
Director of Safety and Security
Parma City Schools
6726 Ridge Road
Parma, OH 44129
(216) 885–2495
(216) 885–2497 (fax)

Individuals With Expertise in Witness Security

Name	Title or Position	Address Number	Telephone Number	Fax Experience	Special
Arsenault, Walter	Unit Chief, Homicide Investigation Unit	Manhattan District Attorney's Office One Hogan Place New York, NY 10013	(212) 335–9262	(212) 335–9293	• gang prosecution • witness security
Cleveland, John	Acting Chief, Witness Services Division	U.S. Marshals Service 600 Army Navy Drive Arlington, VA 22202	(202) 307–9150	(703) 603–0354	• witness security
Darnall, Kenneth J.	Special Agent in Charge, Capital District	U.S. Department of Housing and Urban Development 451 7th Street, SW Room 3162 Washington, DC 20410	(202) 708–0387 (Darnall) (202) 708–0390 (HUD information)	(202) 708–7718	• witness protection using HUD resources
Dupuy, John Edward	Special Agent	U.S. Department of Housing and Urban Development Office of Inspector General (OIG) for Investigation 450 Golden Gate Avenue P.O. 36003 Room 8-5139 San Francisco, CA 94102-3448	(415) 436–8108	(415) 436–8114	• relocation in public housing

Individuals With Expertise in Witness Security

Name	Title or Position	Address Number	Telephone Number	Fax Experience	Special
Genelin, Michael	Head Deputy	Criminal Courts Building Hard Core Gang Unit 17th Floor, Room 1118 Los Angeles District Attorney's Office 210 W. Temple Los Angeles, CA 90012	(213) 974–3901	(213) 687–3128	• gang prosecution • using gang statutes • witness protection
Giannini, Alfred	Assistant District Attorney	San Francisco District Attorney's Office Homicide Unit 850 Bryant Street Room 322 San Francisco, CA 94103	(415) 553–1780	(415) 553–1539	• relocation • gang homicide prosecution
Isdell, G. Lee	National Coordinator Anti-Drug/Violent Crime Initiative	Office of the Inspector General U. S. Department of Housing and Urban Development 451 7th Street, SW Suite 8280 Washington, DC 20410	(202) 708-0430	(202) 708–1354	• public housing relocation
Jessamy, Patricia C.	State's Attorney, City of Baltimore	The Clarence Mitchell Courthouse 110 N. Calvert Street Baltimore, MD 21202	(410) 396–4000	(410) 539–5215	• witness security • program structure
Rice, James	Special Agent	Federal Bureau of Investigation Violent Crimes and Gang Unit 1900 Half Street, SW Washington, DC 20535	(202) 252–7801	(202) 252–7545	• gang investigations, intelligence, and homicides

Individuals With Expertise in Witness Security

Name	Title or Position	Address Number	Telephone Number	Fax Experience	Special
Sanders, Earl	Lieutenant	Central Warrant Bureau San Francisco Police Department 850 Bryant Street Room 460 San Francisco, CA 94103	(415) 553–1780	(415) 553–1539	• relocation
Schell, Barbara	Victim/Witness Program Coordinator	Victim Witness Assistance Center 200 South Third Street Suite 545 Las Vegas, NV 89155–2220	(702) 455–4204	(702) 455–5101	• witness relocation
Schwartz, Ted	Program Integrity Administrator	Housing Authority of Alameda County 22941 Atherton Street Hayward, CA 94541–6613	(510) 727–8519	(510) 727–8554	• relocation in public housing and Section 8 housing
Tellis, Blaine	Investigator	Criminal Investigation Division Special Investigations Unit Des Moines Police Department 25 East First Street Des Moines, IA 50309	(515) 237–1515	(515) 237–1642	• Asian gangs
Voogt, Daniel	Assistant County Attorney	Drug and Gang Unit Polk County Attorney's Office Third Floor Midland Building 206 6th Avenue Des Moines, IA 50309–4025	(515) 286–2120	(515) 286–3428	• vertical prosecution of gangs • Asian gangs

Appendix A
Sample Program Guidelines

Appendix A1
Intimidation Interview Guide

Philadelphia District Attorney's Office Victim Services Division

Recommendations for Victim Service Agencies on the Handling of Complaints of Threats, Intimidation, and Harassment

1. *WHO is the intimidator?*

   a. defendant;
   b. defendant's family member;
   c. defendant's friend or sympathizer;
   d. defense attorney.

Inquiries: Is the victim or witness acquainted with the intimidator? Is the victim or witness able to identify the perpetrator?

2. *What is the type of intimidating conduct?*

   a. actual force or physical violence;
   b. threats of force or physical violence;
   c. acts of coercion towards victim/witness or third party's veiled threats;
   d. acts of harassment, e.g., telephone communications, written correspondence, loitering with no legitimate purpose);
   e. offers of money or other pecuniary benefits to persuade victim/witness to withdraw charges.

3. *WHEN did the act of intimidation occur?*

   a. pre-preliminary hearing;
   b. pretrial;
   c. during trial;
   d. post-trial;
   e. presentence;
   d. post-sentence.

4. *WHERE did the act of intimidation occur?*

   a. in or near courtroom?
      — bring to the attention of trial judge;
      — insist on revocation of bail or a substantial increase;
      — place facts of intimidation on record;
      — move that perpetrator be held in contempt.
   b. elsewhere? where?

5. *OTHER important questions.*

   a. Is there an open case in the system?
   b. If so, what is defendant's name and case number, and where is the case listed?
   c. Is the victim or witness acquainted with the intimidator?
   d. Is the victim or witness able to identify the perpetrator?

Appendix A2
California Victim/Witness Assistance Program

Program Guidelines
July 1, 1994 through June 30, 1995

Witness Protection

Arranging for law enforcement protection when a witness' safety is threatened.

A maximum of one (1) percent of the total grant award may be allocated for witness protection, unless otherwise approved by OCJP.

Witness Protection Services

California Penal Code Section 13835.5 authorizes victim/witness assistance centers, funded with grant funds administered by the Office of Criminal Justice Planning (OCJP), to budget a portion of the project's funds for witness protection. Witness protection is an *optional* service which may be provided only when the effective provision of the statutorily mandated services listed in PC 13835.5 are not precluded. Witnesses may not be denied witness protection services based solely on the type of criminal activity (crime type) that made the testimony of the witness necessary.

The purpose of witness protection services in victim/witness assistance centers is to reduce the emotional, and potential physical, trauma when a threat is demonstrated. The benefits to law enforcement and the prosecution, while desirable, are secondary and, as such, should never be the determining factor in rendering witness protection services. In screening potential witness protection clients the project must give the priority consideration based on the needs of the client and the degree of risk. Actual victims of violent crime who are witnesses and witnesses at extreme risk, such as a witness of a gang homicide, should be given priority consideration.

Projects may budget up to one (1) percent of the total grant award amount to provide witness protection services. If more than one (1) percent of the grant award is requested for witness protection, the amount must be approved by OCJP and extensive written justification is required which must address:

1. the impact of additional witness protection funds being diverted from delivering mandated services;

2. data (type of crime requiring witness protection, number of witnesses protected in the previous grant period, cost of protection per witness, the number and percentage of actual crime victims receiving witness protection services, etc.) supporting the need for additional witness protection funding; and,

3. the anticipated impact on witnesses if funding above the one (1) percent level is not authorized.

Witness Protection Requirements

The person (project coordinator) designated by the project director to have day-to-day oversight of the victim/witness assistance project must oversee the administration of the disbursement of witness protection funds. However, projects may assign the actual disbursement responsibilities to other personnel within the implementing agency if the following procedures are enforced:

1. A quarterly report of expenditures *must* be submitted to *both* the project coordinator and project director for each quarter of the grant year. The report must include the following information for each witness protected:

   a. the name of witnesses protected during the quarter (the court case number may be used if the case number can be reconciled, by OCJP during an audit, with a specific witness in the confidential witness protection files).

   b. the type of crime.

   c. the reason the protection was required.

   d. the amount expended.

   e. state whether the witness protected was the actual victim; and

2. The project must report all information required for the witness protection services in the OCJP Progress Report. All expenditure reports will be reviewed and verified by OCJP staff during site and monitoring visits.

- Projects must maintain documentation for *all* expended funds (receipts, vouchers, invoices, etc.). All documentation must include the date of the expenditure, the name of the witness receiving protection, the case number, the purpose and reason for the expenditure, and the business location of the expenditure. The project records must also indicate if the person receiving witness protection services is the actual crime victim.

- The chief executive officer and his/her designee have the authority to approve and make payment of witness protection funds.

- Projects must establish and maintain separate accounts and record keeping systems for OCJP witness protection funds and all other victim/witness assistance funds.

Witness Protection Accountability Procedures

The nature of witness protection funds require that they be accessible. It is also necessary that safeguards and accountability of the funds be maintained. For effective management and audit purposes, the following procedures must be followed:

- This fund may only be used in the absence of another witness protection funding source;

- Cash allotments to witnesses or law enforcement are *not* allowable without documentation of an allowable expense;

- The witness protection fund and the regular grant allocation must be kept separate, each with its own account within the general ledger.

- Vouchers, receipts, cancelled checks and/or bank statements must be maintained for audit purposes;

- Authority to make payments from witness protection fund rests with the chief executive of the agency. Authority to draw on the witness protection funds may be delegated by the chief executive. The project must identify the designated personnel by name and position. Each check requires a counter signature. The project is required to give OCJP written notification, within ten (10) working days, of any changes in personnel authorized to approve and make payments;

- Grant funds must not be commingled with other funds;

- As checks are drawn against the fund, a copy of the checks must be sent to the person designated as the project's fiscal officer;

Witness Protection Eligibility Requirements

The following parties are eligible for witness protection assistance:

- Witnesses or their families who have received documented threats or have been assaulted as a direct result of their participation as a witness.

- The project must document information that indicates the witness or the witness's immediate family are in present danger.

Additionally, the following *must* occur:

- The witness must be a willing participant in providing testimony in a criminal or juvenile court case.

- The witness must have testified or must be called upon to testify in a case where criminal charges have been filed.

Witness Protection Non-allowable Use of Funds

Witness protection funds from the Victim/Witness Assistance Center Program may *not* be utilized for the following:

- To pay cash allotments to witnesses or law enforcement;

- To pay for expenses, goods or services for incarcerated witnesses;

- To pay informants for testimony, reimburse informants for expenses, or to purchase goods or services for informants;

- To pay or reimburse costs associated with expert witness testimony;

- To reimburse or support any costs associated with protecting witnesses who were active or passive participants in the criminal act which made the witnesses' testimony necessary;

- To pay or reimburse witnesses for public or private transportation not related to relocating the witness for protective reasons;

- To pay or reimburse expenses associated with providing security, police escorts, or policy vehicles,

- To pay or reimburse medical or dental expenses (including medication) for the witness or family member.

- To pay or reimburse long-distance telephone bills;

- To pay or reimburse non-essential items such as alcoholic beverages, tobacco, pet supplies, candy, cosmetics, books/magazines, clothing/shoes, furniture, real or personnel property, etc.;

- To pay for non-essential relocation cost such as cable television services.

Witness Protection Allowable Costs

Victim/witness assistance funds may be utilized for the following activities associated with witness protection services:

- Victim/witness assistance funds may be used to reimburse witnesses and/or law enforcement agencies for documented expenses related to the provision of temporary lodging of witnesses and their families. All temporary lodging must be expressly for the protection of witnesses and their families during the court process. Please see Appendix form section for maximum rates allowed by OCJP.

- Victim/witness funds may be used to reimburse witnesses or law enforcement for documented expenses related to providing meals to witnesses while under protection during the court process. Please see Appendix in the forms section for maximum rates allowed by OCJP.

- Victim/witness assistance funds may be used to reimbursement witness or law enforcement for documented costs related to relocating witnesses, their families and their belongings due to a documented threat to their personal well-being. Documentation of the threat may be justified by a crime report in which law enforcement supports there is a threat and/or the project records in which project staff determine and document there is a justifiable threat. Projects must maintain documentation that no relocating expenditures exceed the prevailing local cost for such expenditure and that the expenditures is related to witness protection.

The costs of temporary lodging and meals for the purpose of witness protection may be reimbursed for a duration of 21 calendar days per witness (including the family of the witness). The twenty-one (21) calendar days are cumulative. All witnesses and/or families of witnesses requesting more than a total of twenty-one days of witness protection funds must have prior written authorization of OCJP. The project must submit a written request to OCJP for additional witness protection funds on a case by case basis prior to the expiration of the initial twenty-one days of OCJP funded witness protection. The request *must* include the reason for extended funding, the amount of additional funds needed and the additional amount of time that witness protection services will be required. Witness protection services may *not* extend beyond the time required to protect the witness and/or the family of the witness during the court process.

Failure to maintain documentation of all expenditures may lead to questions and/or disallowed costs. All expenditures are subject to review and approval by OCJP. All records must be maintained consistently with the requirements of *OCJP Grantee Handbook.*

Appendix A3
Baltimore City Witness Protection Program

I. Purpose

To create a formal Witness Security Program to provide security and protection of witnesses in Circuit Court felony matters who have been threatened, intimidated or harassed because they have information which is vital to the State's case; to create a formal network with protocols and Memoranda of Understanding between the State's Attorney's Office and law enforcement and other agencies which set forth each agency's responsibility under the program; to establish policy and procedures for the expenditure and/or reimbursement of funds specially provided for witness security; and to improve witness cooperation in violent crime matters.

II. Agencies Involved

A. State's Attorney's Office - The Office of the State's Attorney will be the operating agency for the Witness Security Program.

1. The criteria for inclusion of witnesses in the program will be developed and approved by the State's Attorney's Office, but each case will be evaluated on a case by case basis.

2. A team approach will be utilized to determine if the witness is in need of security and the level of security (in consultation with law enforcement agencies involved). The Team, at a minimum, will consist of the Division Chief of the unit involved, the Chief of Community Services/Victim Witness Unit and the Deputy State's Attorney for Administration. Other individuals who may routinely participate in team reviews will be the Chiefs of the following units: Narcotics, Violent Crimes and Trial; depending upon their availability. Others may be asked from time to time to present any information which they may have which influences or bears upon the security of the witness. [All of this information, if possible, should be obtained from the witness, Assistant State's Attorney assigned to the case and any law enforcement officer assigned to the matter or having information directly relating to the matter]. The Witness Security Coordinator will always participate and coordinate efforts of all persons listed above.

3. The initiation of the *Request for Security* should be by the Assistant State's Attorney through the Division Chief. Any attorney who is aware that a security issue exists with a witness in a matter pending before the Courts or being investigated by any law enforcement agency in this jurisdiction, should, with the advice of their Division Chief, complete a REQUEST For Security Form.

4. Team determinations should be made within 12 hours. In situations where a determination cannot be made within 12 hours but the Division Chief feels that the witness's security is at immediate risk, he/she can and should make a temporary determination with approval of the Deputy State's Attorney designee and notification to Chief of Community Services/Victim Witness. Temporary security measures based upon the Division Chief's findings will last a maximum of 72 hours. A Team review should take place as soon as possible to determine another short term or long range solution to the security problem.

5. The State's Attorney's Office will provide one individual who will be down as the "Witness Security Coordinator." This individual should have a law enforcement background and shall be responsible for the following:

   a. Securing housing and transportation for witnesses in need of security.

   b. Coordinating all Witness Security activities with the agencies involved.

   c. Helping to locate witnesses in major felony cases when requested by the units to do so.

   d. Securing all expense and reimbursement requests for proper filing with the funding source. (Does this in conjunction with the Fiscal Administrator).

B. Sheriff's Office - The Sheriff's Office will be the chief law enforcement agency utilized for witness Security services. Services provided may range from 100% 24 hour security to something less depending upon the security needs of the witness. The level of security should be outlined as to the number of deputies, where

services are to be provided and the number of hours services are to be utilized. The degree of security should be determined after consultation with the Sheriff's representative, law enforcement agency and State's Attorney team. The following will be needed from the Sheriff's Office:

1. Training - The Sheriff's Office will provide a minimum of eight deputies, with an equal distribution as to sex, to be specially trained to provide witness security when the need arises. Specialized training of Deputies in "executive protection" should be approved in consultation with the State's Attorney's Office.

2. Protocol - The State's Attorney's Office and Sheriff's Office shall develop a formal protocol and/or memorandum of understanding to be followed by the agencies in a witness security situation. This protocol shall designate the individual within the Sheriff's Office who will begin implementation from the Sheriff's end.

3. Expenses -
   a. The Sheriff's Office will be responsible for the training of these deputies. All of their salaries and related expenses while assigned to witness protection duties, however, will be reimbursed to the Sheriff's Office by the State's Attorney's Office. Initial funds for the purchase of equipment (guns, vests, etc.) and supplies to be used by Deputies in witness security will be paid for out of witness security funds.

   b. The Sheriff's Office shall provide the salary schedules of all trained officers and submit a time sheet outlining the hours during which the deputy provided witness security services along with receipts and/or itemization of all other expenses incurred. Once submitted, the Sheriff's Office will be reimbursed through normal City procedures (forms may or may not be developed for these purposes).

4. The Sheriff's Office will provide summaries and reports during the security period as requested by the State's Attorney's Office.

C. The Police Department - The Police Department will continue to provide witness related services which they now provide. They will provide witness security services over and above their normal responsibilities only in "special circumstances". These "special circumstances" will be determined by the State's Attorney's Office Team. When it is determined that the Police Department will provide witness security due to "special circumstances", the following will be the Department's responsibilities.

1. Protocol - The State's Attorney's Office and the Police Department will develop a special protocol and/or memorandum of understanding for the handling of these cases. When it is determined that "special circumstances" exist and the Police Department will provide witness security, the protocol will be activated.

   a. A named individual within the department will be responsible for implementation.

   b. All matters will be coordinated by this individual and the Witness Security Coordinator.

2. Expenses - All expenses incurred for Witness Security by the Department over and above the normal/regularly scheduled duties of a Police Department officer will be reimbursed from the State's Attorney's Witness Security Fund.

   The department shall submit a reimbursement request which shows the regular "on duty hours" of the officer and the "off duty hours" during which the officer provided witness security along with the annual salaries of the officer involved. Receipts for all other expenses should also be attached. Reimbursement will be through normal City channels.

3. Reports - Witness security reports should be filed with the witness coordinator as determined to be necessary by the State's Attorney's Office Team. A "form" to be completed by the protecting officers should be provided by the State's Attorney's Office. Any special requirements of the witness should also be indicated thereon, i.e., medical notations, etc.

D. The Department of Corrections - The Department of Corrections houses inmates in the Detention Center (jail) as well as all other correctional facilities (prisons) within the State. On occasion, an inmate at the Deten-

tion Center or DOC will need additional security due to his witness status. Should it be determined by the Team that a Detention Center or DOC inmate is in need of additional security, the following will take place:

1. *Protocol* - The DOC and State's Attorney's Office will develop a protocol to be utilized in the event a DOC or Detention Center (jail) inmate needs special security. This protocol will name an individual within DOC and/or jail who will implement the program within the agency.

2. This individual and the Witness Security Coordinator in the State's Attorney's Office shall implement a program of security within the DOC facility which meets all agencies' guidelines for maximum security of the witness. Any special needs or requests by the State's Attorney's Office in reference to this witness should be provided by the State's Attorney's Office to the DOC.

3. Expenses - Unless the services provided are so extraordinary, no reimbursement of expenses will be made by the State's Attorney's Office to the DOC for additional witness security.

4. Any "extraordinary" services must be approved beforehand by the State's Attorney's Office Team if they are to be provided and if reimbursement is to be requested. This does not include services which the DOC consider emergency. The DOC should act in emergency situations to protect the witness.

5. Any problems experienced by the DOC in reference to the witness being protected should be immediately communicated by the DOC representative to the State's Attorney's Office Witness Security Coordinator.

E. Housing - The Department of Housing and Community Development (HCD) and the Housing Authority operate public housing facilities and City owned housing units. Many citizens in need of security are occupants of public housing and/or qualify for public housing in one capacity or another.

Currently, HCD and the Housing Authority work with the Community Services Division of the State's Attorney's Office to transfer witnesses in need of security from one housing facility to another. The Witness Security Program has formalized these arrangements with the development of a special protocol and/or memorandum of understanding to handle these cases.

The Housing Authority will provide support services for the witness in need of security who meets HUD guidelines as follows:

1. Transfer witnesses from one housing unit upon request to another housing unit across town or across the State, if needed; and

2. Secure the expedited placement of witnesses who meet eligibility requirements into public housing; and

3. Train the witness protection coordinator on the eligibility requirements for housing. The determination being made prior to the referral will expedite the process; and

4. Provide, if needed, the assistance needed to secure housing outside the city limits.

F. Department of Social Services - the Local Department of Social Services will provide expedited assistance to the witness security program for those witnesses meeting DSS eligibility requirements as follows:

1. Temporary shelter when not provided by Witness Security Program. This option may be utilized when there is a low-security risk.

2. Upon referral, complete the application process to secure general public assistance, medical assistance, and food.

3. Train Witness Security Program staff on the eligibility requirements and application process for public assistance.

4. Maintain client's information in a confidential manner.

5. Provide a designated staff member to assist Witness Security Program staff with all of the above.

III. Witness Location

Where possible, witness location will be handled as it has been in the past with the following exceptions:

A. Police Department, other law enforcement agencies, detectives or officers assigned to a case shall to the extent possible utilize everything at their disposal to locate witnesses in every criminal matter.

B. If a witness has been initially located by law enforcement, but fails to show up for trial, the State's Attorney's Office unit investigators should attempt to locate the witness by utilizing everything at their disposal.

C. If the witness cannot be located through conventional means, the Witness Security Coordinator and occasionally the Sheriff's Office may be requested to assist with this endeavor. If the matter is a felony and the witness's testimony is vital to the State's case, the Witness Security Coordinator will utilize every available resource at his/her disposal to locate the witness even if the witness is not a witness in need of security.

IV. Transportation

Witness transportation will be provided as follows:

A. Moving - Relocation - If the witness is to be relocated whether, in the City, outside the City or outside the State on a permanent basis and cannot afford to pay for relocation, the State's Attorney's Office Witness Security Program shall bear the costs of relocation. The Witness Security Coordinator should handle the arrangements with the assistance of the Fiscal Officer.

B. If the witness is to be relocated temporarily, the travel arrangements of the witness and any necessary family members should be handled by the State's Attorney's Office. Moving and/or storage expenses may need to be approved pending permanent arrangements. Whatever expenses are approved, however, will be paid for by the State's Attorney's Office if the witness is financially unable to cover them.

C. To and From Court - Transportation to and from Court or for interviews by the State will be provided in cases of 100% security. In all other matters, the State's Attorney's Office Team will determine if it is needed, and if so, to what extent.

V. Reward/Award–Witness Fee.

A. No witness fee will be provided by the State's Attorney's Office for a witness's testimony under this program. Any expert witness who testifies in a matter which has a witness under security will be paid for out of expert witness fees and not witness security.

B. No award or reward for information leading to the arrest and conviction of a defendant will be offered under this program unless all avenues to secure witnesses and information have failed. If it is determined by the State's Attorney's Office Team that circumstances exist which warrant a reward, a determination of how much should be offered will be made and that amount hopefully can be added to an existing program. This determination of an award will be made only if extreme circumstances exist, but no one has come forward and the perpetrator has not been identified.

VI. Costs

A. Salaries/OPCs

1. Witness Protection Coordinator - this individual will be hired at the "investigator" level in the State Attorney's Office.

2. Sheriff's Deputies - State's Attorney's Office will pay for all hours in which a Sheriff's deputy provides witness protection. Reimbursement will be based on annual salary.

3. Police Department - O/T only when specially requested.

4. Salary and Over Time of other officers of law enforcement agencies may be paid in extraordinary circumstances when approved beforehand by the State's Attorney's Office Team.

B. Housing

1. Hotel - temporary witness accommodations.

2. Apartment, house, etc. - more long term witness accommodations.

3. Other housing related allowance.

C. Transportation

1. To and from out of town location (air, bus, train, car mileage, etc.)

2. To and from courthouse for trial, interviews, hearings, etc. (cab, bus, subway, tokens, etc.)

3. Mileage reimbursement to law enforce agency providing transportation from and to whatever location - (would like to see agencies absorb this cost).

D. In Courthouse Security Facility

1. Renovation

2. Maintenance

3. Furnishings, equipment and supplies.

E. Other Expenses

1. Moving

2. Storage

3. Per diem - food, etc.
4. Utilities for private apartment or home if needed (telephone, gas and electric, city water, sewage, etc.)

5. Equipment for Sheriff's Deputies (guns, vests, etc.)

6. Miscellaneous - expenditure for special needs witnesses. Reimbursement will be made with receipts, if prior authorization acquired.

VII. Witness Responsibilities

The program is only as effective as the witness allows it to be.

A. Participation - All witnesses who are in need of security (as determined by the State's Attorney's Office Team) will be offered participation in the program. Witnesses must be willing to participate.

B. Guidelines - All witnesses who wish to participate in the program must sign an acknowledgment that they were given a copy of the guidelines which state their responsibilities under the program. These guidelines will be prepared by the State's Attorney's Office in conjunction with the protecting agency.

C. Financial - All witness who participate in the program and are able to contribute to their expenses will be asked to do so to the extent of their financial abilities.

D. Any witness who violates the terms and conditions of the program may bring danger to themselves or others. As a result may be denied further assistance through the program.

Appendix A4
Los Angeles District Attorney's Office: VIctim Witness Assistance Program Witness Protection Fund

A. Program Objectives

1. The overall goal of the Witness Protection Program is to expand the capability of local law enforcement to successfully prosecute criminals on trial through the protection of witnesses and their families.

2. The program will enable the District Attorney's Office to make funds available to local law enforcement and prosecution agencies in Los Angeles County for this purpose in an expeditious manner.

B. Policies and Procedures

1. The Witness Protection Program is intended to assist local agencies and prosecutors who do not have other resources available to protect witnesses. When such assistance is needed, this program will make possible a rapid response.

2. Under the direction of the Chief Deputy District Attorney of the Los Angeles County District Attorney's Office, the Bureau of Investigation will administer the Witness Protection Program. The policies and procedures for disbursement of project funds to requesting agencies are denoted in the following paragraphs.

C. Policies

1. The following criteria must be met in order to obtain approval of funding for the relocation of the witness and/or the family of the witness.

   a. Witness or witness' family *has* been threatened, *or*

   b. An actual threat to the safety of witness or witness' family exists, *and*

   c. Criminal charges have been filed against a defendant, *and*

   d. This witness will be called or has been called to testify against the defendant.

2. Only law enforcement agencies and prosecutors and their investigators are eligible for assistance under the provisions of the Witness Protection Program.

3. When a case is under the -jurisdiction of the Superior Court, a Count Order approving the expenditure of funds for the subject relocation, may be required.

4. Request for funding will be reviewed as long as funds are available.

5. Reports or other records, which document the subject threat or witness intimidation, must be submitted with the relocation requests.

6. Assisted agencies will be required to formally account for funds expended for witness protection in the form of a letter accompanied by original vouchers or receipts which will substantiate expenditures. Every effort should be made to ensure the receipts are legitimate and correctly reflect the approved expenses.

7. Except in unusual circumstances, requests for witness relocations must be processed by the investigating officer from the law enforcement agency which requested the filing of the case. This should be done as soon as possible after the threatening situation develops.

8. The witness protection funds are limited to endangered witnesses only and *cannot* be used for indigent witnesses.

9. All requests for witness relocations must be approved in advance and *no promises or commitments should be made to witnesses prior to approval.*

10. Only those expenses articulated in the agreement, in the amounts approved, are reimbursable. Any other additions, modifications or changes *must* be approved in advance (see attachment #2).

11. The final decision as to whether the request for a witness relocation is necessary or appropriate lies with the Program Director or his designee.

12. Any exceptions to the stated policies and/or procedures, as set forth in this guide, will be at the discretion and authority of the Program Director or his designee.

D. Procedures

The procedures detailed below are intended to assist law enforcement agencies and prosecutors in applying for assistance under provisions of the Witness Protection Program. In applying these procedures, law enforcement agencies and prosecutors should keep in mind the policies of the Witness Protection Program and requirements of the State of California.

1. Absent emergency situations, payments to agencies requesting assistance will only be on a reimbursable basis.

2. Reimbursements will be only for monies expended for costs related to witness' relocation, and any other essential expenses determined to be appropriate and related to the security of the witness and/or witness' family.

3. Requesting agencies must substantiate expenditures with original receipts.

4. Receipts must be those issued in the normal course of business and contain sufficient information to allow for identification of approved expense, including date, place (address), nature of expense, and person issuing receipt, if appropriate.

5. It shall be the Investigating Officer's responsibility to make a reasonable effort to confirm that the witness did in fact relocate to a specified location and paid the agreed move-in costs, in addition to securing the required receipts.

E. Methodology

1. The process of obtaining assistance under the witness protection program commences with the submission of an Assistance Request Form (attachment 1) *in person*. The requests are to be submitted to the Program Director or one of his designees.

2. Unless other arrangements have been made, all requests *must* be made in person and *all* elements shown in attachment 1 must be answered. In all cases, the requests must be sufficiently detailed and informative in order for a decision to be made. Insufficient details will result in delays in the processing of requests.

3. Requests for assistance will be reviewed promptly and on a "first-come, first-served" basis. The review will be conducted to insure that the requesting agencies have provided sufficient detail to allow for approving action to be taken and that witnesses meet the program's conditions.

4. Following review, requesting agencies will be notified immediately as to whether their requests have been approved or disapproved.

F. Reimbursements Allowed

Agencies, whose requests for assistance are approved, will be reimbursed for costs related to the relocation, as per the agreement, for the protected witnesses and their families. Any change or modification to the original agreement must be approved in advance by the Program Director or his designee.

1. <u>Relocation Costs (Food. Transportation, and Related Costs)</u>

   a. Other potential costs associated with an emergency witness relocation (i.e., food, transportation/travel expenses, emergency lodging, moving expenses, etc.) must be justified and approved separately.

   b. Individual receipts for food may be waived in lieu of the officer obtaining a receipt from the witness for the approved amount of cash given directly to the witness exclusively for food as per the agreement.

   c. Reimbursements for transportation will be limited to travel from the jurisdiction in which the witnesses are located to the secure areas where they are being safeguarded and their return trip(s).

   d. With prior approval, agencies may be reimbursed for the rental of trailers and vans required for permanent relocation and movement of household goods.

e. ONLY THOSE EXPENDITURES SUBSTANTIATED BY ORIGINAL RECEIPTS WILL BE REIMBURSED.

G. Reimbursement Procedures

1. Agencies may be reimbursed on a one-time full payment or in partial payments. Partial payments are authorized to assist agencies whose budgets do not allow for prolonged outputs of funds in protecting witnesses. In either case, one-time payment or partial payments, the same procedures shown below apply in requesting payment.

2. Agencies requesting payment should prepare letter(s) under the agencies' letterhead containing the elements shown in Attachment 3 (Request for Payment Letter). The letter(s) should be signed by the agency head or a ranking officer.

3. Reimbursement requests submitted in person will be reviewed within 24 hours and payment will be made shortly thereafter.

4. Payment of claims for reimbursement submitted by requesting agencies will be authorized by the Program Director (or a person acting in his behalf). All materials will be reviewed for accuracy and propriety of expenditure and as to form.

H. Project Personnel

Program Director: Robert L. Hilleary
Assistant Chief, Bureau of Investigation
Los Angeles County District Attorney's Office
210 West Temple Street, Room 17-1103
Los Angeles, California 90012
(213) 974-3603

Program Manager: John Paccione
Fiscal Officer II
Bureau of Management and Budget
Los Angeles County District Attorney's Office
320 West Temple Street, Room 540
Los Angeles, California 90012
(213) 974-3521

Appendix A5
Policy for Handling Complaints of Victim/Witness Intimidation

Philadelphia District Attorney's Office

POLICY FOR HANDLING VICTIM/WITNESS COMPLAINTS OF HARASSMENT, INTIMIDATION AND/OR THREATS ON OPEN CASES IN THE TRIAL DIVISION

Starting immediately, all Complaints of harassment, intimidation and/or threats will be directed to the Witness Security Coordinator, Marcia Thomas, at 686-8023.

Upon referral of complaints, the following steps will be taken:

1. All complaints will be taken seriously until further investigation.

2. The working file will be located and any statements taken from the witness copied for the file. *Whether or not* an arrest is warranted, the complaint will be available to the assigned A.D.A. by a statement or memo to the file.

3. If following the initial interview (using the new victim contact sheet attached), a statement is deemed necessary, the Witness Security Coordinator will:

   a. at pre-preliminary stage, make an appointment for the complainant with the investigating police detective. The detective will be supplied with a copy of the statement and any background information (*i.e.*, priors, probation status, etc. of the accused);

   b. if the case has been held for court, the Witness Security Coordinator will make an appointment with D.A. Detectives (immediately, if possible) to have a statement taken, again supplying all background information on the accused, the-case file and a list of possible questions to be asked based on information received during the initial interview;

4. The Witness Security Coordinator will present all information to the appropriate Unit Chief for immediate approval or disapproval.

5. Following approval by the Unit Chief, the Witness Security Coordinator will present the information to the Deputy of Trials for approval of charges and a warrant placed against the accused.

6. The Witness Security Coordinator will then present the approved order for a warrant and all information to the D.A. Detectives for immediate initiation of arrest warrant procedures.

7. If it is determined that an arrest is unwarranted and a determination that a Private Criminal Complaint is the correct step, the Witness Security Coordinator will prepare a Private Criminal Complaint immediately for approval by the Deputy and the complainant can proceed directly to 34 S. Street, Room 480, with a payment of the $16.00 for the court clerk and a court date assigned forthwith. A copy of the private criminal complaint will be forwarded to the Private Criminal Complaint Unit.

8. If at any stage of the proceedings the Probation Department should be alerted, it will be done.

9. A memo and/or copy of the statement will be placed in the working file to alert the assigned A.D.A. to all problems.

10. A log of all complaints and dispositions will be kept in a complaint log book cross filed under both the complainant's and accused's names (new procedure).

Appendix B
Sample Program Forms

Appendix B1
Witness Assistance Request Form

Alameda County District Attorney's Office

Date: _____

I. REQUESTING INSPECTOR

Name:_____

Phone:_____

II. CASE INFORMATION

Briefly describe the case in which the witness is testifying.

Has a complaint been filed? Yes____ No____
Case #:_____ Court:_____ DDA:_____

Defendant(s) Name(s)	DOB	PFN	Charges Filed	In Custody Yes/No
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

List person(s) previously protected/assisted relative to this case.

Name	DOB
_____	_____
_____	_____

III. THREAT INFORMATION

Circle the degree of threat to the witness. Low 1 2 3 4 5 High.
Explain how the threat was delivered and who threatened the witness.

Explain how the threat was substantiated. (*Attach any police or investigative reports substantiating threats)*

IV. WITNESS INFORMATION

Witness(es) Name 1)_____ 2) _____
AKA: _____ _____
DOB: _____ _____
PFN/CII: _____ _____
CDL: _____ _____

List family and/or household members who will also be protected:

Name	DOB	Relationship to Witness
_____	_____	_____
_____	_____	_____
_____	_____	_____

How has the witness' credibility been previously established and can he/she provide competent, reliable testimony?

What is the importance and type of the witness' testimony?

Can you go to trial without the witness' testimony? Yes____ No____

V. WITNESS ASSISTANCE FUND

Period of time that assistance is needed (21 day limit):
Beginning date:_____ Ending date:_____
Has witness been relocated? Yes____ No____

Estimated amount needed:

Relocation costs: $_____
(A one-time fee for travel by _____ to _____)
(air, car, bus, train) (location)

Per Diem (lodging and food):$_____/day for_____days.
Note: Per Diem costs may not exceed $79/day/witness; $119/day/witness & spouse; $26/day for each child.
Total Amount: $_____

Appendix B2
Organized Crime Intelligence Report

Des Moines Police Department

NAME _____ DATE _____

ALIASES _____ INTELLIGENCE SOURCE _____

ADDRESS _____ AGENCY AFFILIATION _____

SSN _____ DOB _____

Hgt ____ Weight ____ Eyes ____ Hair ____ Sex ____ Race ____

LAW ENFORCEMENT INFORMATION ONLY

THIS INVESTIGATIVE MATERIAL IS NOT TO BE DISTRIBUTED TO NON-LAW ENFORCEMENT INDIVIDUALS WITHOUT COURT ORDER

EVIDENCE OF ORGANIZED CRIME INVOLVEMENT

_____ Tattoos depicting gang affiliations (explain).

_____ Mode of dress consistent with gangs (explain).

_____ Gang graffiti on personal property, clothing, etc. (explain).

_____ Possession of writings attributable to a particular gang which may indicate membership (explain).

_____ Admissions which indicate gang affiliation (explain).

_____ Arrest(s) arising from a criminal act in which known gang members participated (explain).

_____ Attendance at functions sponsored by the gang or by known gang members (explain).

_____ Information from a reliable named informant. (Name of informant, if possible) (Explain).

_____ Statements from family members indicating their belief that the individual is a gang member (explain).

_____ Information from other law enforcement agencies identifying the subject as a gang member (explain, using specific dates and names, if possible).

_____ Method of operation consistent with gang activity (explain).

_____ Observed loitering, riding or meeting with known gang members (explain, naming the known gang members - supply specific times and dates).

_____ Involved in the sales and distribution of narcotics for a known gang member (name known gang member - explain).

_____ Indirectly associated in a criminal activity committed by a known gang member (lookout, runner, etc.).

_____ Information supplied by this subject about the involvement of others in gang activity (explain).

Appendix B3
Witness Security Program Application

Philadelphia District Attorney's Office

Date: _____

I. BIOGRAPHICAL

Name: _____ Alias:_____
Address:_____
_____
Phone:_____ Sex: M_____ F _____
SS #:_____
D.O.B.: _____ Age: _____ Race: _____

Weight: _____ HT.:_____ Eyes: _____ Hair: _____

Address History (List *all prior* addresses):
_____
_____
_____
_____
_____

II. FAMILY INFORMATION (GIVE FULL NAMES)

Spouse/Living Partner: _____

Address:_____

Phone #: _____

Children & Ages: _____

Address:_____

School Address:_____

Parents: _____

Address:_____

Phone #: _____

Brothers/Sisters: _____

Address: _____

Phone#:_____

Aunts/Uncles: _____

Address:_____

Phone#: _____

Parents of Spouse/Living Partner: _____

Address: _____

Phone#: _____

Closest Friends (At least 3): _____

Address:_____

Phone#: _____

III. EMPLOYMENT HISTORY

Employer:_____

Address: _____

Phone: _____

Spouse/Partner Employer:_____

Address:_____

Phone:_____

Provide names & address of all your employers and spous/partner's employers over last twenty (20) years.

_____
_____
_____
_____

IV. SUPPORT HISTORY

Provide *all* sources of income for the past ten (10) years, including welfare, gift, loans, illegal sources, etc. for you and your spouse/partner.

_____
_____
_____

If no income for past ten (10) years, how were you able to live?

_____
_____
_____
_____

V. MEDICAL BACKGROUND

Problems: _____

Medication: _____

Doctor(s) Name: _____

Address: _____

VI. CRIMINAL JUSTICE HISTORY

Ever arrested in Philadelphia? _____

If yes, what's your Philadelphia photo number? _____

What is FBI number? _____

Ever arrested outside Philadelphia? _____

If yes, where: _____

When? _____

For what? _____

Disposition of case(s): _____

Ever a victim or witness prior to this case? _____

Where? _____

When? _____

Which case? _____

VII. RELOCATION POSSIBILITIES

Who must relocate with you? _____
_____

Indicate if there is any relative or close friend whom you can trust and with whom you can live with in Philadelphia.

_____
_____

Any relative or friend outside Philadelphia? _____

Can the relative/friend afford financial support for you and your family?_____

IX. WITNESS INTIMIDATION HISTORY

As a result of being a witness in this case, what threats, retaliation, etc. have you experienced so far:

_____

_____

If no threats, retaliation so far, what are your expectations of such intimidations?

_____

_____

What is the basis for you expectation of intimidation?

_____

_____

Name(s) of intimidators:

_____

_____

Open Case Name: _____

Assigned Detective:_____

LT. Detective: _____

VERIFICATION

I hereby verify the facts set forth in this witness security application are true and correct to the best of my knowledge, information and belief, and this verification is made subject to the penalties for unsworn falsification to authorities under PA Crime Code Section 4904 (18 PA C.S.A. S.4904).

_____ _____

Witness' Signature Applicant's Signature

_____ _____

Date Date

Appendix B4
Victim Contact Sheet
Intimidation Report

Philadelphia District Attorney's Office

Date: _____ Defendent:_____

Victim: _____ Petition#:_____

_____ M.C.#:_____

_____ Type of Crime:_____

Age: _____ Next Listing Date: _____

Sex: _____

Race: _____

Referred by: _____

Problem (Briefly):_____
_____
_____
_____

WHO:

Intimidator(s):_____ Defendant:_____
_____ Juvenile_____ Adult_____
_____
_____ Defendant's Friend:_____

Defense Attorney:_____

Does C/W know intimidator? Yes____ No____

Can C/W identify intimidator? Yes____ No____

What type of intimidating conduct? _____

Physical force or violence? Yes____ No____

Threats of force or violence? Yes____ No____

Acts of coercion toward C/W or third party veiled threats? Yes____ No____

Acts of harassment: _____
_____

Telephone Communication? Yes____ No____

Written Communication? Yes____ No____

Signed? Yes____ No____

Loitering with no purpose? Yes____ No____

Offers of money or other pecuniary benefits to withdraw charges? Yes____ No____

WHEN:

Pre-Preliminary Hearing _____
Preliminary Hearing _____
Pre-Trial _____
During Trial _____
Post Trial _____
Pre-Sentencing _____
Post-Sentencing _____

WHERE:

In or Near Courtroom _____
At C/W'S Home _____
On Street _____
At Place of Employment _____
Other _____

Any witnesses? _____

STATEMENT:

Statement taken by D.A.D.? Yes____ No____

If No, why not?_____
_____

Which D.A.D.? _____

Assigned A.D.A.? _____

Unit: _____ Chief:_____

Judge:_____

Probation Officer: _____

Decision of Deputy D.A.

_____
_____

Other Alternatives

Appendix B5
Witness Protection Program Assistance Request

Los Angeles County

SUSPENSE DATE		
	CONFIDENTIAL	

WITNESS PROTECTION PROGRAM ASSISTANCE REQUEST

1. REQUESTING AGENCY

Date: _____ Address: _____

Department: _____ _____

Officer/Agent: _____ Phone #: _____

DR/FILE #: _____

2. DESCRIPTION OF WITNESS(ES)

Name: _____ POB: _____

Aliases: _____ CII: _____

DOB: _____ CDL: _____

Description of other family and/or household members to be given witness protection assistance (include name, DOB, CDL, addresses, and relationship to witness)

_____

_____

_____

3. Describe the circumstances of the crime(s) committed in this case and how the witness is involved (note any special significance to the deft(s) or the nature of their criminal activity such as street gang involvement, organized crime affiliation.)

_____

_____

_____

4. Specifically, what will this witness testimony be and its importance to the case (e.g., eyewitness to murder and under what circumstances, co-conspirator and nature of involvement)

_____

_____

_____

5. Has this witness or family been threatened? ☐ **YES** ☐ **NO**

   By Whom: _____

   Describe the threats, how they were delivered, and how they were substantiated by the requesting agency:

   _____
   _____
   _____

   Do the deft(s) or their associates know where the witness lives, works, or goes to school?

   ☐ **YES** ☐ **NO**

6. If no threats, why do you feel this witness is endangered and must be relocated?

   _____
   _____
   _____

   Have funds been requested on this case before? ☐ **YES** ☐ **NO**

   If so, name of witnesses and date funds were requested.

   _____

7. Case legal # _____ Charges: _____
   Deft. Name: _____ _____

8. Reliability of the witness (has the witness' reliability been previously established in court, can witness provide credible, competent testimony, etc.)

   _____
   _____

9. Willingness of witness to testify without provided protection:

   _____

10. Is the witness/family currently receiving financial assistance from any governmental agency?

    ☐ **YES** ☐ **NO**

    It is hereby acknowledged and agreed these funds are requested for the emergency relocation of the witness(es) for the reasons outlined in this request. I understand only those expenses approved below, in the indicated amounts are reimbursable only through the subsequent submittance of original requests, unless otherwise indicated in this agreement. No other substitution of expenses is allowed. I have received approval from my department to seek these funds from _____(supervisor).

    Signed _____ Date _____

FOR OFFICIAL USE ONLY - DO NOT WRITE BELOW THIS LINE

Agreement between parties as how the funds will be utilized and amount(s) authorized:

Total amount approved:_____ Approving Authority: _____ Date _____

WITNESS PROTECTION PROGRAM ASSISTANCE REQUEST
AGREEMENT CHANGES/MODIFICATIONS

CASE #

NEW SUSPENSE DATE,
IF APPLICABLE

DATE:

Nature of requested change or modification:

_____
_____
_____
_____

Person Requesting: _____
Phone #: _____

Q Change(s) approved. To be carried out within the original amount authorized under above criteria.

Q Change(s) approved. An additional $ _____ is authorized to be spent within the above criteria.

Approving Authority: _____

WITNESS PROTECTION PROGRAM ASSISTANCE REQUEST
AGREEMENT CHANGES/MODIFICATIONS

NEW SUSPENSE DATE,
IF APPLICABLE

DATE:

Nature of requested change or modification:

_____
_____
_____
_____

Person Requesting: _____
Phone #: _____

Q Change(s) approved. To be carried out within the original amount authorized under above criteria.

Q Change(s) approved. An additional $ _____ is authorized to be spent within the above criteria.

Approving Authority: _____

Appendix B6
Helping Communities With Nuisance Abatement Suits

A MESSAGE FROM THE STATE'S ATTORNEY

This brochure has been prepared to inform citizens on the use of the Drug Nuisance Abatement Law. We see the use of this law as another tool for neighborhoods in the "neighborhood reclamation" effort.

Drug users, sellers and buyers create nuisances in our neighborhoods. Their activities disrupt the quality of life that we've established for our families and often destroy the sense of community that ties neighbors to neighbors.

With the help of a grant from the Governor's Drug and Alcohol Abuse Commission, we have established the Community Anti-Drug Project to help the citizens of Baltimore rid their neighborhoods of the nuisances that are brought on by drug activity. We will be assisting neighborhood organizations throughout the city with learning the necessary skills to use the Drug Nuisance Abatement Law.

All of us have been affected by the drug activity that has marred many of Baltimore's neighborhoods. It is our hope that the Community Anti-Drug Project will be a valuable tool in the continuing effort to rid our neighborhoods of drugs and drug activities.

Stuart O. Simms
State's Attorney
for Baltimore City

YOUR NEIGHBORHOOD

THE LAW:
The Drug Nuisance Abatement Law says that a privately owned property that is being used for drug activity is a nuisance.

- a building where people deal drugs
- a building where drugs are stored in large quantities, or
- a building where people gather to take drugs.

WHO CAN SUE?
A drug nuisance suit can be brought by:

- a non-profit community association
- the State's Attorney's Office, or
- the City Solicitor's Office

WHO CAN BE SUED?
The law allows a suit against either:

- OWNER of the property
- TENANTS who are using the property for drug dealing, or
- BOTH

WHAT DOES THE LAW ALLOW US TO DO?
In a drug nuisance suit, the court has the power to:

- order the owner to submit a plan of correction to ensure that the drug dealing stops;
- order a tenant to vacate the property within 72 hours, if the tenant knew about the drug activity;
- order a tenant to cease any drug related activity and evict the tenant if the tenant continues;
- any other relief the court thinks necessary.

HOW DO WE FILE SUIT?

- Determine the ownership of properties;
- Collect information submitted by community associations;
- Document related drug activity;
- Notify landlord and/or tenant; and
- Formalize a civil suit.

RESPONSIBILITIES OF THE COMMUNITY ORGANIZATION

- Organize community effort in your neighborhood;
- Identify property where drugs are being stored, used and/or sold;
- Maintain and document a daily log of activity;
- Report activity to your neighborhood representative; and
- Prepare for trial.

PROJECT ASSISTANCE TO NEIGHBORHOODS

Staff members of the Community Anti-Drug Project can assist your neighborhood effort to rid drugs in your community by:

- Providing the necessary training;
- Supplying technical assistance;
- Furnishing legal support;
- Supporting your neighborhood effort; and
- Monitoring results.

Appendix C
Sample Legislation

Appendix C1
Rhode Island

12-30-1 Criminal Procedure

12-30-1. Statement of purpose. The effective prosecution of persons involved in organized criminal activity requires the development and use of testimony obtained from witnesses who were themselves involved in crime. The standards set forth herein are intended (1) to encourage the cooperation of potential witnesses with law enforcement authorities, (2) to assure the safety and security of those witnesses, (3) to provide accountability in the cost and operation of the witness program, and (4) to protect the community from those with a history of criminal behavior.

History of Section.
P.L. 1990, ch. 331, § 1.

12-30-2. Agreement with witness. Whenever any law enforcement official of the state of Rhode Island or any city or town thereof determines that a person who is either (1) incarcerated upon conviction for a felony, (2) indicted or informed against for a felony, or (3) the subject of a felony investigation, is-willing to give evidence regarding the commission of felony offenses within the state in exchange for a reduction of his or her sentence, and/or assistance in obtaining parole, and/or the dismissal or reduction of charges pending against him or her, and/or immunity from prosecution said official shall notify the department of attorney general forthwith. An assistant attorney general and the law enforcement official shall interview the prospective witness to determine what information he or she possesses and what consideration he or she is seeking for his or her testimony. If they determine that the evidence proffered is reliable and that the consideration sought is reasonable, the assistant attorney general shall prepare a written memorandum setting forth all of the terms of the agreement which shall be signed by the witness, a representative of the law enforcement agency initiating the case, and representative of the attorney general's office. The terms of said agreement shall include the length and manner of custodial supervision to be provided in order to accomplish both the protection and incarceration of the criminal witness. The document shall explicitly state that the agreement will become void if the criminal witness violates the terms of his or her confinement, or fails to provide the promised information and assistance to the prosecution, or commits a new crime. The prospective witness shall be afforded the right to counsel during the negotiation and execution of said agreement. The memorandum shall not become binding and enforceable by the parties until approved in accordance with the procedures set forth in § 12-30-3.

Historyof section.
P.L. 1990, ch. 331, § 1.

12-30-3. Witness protection review board. — There is hereby created within the department of attorney general a witness protection review board consisting of an assistant attorney general appointed by the attorney general, an officer of the state police appointed by the superintendent of state police, and a municipal police chief appointed by the president of the Rhode Island police chiefs' association. No agreement which obligates any law enforcement agency of the state or its municipalities to provide protection for and/or to release from custody or dismiss pending charges against any criminal witness (person who is incarcerated upon conviction for a felony or who is indicted or informed against for a felony or who is the subject of a felony investigation) in exchange for his or her testimony shall take effect until it has been approved by a majority vote of said review board. The board shall review each such agreement to determine whether (1) the evidence proffered justifies the reduction of sentence and/or dismissal of charges, (2) adequate provision has been made to insure the safety of the witness and his or her immediate family, if any, during the times in which he or she will be cooperating with law enforcement authorities and during his or her resettlement thereafter, (3) the witness will serve any sentence of confinement imposed upon him or her for his or her crimes in a sufficiently restrictive environment, (4) the cost of maintaining the witness in the protection

program is reasonable, 5) the witness will pose any threat of future criminality if released into the community pursuant to the terms of the agreement. In determining whether to approve the agreement, the board shall consider whether the particular witness could be better managed if responsibility for his or her custody were transferred to the, witness protection program, operated by the United States justice department. The recommendation of the review board shall be presented to the attorney general, whose approval shall be required prior to implementation of the agreement. Once approved by the review board and the attorney general, any provision of the agreement reducing the sentence of, transferring the custody of, dismissing the charges against and/or agreeing to immunize the witness must be presented to the superior court for its approval in accordance with applicable statutes and the rules of said court.

History of Section.
P.L. 1990, ch. 331, § 1.

12-30-4. Non-criminal witnesses. Whenever any law enforcement official of the state or any city or town thereof determines that a prospective witness who is not incarcerated, charged, or under investigation for commission of a felony requires custodial protection and/or assistance with relocation due to a threat to the safety of that witness or his or her family, said official shall notify the department of attorney general forthwith. An assistant attorney general and the law enforcement official shall interview the prospective witness to determine what information he or she possesses and what level of protection is required. If they determine that the evidence proffered is reliable and that the protection is necessary, the assistant attorney general shall prepare a written memorandum setting forth a summation of the information to be provided and the nature and cost of the protection to be afforded. Said memorandum shall be presented to the witness protection review board for its review and approval pursuant to § 12-30-3.

History of Section.
P.L. 1990, ch. 331, § 1.

12-30-5. Supervision of witness. Whenever the terms of an agreement with a criminal witness provide for him or her to serve a period of incarceration in the state of Rhode Island, his or her confinement shall be either at the adult correction institution or at a facility maintained and supervised by the state police. The court by order shall set forth whether custody of the criminal witness shall be maintained by the department of corrections or the state police. If the place of confinement is other than at the ACI, the witness shall be under guard by law enforcement officials at all times. He or she shall not be permitted to leave the place of confinement unless escorted by a law enforcement guard. The officers selected to guard the witness shall have no other involvement in the case or cases in which the witness is providing evidence.

History of Section.
P.L. 1990, ch. 326, § 3; P.L. 1990, ch. 327, § 3; P.L. 1990, ch.331, § 1.

Compiler's Notes. This section was enacted by three Acts (P.L. 1990, ch. 326, § 3; P.L. 1990, ch. 327, § 3; P.L. 1990, ch. 331, § 1) passed by the 1990 General Assembly. Chapters 326, § 3 and 327, § 3 both enact identical versions of this section. However, the version enacted by P.L. 1990, ch. 331, § 1 differs from the other versions in that it substitutes "state marshalls" for both "state police" and "law enforcement officials" throughout the section. The law revision officer of the joint committee on legislative affairs, pursuant to § 43-2-2.1, has determined that the enactment of this section by P.L. 1990, ch. 326, § 3, and P.L. 1990, ch. 327, § 3, supercede the enactment by P. L. 1990, ch. 331, § 1. The section is set out above as enacted by P.L. 1990, ch. 326, § 3, and P.L. 1990, ch. 327, § 3.

As enacted by P.L. 1990, ch. 326, § 3; P.L. 1990, ch. 327, § 3; and P.L. 1990, ch. 331, § 1

12-30-9. Monitoring of witness. The witness protection review board shall examine the status of each case involving a protected criminal witness at three (3) month intervals. Any change in the terms of confinement of the witness must be reported to the board within five (5) days of its occurrence.

History of Section.
P.L. 1990, ch. 331, § 1.

12-30-10. Rules and regulations. The department of attorney general and the state police shall promulgate rules and regulations in furtherance of the administration of their responsibilities pursuant to this chapter. Said rules and regulations shall be submitted to the witness protection review board within six (6) months of the effective date of this statute. Any amendment of or addition to said rules shall be submitted to the board within thirty (30) days of their promulgation.

History of Section.
P.L. 1990, ch. 326, § 3; P.L. 1990, ch. 327, § 3; P.L. 1990, ch. 331, § 1.

Compiler's Notes. This section was enacted by three Acts (P.L. 1990, ch. 326, § 3; P.L. 1990, ch. 327, § 3; P.L. 1990, ch. 331, § 1) passed by the 1990 General Assembly Chapters 326, § 3 and 327, § 3 both enact identical versions of this section. However, the version enacted by P.L. 1990, ch. 331, § 1 differs from the other versions in that it substitutes "state marshalls" for "state police" in the first sentence of the section. The law revision officer of the joint committee on legislative affairs, pursuant to § 43-2-2.1, has determined that the enactment of this section by P.L. 1990, ch. 326, § 3, and P.L. 1990, ch. 327, § 3, supercede the enactment by P.L. 1990, ch. 331, § 1. The section is set out above as enacted by P.L. 1990, ch. 326, § 3, and P.L. 1990, ch. 327, § 3.

12-30-11. Priority for trial. In order to minimize the period of time during which protection must be provided for the witness, the trial of cases in which a protected witness will be testifying shall, upon application of the attorney general, be given priority on the criminal trial calendar by the superior court.

History of Section.
P.L. 1990, ch. 331, § 1.

12-30-12. Annual report. On the second Friday of January of each year, the attorney general shall submit a report to the general assembly stating the number of proposed agreements submitted to the witness protection review board during the previous year and the number of agreements approved by said review board and the attorney general.

In addition the report shall provide 1) the number of witnesses currently in the program; 2) the number of witnesses in the custody of the department of corrections and in the custody of the state police; 3) the charges pending against each witness and the proposed disposition resulting from his or her cooperation; 4) the number of indictments that have resulted from information obtained from each witness; 5) the number of convictions that have resulted from the information obtained from each witness and the sentences imposed by the court; 6) an itemization of all expenditures of public funds made by or on behalf of each witness listed by the purpose of the expenditure.

Said report shall not disclose the identity of any witness not already publicly known to be participating in the program nor shall it disclose any specific information that might tend to reveal the location of the witness.

History of Section.
P.L. 1990, ch. 326, § 3; P.L. 1990, ch. 327, § 3; P.L. 1990, ch. 331, §

Compiler's Notes. This section was enacted by three Acts (P.L. 1990, ch. 326, § 3; P.L. 1990, ch. 327, § 3; P.L. 1990, ch. 331, § 1) passed by the 1990 General Assembly. Chapters 326, § 3 and 327, § 3 both enact identical versions of this section. However, the version enacted by P.L. 1990, ch. 331, § 1 differs from the other versions in that it substitutes "state marshalls" for "state police near the beginning of the second paragraphs of the section. The law revision officer of the joint committee on legislative affairs, pursuant to § 43-2-2.1, has determined that the enactment of this section by P.L. 1990, ch. 326, § 3, and P.L. 1990, ch. 327, § 3, supercede the enactment by P.L. 1990, ch. 331, § 1. The section is set out above as enacted by P.L. 1990, ch. 326, § 3, and P.L. 1990, ch. 327, § 3.

Appendix C2
Victim and Witness Intimidation

Sec.
4951. Definitions.
4952. Intimidation of witnesses or victims.
4953. Retaliation against witness or victim.
4954. Protective orders.
4955. Violation of orders.
4956. Pretrial release.

Historical Note
Subchapter B was added by Act 1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

§ 4951. Definitions

The following words and phrases when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Victim." Any person against whom any crime as defined under the laws of this State or of any other state or of the United States is being or has been perpetrated or attempted.

"Witness." Any person having knowledge of the existence or nonexistence of facts or information relating to any crime, including but not limited to those who have reported facts or information to any law enforcement officer, prosecuting official, attorney representing a criminal defendant or judge, those who have been served with a subpoena issued under the authority of this State or any other state or of the United States, and those who have given written or oral testimony in any criminal matter; or who would be believed by any reasonable person to be an individual described in this definition.

1980, Dec. 4, P.L. 1097, No. 187, § 4, effective in 60 days.

Library References
Obstructing Justice - 1,4. C.J.S. Obstructing Justice or Governmental Administration §§ 2 to 4, 9, 16, 17, 20, 21.

§ 4952. Intimidation of witnesses or victims

A. Offense defined. - A person commits an offense if, with the intent to or with the knowledge that his conduct will obstruct, impede, impair, prevent or interfere with the administration of criminal justice, he intimidates or attempts to intimidate any witness or victim to:

1. Refrain from informing or reporting to any law enforcement officer, prosecuting official or judge concerning any information, document or thing relating to the commission of a crime.

2. Give any false or misleading information or testimony relating to the commission of any crime to any law enforcement officer, prosecuting official or judge.

3. Withhold any testimony, information, document or thing relating to the commission of a crime from any law enforcement officer, prosecuting official or judge.

4. Give any false or misleading information or testimony or refrain from giving any testimony, information, document or thing, relating to the commission of a crime, to an attorney representing a criminal defendant.

5. Elude, evade or ignore any request to appear or legal process summoning him to appear to testify or supply evidence.
6. Absent himself from any proceeding or investigation to which he has been legally summoned.

B. Grading. The offense is a felony of the third degree if:

1. The actor employs force, violence or deception, or threatens to employ force or violence, upon the witness or victim or, with the requisite intent or knowledge upon any other person.
2. The actor offers any pecuniary or other benefit to the witness or victim or, with the requisite intent or knowledge, to any other person.
3. The actor's conduct is in furtherance of a conspiracy to intimidate a witness or victim.
4. The actor solicits another to or accepts or agrees to accept any pecuniary or other benefit to intimidate a witness or victim.
5. The actor has suffered any prior conviction for any violation of this title or any predecessor haw hereto, or has been convicted, under any Federal statute or statute of any other state, of an act which would be a violation of this title if committed in this State.

Otherwise the offense is a misdemeanor of the second degree.

1980, Dec. 4, P.L. 1987, No. 1987, § 4, effective in 60 days.

Cross References
Limitation of prosecutions for crime committed under this section, see 42 Pa.C.S.A. § 5552.

§ 4953. Retaliation against witness or victim

A. Offense defined. - A person commits an offense if he harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or victim.

B. Grading. - The offense is a felony of the third degree if the retaliation is accomplished by any of the means specified in section 4952(b)(1) through (5) (relating to intimidation of witnesses or victims). Otherwise the offense is a misdemeanor of the second degree.

1980, Dec. 4, P.L. 1097, No. 187, § 4, effective in 60 days.

Cross References
Limitation of prosecutions for crime committed under this section, see 42 Pa.C.S.A. § 5552.

§ 4954. Protective orders

Any court with jurisdiction over any criminal matter may, after a hearing and in its discretion, upon substantial evidence, which may include hearsay or the declaration of the prosecutor that a witness or victim has been intimidated or is reasonably likely to be intimidated, issue protective orders including but not limited to the following:

1. An order that a defendant not violate any provision of this subchapter.

2. An order that a person other than the defendant, including but not limited to a subpoenaed witness, not violate any provision of this subchapter.

3. An order that any person described in paragraph (1) or (2) maintain a prescribed geographic distance from any specified witness or victim.

4. An order that any person described in paragraph (1) or (2) have no communication whatsoever with any specified witness or victim, except through an attorney under such reasonable restrictions as the court may impose.

1980, Dec. 4, P.L. 1097, No. 187, § 4, effective in 60 days.

§ 4955. Violation of orders

Any person violating any order made pursuant to section 4954 (relating to protective orders) may be punished in any of the following ways:

1. For any substantive offense described in this chapter, where such violation of an order is a violation of any provision of this subchapter.

2. As a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under section 4952 (relating to intimidation of witnesses or victims) or 4953 (relating to retaliation against witness or victim), but:

   i. any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed on conviction of said substantive offense; and
   ii. any conviction or acquittal for any substantive offense under this title shall be a bar to subsequent punishment for contempt arising out of the same act.

3. By revocation of any form of pretrial release, or the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding him to custody. Revocation may, after hearing and on substantial evidence, in the sound discretion of the court, be made whether the violation of order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by the defendant.

1980, Dec. 4, P.L. 1097, No. 187, § 4, effective in 60 days.

§ 4956. Pretrial release

A. Conditions for pretrial release.- Any pretrial release of any defendant whether on bail or under any other form of recognizance shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor permit to be done on his behalf, any act proscribed by section 4952 (relating to intimidation of witnesses or victims) or 4953 (relating to retaliation against witness or victim) and any willful violation of said condition is subject to punishment as prescribed in

section 4955(3) (relating to violation of orders) whether or not the defendant was the subject of an order under section 4954 (relating to protective orders).

B. Notice of condition.- From and after the effective date of this subchapter, any receipt for any bail or bond given by the clerk of any court, by any court, by any surety or bondsman and any written promise to appear on one's own recognizance shall contain, in a conspicuous location, notice of this condition.

1980, Dec. 4, P.L. 1097, No. 187, § 4, effective in 60 days.

Cross References
Conditions of bond, see Pa.R.Crim.P., Rule 4014, 42 Pa.C.S.A.

Appendix C3
California

Chapter 11. Street Terrorism Enforcement and Prevention Act

Section

Repeal

Chapter 11 is repealed Jan. 1, 1997, by the provisions of §186.27.

§ 186.20. Citation

This chapter shall be known and may be cited as the "California Street Terrorism Enforcement and Prevention Act." *Added by Stats. 1988, c. 1242, § 1. eff. Sept. 26, 1988; Stats. 1988, c. 1256, § 1 eff. Sept. 26, 1988.)*

§ 186.21. Legislative findings and declaration

The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles county alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief sources of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs. *(Added by Stats. 1988, c. 1242, § 1, eff. Sept. 26, 1988: Stats. 1988, c. 1256, § 1, eff. Sept. 26, 1988.)*

§ 186.22. Participation in criminal street gang; punishment; felony conviction; sentence enhancement; commission on or near school grounds; pattern of criminal gang activity

A. Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern or criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or 2 or 3 years.

B. 1. Except as in paragraph (2), any person who is con-

victed of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. However, if the underlying felony is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

2. Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

C. If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true findings of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

D. Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

E. As used in this chapter, "pattern or criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

1. Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

2. Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 or Part 1.

3. Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

4. The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

5. Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

6. Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

7. Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

8. The intimidation of witnesses and victims, as defined in Section 136.1.

9. Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

10. Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

11. Burglary, as defined in Section 459.

12. Rape, as defined in Section 261.

13. Looting, as defined in Section 463.

14. Moneylaundering, as defined in Section 186.10.

15. Kidnapping, as defined in Section 207.

16. Mayhem, as defined in Section 203.

17. Aggravated mayhem, as defined in Section 205.

18. Torture, as defined in Section 206.

19. Felony extortion, as defined in Sections 518 and 520.

20. Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

21. Carjacking, as defined in Section 215.

22. *The sale, delivery, or transfer of a firearm as described in Section 12072.*

23. *Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.*

F. As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (23), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

G. This section shall remain in effect only until January 1, 1997, and on that date is repealed. *(Added by Stats. 1989, c. 930, § 5.1, operative Jan. 1, 1993. Amended by Stats. 1991, c. 201 (A.B.1135), § 1, operative Jan. 1, 1993; Stats.1991, c. 661 (A.B.1866), § 2, operative Jan. 1, 1993; Stats.1993, c. 601 (S.B.724), § 1; Stats.1993, c. 610 (A.B.6), § 3, eff. Oct. 1, 1993; Stats.1993, c.611 (S.B.60), § 3, eff. Oct. 1, 1993; Stat.1993, c. 1125 (A.B.1630), § 3; Stats.1994, c. 47 (S.B.480), § 1, eff. April 19, 1994; Stats.1994, c. 451 (A.B.2470), § 1.)*

Repeal

Section 186.22 is repealed by its own terms on Jan. 1, 1997.

Cross References

Firearm possession during street gang crimes, sentence enhancement, see § 12021.5.
Juvenile court rules related to this section, see California Rules of court, rule 1404.

§ 186.22a. Buildings or places used by criminal street gangs; nuisance; additional remedies; confiscation of firearms or deadly or dangerous weapons owned or possessed by gang members.

A. Every building or place used by members of a criminal street gang for the purpose of the commission of the offenses listed in subdivision (c) of Section 186.22 or any offense involving dangerous or deadly weapons, burglary, or rape, and every building or place wherein or upon which that criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

B. any action for injunction or abatement filed pursuant to * * * *subdivision (a)* shall proceed according to the provisions of article 3 (commencing with Section 11570) or Chapter 10 of Division 10 of the Health and Safety Code, except that all of the following shall apply:

1. The court shall not assess a civil penalty against any person unless that person knew or should have known of the unlawful acts.

2. No order of eviction or closure may be entered.

3. All injunctions issued shall be limited to those necessary to protect the health and safety of the residents or the public or those necessary to prevent further criminal activity.

4. Suit may not be filed until 30-day notice of the unlawful use or criminal conduct has been provided to the owner by mail, return receipt requested, postage prepaid, to the last known address.

C. No nonprofit or charitable organization which is conducting its affairs with ordinary care or skill, and no governmental entity, shall be abated pursuant to * * * *subdivisions (a) and (b).*

D. Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

E. 1. Any firearm, ammunition which may be used with the firearm, or any deadly or dangerous weapon which is owned or possessed by a member of a criminal street gang for the purpose of the commission of any of the offenses listed in subdivision (c) of Section 186.22,

or the commission of any burglary or rape, may be confiscated by any law enforcement agency or peace officer.

2. In those cases where a law enforcement agency believes that the return of the firearm, ammunition, or deadly weapon confiscated pursuant to this subdivision, is or will be used in criminal street gang activity or that the return of the item would be likely to result in endangering the safety of others, the law enforcement agency shall initiate a petition in the superior court to determine if the item confiscated should be returned or declared a nuisance.

3. No firearm, ammunition, or deadly weapon shall be sold or destroyed unless reasonable notice is given to its lawful owner if his or her identity and address can be reasonably ascertained. The law enforcement agency shall inform the lawful owner, at that person's last known address by registered mail, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing and that the failure to respond shall result in a default order forfeiting the confiscated firearm, ammunition, or deadly weapon as a nuisance.

4. If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing.

5. At the hearing, the burden of proof is upon the law enforcement agency or peace officer to show by a preponderance of the evidence that the seized item is or will be used in criminal street gangs activity or that return of the item would be likely to result in endangering the safety of others. All returns of firearms shall be subject to subdivision (d) of Section 12072.

6. If the person does not request a hearing within 30 days of the notice or the lawful owner cannot be ascertained, the law enforcement agency may file a petition that the confiscated firearm, ammunition, or deadly weapon be declared a nuisance. If the items are declared to be a nuisance, the law enforcement agency shall dispose of the items as provided in Section 12028. *(Added by Stats.1988, c. 1256, § 1, eff. Sept. 26, 1988. Amended by Stats.1990, c. 223 (A.B.3485), § 1; Stats. 1991, c. 260 (S.B.809), § 1.)*

§ 186.23. Mutual aid activities; labor organizations

This chapter does not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents. *(Added by Stats.1988, c. 1242, § 1, eff. Sept. 26, 1988; Stats. 1988, c. 1256, § 1, eff. Sept. 26, 1988).*

§ 186.24. Severability

If any part or provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, including the application of that part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provision of this chapter are severable. *(Added by Stats.1988, c. 1242, § 1, eff. Sept. 26, 1988; Stats.1988, c. 1256, § 1, eff. Sept. 26, 1988.)*

§ 186.25. Local laws; preemption

Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws consistent with this chapter relating to gangs and gang violence. Where local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field. *(Added by Stats.1988, c. 1242, § 1, eff. Sept. 26, 1988: Stats.1988, c. 1256, § 1 eff. Sept. 26, 1988.)*

§ 186.26 Criminal street gang; violent coercion to participate; offense

a) Any adult who utilizes physical violence to coerce, induce, or solicit another person who is under 18 years of age to actively participate in any criminal street gang, as defined in subdivision f) of Section 186.22, the members of which engage in a pattern of criminal gang activity, as defined in subdivision (c) of Section 186.22, shall be punished by imprisonment in the state prison for one, two, or three years.

b) Any adult who threatens a minor with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit the minor to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, the mem-

bers of which engage in a pattern of criminal gang activity, as defined in subdivision (e) of Section 186.22, shall be punished by imprisonment in the state prison for one, two, or three years or in a county jail for up to one year.

C. A minor who is 16 years of age or older who commits an offense described in subdivision (a) or (b) is guilty of a misdemeanor.

D. Nothing in this section shall be construed to limit prosecution under any other provision of the law.

E. No person shall be convicted of violating this section based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person, that the defendant had the apparent ability to carry out the threat, and that physical harm was imminently likely to occur. *(Added by Stats.1993, c. 557 (A.B.514, § 1.)*

§ 186.27. Duration of chapter

This chapter shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1997, deletes or extends that date. *(Added by Stats.1988, c. 1242, § 1, eff. Sept. 26, 1988; Stats.1988,c. 1256, § 1, eff. Sept. 26, 1988. Amended by Stats.1991, c. 201 (A.B.1135), § 2.)*

§ 186.28. Firearms; supply, sell or give possession; participation in criminal street gangs

A. Any person, corporation, or firm who shall knowingly supply, sell, or give possession or control of any firearm to another shall be punished by imprisonment in the state prison, or in a county jail for a term not exceeding one year, or by a fire not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment if all of the following apply:

1. The person, corporation, or firm has actual knowledge that the person will use the firearm to commit a felony described in subdivision (e) of Section 186.22, while actively participating in any criminal street gang, as defined in subdivision (f) of Section 186.22, the members of which engage in a pattern of criminal activity, as defined in subdivision (e) of Section 186.22.

2. The firearm is used to commit the felony.

3. A conviction for the felony violation under subdivision e) of Section 186.22 has first been obtained of the person to whom the firearm was supplied, sold, or given possession of control pursuant to this section.

B. This section shall only be applicable where the person is not convicted as a principal to the felony offense committed by the person to whom the firearm was supplied, sold, or given possession or control pursuant to this sections. *(Added by Stats.1992, c. 370 (S.B.437), § 1.)*

Appendix C4
Minnesota

609.495 Aiding An Offender

Subdivision 1. Whoever harbors, conceals, or aids another known by the actor to have committed a felony under the laws of this or another state or of the United States with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment, may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $5,000, or both.

Subdivision 2. This section does not apply if the actor at the time of harboring, concealing, or aiding an offender in violation of subdivision 1, or aiding an offender in violation of subdivision 3, is related to the offender as spouse, parent, or child.

Subdivision 3. Whoever intentionally aids another person known by the actor to have committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact and may be sentenced to not more than one-half of the statutory maximum sentence of imprisonment or to payment of a fine of not more than one-half of the maximum fine that could be imposed on the principal offender for the crime of violence. For purposes of this subdivision, "criminal act" means an act that is a crime listed in section 609.1 1, subdivision 9, under the laws of this or another state, or of the United States, and also includes an act that would be a criminal act if committed by an adult.

History
1963 c 753 art 1 s 609: 495; 1984 c 628 art 3 s 11; 1986 c 444; 1993 c 326 art 4 s 25

Appendix D
Sample Evaluative Reports

Appendix D1
New York District Attorney's Office

WITNESS PROTECTION PROGRAM ***Statistical Summary*** ***July 1, 1994 through December 31, 1994***			
		3rd & 4th QTRS	*YTD*
1.	Number of Witnesses Protected	103	134
2.	Number of Cases Receiving Funding	37	64
3.	Number of Dispositions Reached	12	22
4.	Number of Convictions by Plea to Top Charge Number of Convictions by Plea to Lesser Charge Total Convictions By Plea	1 4 5	6 7 13
5.	Number of Dismissals	1	1
6.	Number of Convictions by Plea to Top Charge Number of Convictions by Plea to Lesser Charge Total Convictions By Trial	4 2 6	6 2 8
7.	Number of Acquittals	0	0
8.	Number of Sentences	11	18
9.	Overall Conviction Rate for Witness Protection Cases	92%	95%
10.	Trial Conviction Rate for Witness Protection Cases	100%	100%

WITNESS PROTECTION FUNDS SPENT ***By Type of Expense*** ***July 1, 1994 through December 31, 1994***				
	3rd and 4th Quarters		*YTD*	
Expense Type	$	%	$	%
Living Expenses	45,155.86	25%	76,415.03	24%
Lodging	81,280.55	45%	144,286.46	46%
Transportation	9,031.17	5%	17,106.10	5%
Protective				
Custody	3,612.47	2%	5,612.47	2%
Other	41,543.39	23%	71,180.88	23%
TOTAL	180,623.44	100%	314,600.94	100%

Appendix D2
LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
VICTIM WITNESS ASSISTANCE PROGRAM

WITNESS PROTECTION—FISCAL YEAR 1993–1994
STATISTICS FOR 1 YEAR PERIOD
(JULY 1, 1993 THRU JUNE 30,1994)

Number of cases requiring relocation of victims and witnesses	=	142
Percentage *decrease* over fiscal year 1992/93	=	3.2%
Number of victims, witnesses, and family members actually relocated	=	374
Percentage *decrease* over fiscal year 1992/93	=	16%
Average number of individuals relocated per authorization	=	2.6
Number of cases in which victim(s) and/or family members required relocation	=	49
Percentage of all cases approved for this fiscal period	=	34.5%
Percentage *decrease* over fiscal year 1992/93	=	12.5%
Number of cases in which witnesses to a crime required relocation	=	93
Percentage *increase* over fiscal year 1992/93	=	3.5%
Number of relocations directly attributed to gang related activities	=	111
Percentage of cases involving gang related crimes	=	78%
Percentage *decrease* over fiscal year 1992/93	=	1.75%
Number of Superior Court Order relocations	=	59
Percentage of cases supported by Court Order	=	41.5%
Amount authorized by program directors for fiscal year	=	$190,973.25
Average authorized amount per case	=	$ 1,345.00

Compared to previous year 10.75% DECREASE in funding authorizations.

Witness ProtectionTotals			
TOTAL CASES	=	59	SUPERIOR COURT ORDERS
142		83	MUNICIPAL COURT CASES
PEOPLE RELOCATED	=	144	RELOCATED WITH SUPERIOR COURT ORDER
374		230	WITHOUT SUPERIOR COURT ORDER
GANG CASES	=	47	SUPERIOR COURT ORDERS
111		64	WITHOUT SUPERIOR COURT ORDER
RELOCATED VICTIMS	=	21	SUPERIOR COURT ORDERS
49		28	WITHOUT SUPERIOR COURT ORDER

Agencies Requesting Relocations For Fiscal Year

LAPD	= 91	CASES	64.0%
LASD	= 19	CASES	13.4%
LONG BEACH PD	= 14	CASES	9.8%
COMPTON PD	= 4	CASES	2.8%
POMONA PD	= 3	CASES	2.1%
PASADENA PD	= 2	CASES	1.4%
CLAREMONT PD	= 2	CASES	1.4%
LADA Bofl	= 1	CASE	.7%
CULVER CITY PD	= 1	CASE	.7%
BEVERLY HILLS	= 1	CASE	.7%
GARDENA PD	= 1	CASE	.7%
EL SEGUNDO PD	= 1	CASE	.7%
SIGNAL HILL PD	= 1	CASE	.7%
METRO GANG TF	= 1	CASE	.7%
14 AGENCIES	142	CASES	100%

GM# 3395

June 18, 1991
(OBSOLETES GM 3358)

Appendix E
Sample Public Housing Authority Procedures for Expediting Transfers of Intimidated Witnesses

New York City Housing Authority

TO: District Directors
District Supervisors & Project Mangers

FROM: Donald Matthews, Director of Management

SUBJECT: Emergency Transfer Procedure for Victims of Domestic Violence, Intimidated Victims & Intimidated Witnesses

Background

In 1988, the Office of the Inspector General (OIG) established a Witness Relocation program to deal with relocation requests of both non-tenants and tenants. A formal liaison with the prosecutor's offices was established by the OIG to assume responsibility for all agency relocation requests. In 1989, the Management Department implemented an emergency transfer policy for victims of domestic violence and intimidated victims and witnesses.

The Management Department, Victim Services Agency, and the OIG, are now coordinating the relocation process through a joint emergency transfer policy which establishes uniformity in the steps taken by residents for all categories of emergency transfers.

Statement of Purpose

In order to reduce as much as possible the possibility of violence and to ensure the safety of our tenants, *the processing of all requests must be given the highest priority by staff at all levels for victims of domestic violence, intimidated victims and intimidated witnesses*.

Definitions

In order to clarify the emergency transfer policies, the following terms which are applicable to this procedure have been defined below:

A. VSA - refers to the Victim Services Agency (see attached list of community offices and court programs).

B. DA- refers to District Attorney's Office or any other prosecutor's office with offices within the city of New York (see attached list of District Attorney's liaison contacts).

C. LEA - Law Enforcement Agency such as Police, Corrections, Probation Department(s).

D. IV - Intimidated Victim — refers to a person against whom a violent crime has been committed or threatened but for which no arrest has been effected. The circumstances surrounding the commission of the crime or the threat against the intimidated victim are such as to constitute a continuing threat to the safety of the intimidated victim and/or members of the immediate family if such person(s) continue(s) to live in the home. Facts which must be assessed to demonstrate the existence of a continuing threat are:

1. The prior relationship, if any, between the victim and person(s) committing the crime or making the threat.

2. A determination by an outside agency that the nature of the threat is one which instills in the intimidated victim a fear that there is a substantial risk of a repeat offense or continued intimidation of a serious nature.

3. A fear that the person who committed the crime or made the threat will cause physical injury to the intimidated victim or to members of his or her immediate family if the intimidated victim cooperates with law enforcement authorities in the investigation, apprehension and prosecution of such person(s).

4. A demonstration of facts which make it likely that the person(s) who committed the crime or made the threat know or possess facts which make it likely that such person(s) or associate(s) of such person(s) know where the intimidated victim lives.

5. Where an actual crime has been committed, the intimidated victim has made a commitment to cooperate and assist in the apprehension and conviction of such person(s).

E. VDV - Victim of Domestic Violence - refers to a person(male or female) who has suffered serious or repeated abuse from a family member or close associate and who fears that the potential of violence continues to exist for the individual from the abuser.

F. IW - Intimidated Witness — refers to a person against whom a violent crime has been committed in which there has been an arrest or a person who has witnessed the commission of a violent crime committed against someone else in which there has been an arrest. The circumstances surrounding the commission of the crime witnessed by the intimidated witness or committed against the intimidated witness are such to constitute a continuing threat to the safety of the intimidated witness and/or members of the immediate family if such person(s) continues to live in the home in which they lived prior to the commission of the crime. Facts which must be assessed to demonstrate the existence of a continuing threat are:

1. The prior relationship between the victim of the crime and the person(s) committing the crime.

2. A determination by the DA of a threat which instills in the intimidated witness a fear that the defendant or others associated with the defendant will cause physical injury to the intimidated witness or members of the immediate family if that individual cooperates or continues to cooperate with law enforcement authorities in the prosecution of the defendant.

G. Order of Protection — An order of the court prohibiting a member of the family or other person from engaging in certain behavior. To be valid, for purposes of this directive, *it must be exclusionary, denying access to the home, in all cases where the defendant in the action has legal rights to the apartment. In those VDV and IV cases, where the order of protection is appropriate, it must be in effect at the time of the transfer request.*

Note: Transfers are not to be delayed because the order of protection is temporary. If the order of protection is in effect at the time of the request, it is to be processed and the tenant is to submit proof of the next court appearance date.

H. DRRC-refers to Department of Resident Review and Counseling.

The Procedure

There are different ways in which Managers receive requests for emergency transfers. Many IV/IW/VDV cases will be referred to the Manager from an outside agency. In other instances, the tenant will request the transfer directly and the project Manager must carefully evaluate the request in line with the definitions outlined above. If applicable, the tenant is to be referred to an appropriate agency for substantiating documentation. If the resident clearly does not qualify as an emergency transfer, the provisions of the Management Manual, Chapter IV, Subdivision XIII (Transfers - all programs) should be discussed with the tenant so that a transfer may be applied for through normal channels. If, however, the tenant believes that his/her request is a legitimate VDV/IW/IV case, a referral to an appropriate agency is to be made.

On the following pages, are the steps to follow for the different types of cases. Most victims of domestic violence (VDV) and intimidated victims (IV) will be referred from VSA or a law enforcement agancy (LEA) such as Police, Corrections, or Probation. However, in some instances, where serious crimes are involved, referrals for VDV and IV cases may be forthcoming from the District Attorney's Office. *Under no circumstances, are these cases to be delayed while the tenant obtains an order of protection, ets. Once the referral is received from the DA's office, it is to be processed immediately.*

Attachments

Attached to this procedure are the following:

Attachment 1 — District Attorney's Office Liaison Contacts — Intimidated Witnesses

Attachment 2 — Victim Services Agency Community Ofices and Court Programs

Attachment 3 — VSA Request for an Expedited N.Y.CH.A. Emergency Transfer for Victims of Domestic Violence (sample form)

Attachment 4 — Victim Services Agency (VSA) Request for an Expedited NYCHA Transfer for Intimidated Witnesses and Victims (sample form)

Attachment 5 — NYCHA Form 040.050, Tenant Request for Transfer

Attachment 6 — Map of NYCHA Management Districts

Steps in the Emergency Transfer Request

Tenant Transfer Request–VDV/IV from VSA or LEA

Step 1. Tenant completes 040.050, Tenant Request for Transfer and submits to Project Manager with 3 District choices.

Note: This procedure does not allow individual project choices. The tenant must request 3 Districts (see attached map with geographic boundaries). Inappropriate choices should not be made, i.e., district of current residence or area where friends or relatives of abuser or perpetrator reside.

Step 2. VDV Cases — Submission to Manager of VSA referral form or referral from LEA.

Step 3. IV Cases — referral from VSA or LEA is submitted to Manager.

Step 4. For both IV and VDV cases, submission of supporting documentation, if required, from Police, Correction, Probation etc.(including any copy of incident reports).

Step 5. Tenant submits valid order of protection to Manager for most VDV cases *(many IV cases will not require an order of protection).*

Note: If an Order of Protection, (exclusion or vacate order) has been obtained, project staff shall under no circumstances provide lock-out service or change the lock at the request of the person cited as the abuser or perpetrator in the Order of Protection.

Step 6. If serving of the Order of Protection at the time of transfer request will present a clear and present danger to the tenant, plans for obtaining possession of the apartment must be included in the VSA referral. *It is not the intent of this procedure to leave any residual tenant in the apartment.*

*Tenant Transfer Request—IW From Office of District Attorney**

Step 1. Tenant completes 040.050 Tenant Request for Transfer and submits to Project Manager with 3 District choices.

Note: This procedure does not allow individual project choices. The tenant must request 3 Districts(see attached map with geographic boundaries). Inappropriate choices should not be made, i.e., district of current residence or area where friends or relative of abuser or perpetrator reside.

Step 2. Letter from liaison in the DA's office requesting tenant's transfer must be submitted to Manager if case is to be processed as an intimidated witness.

Note: Other supporting documentation such as Police incident reports is optional and an order of protection is not required for cases referred from DA's office.

Step 3. The Manager may contact the D.A. liaison (see attached list) directly, if further discussion of case is required.

* Once action is begun on a case by the DA, the tenant is considered an intimidated witness, even if the case originated as an intimidated victim or victim of domestic violence.

DV/IV cont.

Role of Project Manager

Step 1. Manager evaluates transfer request and approves or disapproves transfer (unless additional information is needed) within 2 working days.

Step 2. If the Manager determines that additional information (a.i.) is needed , a request is to be made with the VSA or LEA contact to submit a.i. within 7 working days.

Step 3. If a.i. is still pending after seven working days, informs VSA/LEA to submit information immediately to the appropriate Deputy Dir. of Mgmt.(Room 305 B) and approves or disapproves transfer.

Step 4. Manager prepares inter-project transfer request 040.059R.

a. Only original prepared-no copy
b. Appropriate background information given whereabouts of abuser in VDV case, social problems, status of DRRC and other legal actions, etc.
c. Plan for payment of rent, charges, etc. must be included.
d. Referral letters (VSA or LEA) with substantiating documentation — *if required.*
e. Copy of Order of Protection — *if required*.

Step 5. *Manager hand delivers all transfer requests to District, approved or disapproved.*

Role of District Director

Step 1. The District Director or designee reviews all transfer requests (approved or disapproved) submitted from Managers.

Step 2. District Director or designee approves or disapproves transfer request.

Step 3. Submits all transfer requests approved or disapproved to Deputy Director of Management in 2 working days.

Step 4. Logs dates of submission in District Control Log.

IW cont.

Role of Project Manager

Step 1. Manager evaluates transfer request and approves or disapproves transfer within 2 working days.

Step 2. Manager prepares inter-project transfer request 040.059R.

a. Only original prepared copy.
b. Appropriate background information given whereabouts, social problems status of DRRC and other legal actions etc.
c. Plan for payment of rent, charges, etc. must be included.
d. DA's referral letter and any other substantiating documentation attached.*

Step 3. Manager submits transfer request to District within 2 working days.

Step 4. Manager hand delivers all transfer requests to District, approved or disapproved.

* If a referral letter is not attached from a liaison D.A., then case cannot be considered as an IW case. *No cases are to be delayed for information in addition to the DA's referral letter.*

Role of District Director

Step 1. The District Director or designee reviews all transfer requests (approved or disapproved) submitted from Manager.

Step 2. District Director or designee approves or disapproves transfer request.

Step 3. Submits all transfer requests, approved or disapproved, to Deputy Director of Management in 2 working days.

Step 4. Logs dates of submission in District Control Log.

VDV/IV cont.

Role of Deputy Director of Management for Field Operations

A. *Transfer Requests With No A.I. Pending*

The Deputy Director of Management reviews all complete transfer requests submitted from District Directors:

APPROVED	*DISAPPROVED*
Step 1 The Deputy Director approves request.	**Step 1** The DeputyDirector disapproves request
Step 2 Submits to OCD.	**Step 2** Submits disapproval requests to DRRC, reasons for disapproval are reviewed.
Step 3 OCD certifies transfers and delivers to Command Center for Relocated Families.	**Step 3** *Negative decision —* DRRC informs Deputy Dir. of Mgmt. of decision. Transfer request returned to Deputy who informs VSA or referring agency(LEA).
	Step 4 *DRRC resolves issues*. Transfer returned to Deputy, who approves and sends to OCD.
	Step 5 OCD sends to Command Center for Relocated Families.

B. *Incomplete Transfer Request:*

If pending information is not obtained within 2 working days, the Field Deputy will refer the case to the Deputy Director of Mgmt. for Tenant Relations. If necessary, the referring agency will be contacted in order to resolve any outstanding issues. The transfer request will then be returned to the field Deputy with a recommendation for approval or disapproval and the steps outlined in A. above will be followed.

I.W. cont.

Role of Deputy Director of Management for Field Operations

A. *I.W. Transfer Request**

The Deputy Director of Management *reviews all I.W. transfer requests submitted from District Directors:*

APPROVED	*DISAPPROVED*
Step 1 The Deputy Director approves request.	**Step 1** The DeputyDirector disapproves request
Step 2 Submits to OCD.	**Step 2** Submits disapproval requests to DRRC, reasons for disapproval are reviewed.
Step 3 OCD certifies transfers and delivers to Command Center for Relocated Families.	**Step 3** *Negative decision —* DRRC informs Deputy Dir. of Mgmt. of decision. Transfer request returned to Deputy who informs DA's office.
	Step 4 *DRRC resolves issues.* Transfer returned to Deputy, who approves and sends to OCD.
	Step 5 OCD sends to Command Center for Relocated Families.

* No transfer requests are to be submitted to the Deputy Director of Management for Field Operations as an I.W. case without a referral letter from a D.A. If this verification is not forthcoming the case may be re-evaluated to see if it fits the criteria for a VDV or IV case and may be submitted as per this procedure.

VDV/IV cont.

Role of Command Center

Step 1. Command Center assigns transfer to project and notifies VSA or referring agency of assignment.

All contacts with the tenant must be made through VSA or the referring agency. Under no circumstances, should the receiving project contact the tenant or the move-out project directly. If for any reason, staff is unable to reach the agency contact person after several attempts, the Emergency Transfer Coordinator at VSA (212 577-3870) is to be contacted immediately.

Step 2. As soon as assignment is made, the Command Center immediately transmits application directly to the receiving project.

Step 3. If tenant refuses project, application is returned to Command Center, and second project will be offered.

Step 4. If tenant refuses both choices, project returns case to Command Center for Relocated Families who forwards it to Deputy Director of Management/ Tenant Relations who evaluates reasons for return.

Step 5. If approval is given for the offer of a third choice, transfer request is returned to Command Center for reassignment.

Step 6. If District reassignment is not approved, transfer request returned to Command Center who notifies *VSA or referring agencies (LEA) of decision.*

Step 7. The Command Center then returns transfer request to Deputy Director of Management for Field Operations who returns request to originating project and logs it in the computer.

IW cont.

Role of Command Center

Step 1. Command Center assigns transfer to project and notifies DA of assignment.

All contacts with the tenant must be made through the DA. Under no circumstances should the receiving project contact the tenant move-out project directly.

Step 2. As soon as assignment is made, the Command Center immediately transmits application directly to to the receiving project.

Step 3. If tenant refuses project, application is returned to Command Center, and second project will be offered.

Step 4. If tenant refuses both choices, project returns case to Command Center for Relocated Families who forwards it to Deputy Director of Management/ Tenant Relations who evaluates reasons for return.

Step 5. If approval is given for the offer of a third choice, transfer request is returned to Command Center for reassignment.

Step 6. If District reassignment is not approved, transfer request returned to Command Center who notifies liaison DA of decision.

Step 7. The Command Center then returns transfer request to Deputy Director of Management for Field Operations who returns request to originating project and logs it in the computer.

IMPLEMENTATION OF TRANSFER

After the tenant accepts an assignment, the receiving project conducts the rental interview:

A. Payment of Rent and Security

Rent and security for the new apartment must be paid according to procedure. The payment of an additional deposit prior to transfer is hereby waived [Management Manual, Chapter IV, Subdivision XIII page 14, 11a(l)]. If the payment of a new security deposit in full prior to occupancy in the new apartment would create an undue hardship or delay the move, the current procedure regarding installment payments for the security deposit will be used [Management Manual, Chapter IV Subdivision XIII9 Page 15, -11b (2)]. If any problems arise in obtaining the required monies, security or rent, the project will immediately notify the referring agency. *Extensive efforts must be undertaken by the Manager of the move-out project to obtain all rents due at the old project before the transfer is effected.* In VDV cases, even if the tenant is in residence at a shelter, VSA will assist project staff in obtaining the required monies and resolving rent problems.

B. Move-Out Notices and Procedures

1. After the completion of the rental interview (leases signed, monies paid for the tenant's transfer in the new apartment), the tenant must sign a move-out notice at that time. The tenant must also be advised not to state on the move-out notice either the name of the new project or the address of the new apartment. The Command Center for Relocated Families at 250 Broadway, Rm.301, is to be given an the tenant's forwarding address. An employee other than the Manager should sign the move-out notice (the name of the new project must not appear on this notice). The receiving project will forward the signed move-out notice to the Command Center, who will then forward it to the old project and continue, to monitor the completion of the move-out.

2. The receiving project must notify the Command Center when keys are issued. The Command Center will, in turn, notify the originating project that the keys have been issued (the date of this telephone contact is to be entered in the Command Center log).

3. The tenant is to be instructed to return the keys immediately after the move is completed. The tenant may return keys to the new Management Office who will immediately notify the Command Center by phone and then forward the keys to the C.C. by mail. The Command Center will, in turn, notify the move-out project.

4. On the space inventory card, only VDV/IW/IV is to be entered. No forwarding address is to be entered.

5. All communication concerning the move-out (including the move-out folder and move-out charges) is to be forwarded by the old project to the Command Center who will then forward it to the receiving project.

6. The importance of confidentiality is to be emphasized by project staff at the new rental interview. The tenant should be encouraged to inform hospitals, schools, etc. not to give new address. The DSS must also be informed of the need for confidentiality and this need should also be discussed with family members and friends.

7. A notation in the new tenant folder is to be made in red with the letters VDV or IW/IV so that staff will be aware of the ongoing need to be cautious in disclosing information concerning the tenant.

8. If social problems arise in the tenant's adjustment to the new environment, a referral should be made to the District social worker (the VSA referring agency worker should be contacted in cases of domestic violence).

9. If charges are owed by the vacating tenant, the "Vacating Tenants Final Refund Balance Due", NYCHA Form # 132.039 is forwarded to the Command Center who forwards it to the move-in project. The move-out project will handle the move-in charges as per procedure. The forwarding address of the Command Center must be written on this form in place of the new project and a notation in red "VDV/IW/IV."

10. When transferring tenants end up with a credit balance after processing of the move-out, the vacating project must also note in red "VDV or IV/IW" and must inform Disbursements of the

forwarding address of the Command Center on the "Vacating Tenants Final Refund/Balance Due," NYCHA Form # 132.039. Disbursements will issue the refund check to the Command Center who will then forward it directly to the tenant.

C. Reporting

1. On the Manager's Monthly Report, the move-out project is to enter under the section entitled "Reason for Vacating (if inter-project transfer give name of receiving project)," the name of the Command Center with the notation VDV or IW/IV. At the receiving project, the Manager's Monthly Report is to include "Inter" and the project and account the tenant is transferring from in the reason column.

2. Tenant Transcripts

   When a VDV or IW/IV tenant transfers, the following procedure should be followed with respect to the Tenant Transcripts:

   a. *Receiving Project:* a "Transcript of Tenant Data Admission and Income" (NYCHA form 047.004) should be prepared as for a new tenant. For "Basis for Selection" use the same code that the tenant was originally admitted under.

   b. *Move-Out Project:* prepare a "Report on Tenant Move-out" (NYCHA form 047.006). For "Moved To" circle "7," which is used for unknown, as well as Deceased, Institutionalized; for "Reason for Moving" circle "9" and write "VDV" or "IW/IV" in the space provided.

3. When staff from Research & Policy Development call for move-out or admission information on VDV/IW/IV cases, information is to be given to them as described above and confidentiality will be maintained.

Donald A. Matthews

Index

V

W