

Victim-Witness Issues

In This Issue

January 2003
Volume 5 1
Number 1

United States
Department of Justice
Executive Office for
United States Attorneys
Office of Legal Education
Washington, DC
20535

Guy A. Lewis
Director

Contributors' opinions and statements should not be considered an endorsement by EOUSA for any policy, program, or service

The United States Attorneys' Bulletin is published pursuant to 28 CFR §0.22(b)

The United States Attorneys' Bulletin is published bi-monthly by the Executive Office for United States Attorneys, Office of Legal Education, 1620 Pendleton Street, Columbia, South Carolina 29201. Periodical postage paid at Washington, D.C. Postmaster: Send address changes to Editor, United States Attorneys' Bulletin, Office of Legal Education, 1620 Pendleton Street, Columbia, South Carolina 29201

Managing Editor
Jim Donovan

Assistant Editor
Nancy Bowman

Internet Address
www.usdoj.gov/usao/reading_room/foiamanuals.html

Send article submissions to Managing Editor, United States Attorneys' Bulletin, National Advocacy Center Office of Legal Education 1620 Pendleton Street Columbia, SC 29201



This issue of the United States Attorney's Bulletin is dedicated to the memory of Ann Dooley who died an untimely death on September 17, 2002. Ann was an Assistant United States Attorney and Tribal Liaison from the United States Attorney's Office for the Northern District of Oklahoma and a former member of the Counsel to the Director's staff in the Executive Office for United States Attorneys. Ann's support and dedication for law enforcement in Indian country was immense, and her expertise was sought by AUSAs throughout the nation. Most of all, she was a friend who will be missed by many.

Attorney General's Introductory Letter	
Automated Victim Notification Project	1
By Kurt Shernuk	
Witness Intimidation	5
By Crystal P. Gaines	
The Federal Crime Victim Assistance Fund	11
By Pam Press	
Restitution Update	13
By Catharine M. Goodwin	
Performance-Based Management and What It Means for the Victim-Witness Program	20
By Barbara G. Thompson	
Professionalizing the Victim Service Field	23
By Shari Konarske	
Shattered Worlds: The Impact of Terrorism on Children	27
By Kathryn M. Turman	
On the Front Line: The Fight Against Compassion Fatigue	33
By Eileen Grady and Christy Prietsch	
Victim Rights in Indian Country - an Assistant United States Attorney Perspective	36
By Christopher B. Chaney	

Witness Intimidation

Crystal P. Gaines
Program Manager
Law Enforcement Coordinating
Committee/Victim-Witness Staff
Executive Office for United States Attorneys

I. Introduction

This article will discuss different situations which make victims and witnesses eligible for the Emergency Witness Assistance Program as well as other security programs. This article will first define the tactics used to intimidate witnesses as well as explain why relocation is an effective tool to address witness intimidation.

II. Types of intimidation

Most people perceive witness intimidation as the defendant threatening or actually inflicting some form of violence on the victim or a key witness. In reality, the problem of witness intimidation is far more complex. A report on Preventing Gang- and Drug-Related Witness Intimidation, prepared by the National Institute of Justice (NIJ), describes two different kinds of intimidation: overt and implicit.

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;

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.

Implicit intimidation involves a situation in which there is a real but unexpressed (or indirectly expressed) threat of harm to an individual who may testify. Implicit intimidation is sometimes generated by a history of violent gang retaliation against cooperating witnesses:

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.

III. Forms of intimidation

Witness intimidation may also take many different forms. The report by NIJ on Preventing Gang- and Drug-Related Witness Intimidation explained how intimidation—whether of an individual or a community—may involve the following tactics:

- *physical violence* which involves violent acts of intimidation—including homicides, drive-by shootings, and physical assaults;
- *explicit threat of physical violence* is intimidation that is clearly expressed and directed towards a specific individual;
- *implicit threat* is indirect intimidation that is implied or understood, but not directly expressed, 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 associates;
- *property damage* involves the destruction of property: drive-by shooting 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; and
- *courtroom intimidation* occurs when friends or relatives of the defendant direct threatening looks or gestures at a witness in the courtroom or courthouse, stare intently at the witness, or use threatening hand signals.

Other forms of intimidation 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.

A. When witness intimidation is most likely to occur

The NIJ report on Preventing Gang- and Drug-Related Witness Intimidation explained that prosecutors and police agree that the most dangerous time for a victim or witness is between the arrest and the trial of a defendant. As the trial approaches, the victim or witness becomes more of a target, and the long trial delays allow ample opportunity for intimidation. The second most dangerous period for victims and witnesses is during the trial. 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 victim or witness may feel endangered from the moment they are aware that the crime is gang-related or drug-related:

A prosecutor reported that a resident where a homicide occurred was shot and killed by gang members who saw her simply speaking with police (in fact, the witness had refused to cooperate in the investigation).

B. Preventing witness intimidation

Prosecutors may use different methods to prevent witness intimidation including requesting the judge to set high bail, prosecuting those who intimidate witnesses, filing temporary restraining orders, and relocating witnesses. Careful consideration should be given whenever a witness expresses fear. An active response to witness intimidation makes a statement that the criminal justice system considers witness intimidation a serious matter and will take action to prevent intimidation and prosecute those that commit these acts.

IV. Witness Relocation

The most reliable and effective option prosecutors have to assist intimidated witnesses is relocation. There are three types of witness relocation:

- *immediate relocation* which may require quickly moving the witness from his or her residence to a shelter, hotel, motel, or other facility;
- *short-term assistance* which may require placing the witness in a rental facility for a few months or providing the witness with funds to leave the danger area to reside with relatives or friends; and
- *long-term assistance* which may require placing the witness in another city or state for a long period of time, permanently placing the witness in a rental facility, placing the witness in Section 8 housing, or entering the witness into the Federal Witness Security Program.

The appropriate type of relocation depends on the kind of case involved. If it is a high profile case or a case involving an organized gang or organization, long-term assistance in another city or state should be considered. If the case involves a small gang, a hotel stay outside of the danger area may be sufficient. How long relocation should last after a trial depends upon the circumstances of each individual case. Some prosecutors feel relocation should end when the trial concludes and others feel the witness should be permanently relocated. Even if relocation services are provided, there are situations when the witness may still be harmed. This often occurs when the witness returns to his or her neighborhood after the trial.

A. Challenges of witness relocation

Regardless of which type of relocation is chosen, there are many challenges in relocating witnesses. These challenges include:

- *medical ailments* may require transferring the witness's prescription medicines as well as medical benefits, HMOs, Medicare, Medicaid, etc. If a witness does not have medical benefits, medical treatment can cost in the thousands of dollars. In some states, doctors may refuse to treat patients with preexisting medical conditions;
- *children* may require finding schools and daycare centers near the witness's new location, which can be difficult if the child has special needs. Also, you must ensure that the

the child's school records and other information must be transferred, and child custody issues must be settled;

- *drug addiction* may require placing the witness in drug rehabilitation, which can be costly, as well as locating housing;
- *financial instability* may require large sums of money to assist the witness with food, clothing, housing, and other needs until the witness becomes financially independent or until he or she receives assistance from social services; and
- *criminal records* sometimes make a witness ineligible for certain witness assistance programs because of the fear that the witness will pose a risk to the new community.

B. Locating witnesses through modern technology

One of the greatest challenges in relocating witnesses is the use of technology by defendants to locate the witness. If a witness does not change his or her name, often they can be easily found through the computer. Defendants can easily find their prey by researching the databases of hospitals, libraries, motor vehicle agencies, department stores, credit card companies, utility companies, loan agencies, and others. For example:

When Carol ended her relationship with David, he vowed to kill her, stating that if he couldn't have Carol, no one would. The restraining orders did not hinder David from contacting Carol, so she moved to another part of the city. David reported to the Department of Motor Vehicles that his car was damaged and he only had the vehicle license number. David was provided Carol's new address as well as her phone number.

Each time a victim-witness uses a credit card or a debit card they leave a trail to their location. Many companies not only computerize information about their clients, but they also maintain information about the client's relatives and friends. This information is often shared without the client's permission. Even if a witness

changes his or her name, if the perpetrator is familiar with their family and friends, this information can be used to locate the witness.

The Internet provides numerous companies who employ investigators and attorneys to conduct thorough searches to find individuals. Perpetrators may employ these agencies to search for the witness. Investigators and attorneys often receive access to telephone records. When the witness calls his or her relatives or friends, the number is recorded and provided to whomever wants it. In addition to these companies, there are web sites that provide step-by-step instructions on how to conduct a thorough search to find people, and internet companies that provide information on postal addresses, phone numbers, and email addresses. For example:

After years of abuse, Sarah and her three children relocated to another state. She worked the night shift to be home with the children during the day. Her husband knew this routine and used this information to his advantage. When Sarah disappeared, her husband searched the Internet for new employees at nearby hospitals. One day when leaving the hospital, Sarah was met by her estranged husband.

In addition to relocation, witnesses are encouraged to change their work schedules, telephone numbers, and install security systems. They are advised to use cash whenever possible. Bank accounts and debit cards should be opened in the name of a friend or family members that are unknown or unfamiliar to the perpetrator. Some have created false trails by opening an account in another city containing the resources of another person. Victims may want to consider changing their own name and social security number and the names and social security numbers of their children. Also, witnesses may want to obtain telephone services that include caller id and blocked numbers. These methods can serve as a deterrent for harassment and intimidation.

V. Witness security programs

If the United States Attorneys' Offices want to relocate or provide other assistance to

intimidated witnesses, there are three programs available to assist these witnesses:

- the Federal Witness Security Program;
- the Emergency Witness Assistance Program; and
- the Department of Housing and Urban Development's Operation Safe Home

A. Federal Witness Security Program

The Federal Witness Security Program (FWSP), which is overseen by the Criminal Division's Office of Enforcement Operations (OEO), was created by Congress as part of the Organized Crime Control Act of 1970 and revised by the Witness Security Reform Act of 1984, 18 U.S.C. Section 3521. The FWSP's mission is the protection of government witnesses, and their families, who are endangered due to their cooperation with the government in very significant cases.

Eligibility

A witness maybe considered for the FWSP only if the person is an essential witness in a case involving organized crime and racketeering, federal drug trafficking offenses, any serious federal felony for which a witness may provide testimony that may subject them to retaliation by violence or threats of violence, any state offense that is similar in nature to those mentioned above, and certain civil and administrative proceedings. Strict criteria determine who will enter the program and include 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 this 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.

Services

Witnesses accepted into the FWSP are relocated away from their danger area by the United States Marshals Service (USMS). The USMS is responsible not only for the safety and security of these relocated witnesses, but also for providing them with start-up funding for subsistence and housing until they can become self-supporting. The USMS also assists relocated witnesses in finding civilian employment in their new location. Witnesses and family members are given new legal identities and appropriate supporting documentation, including birth records and driver's licenses. The program provides witnesses and their families with temporary lodging expenses, and free medical and psychological care, until a permanent residence in another jurisdiction has been arranged.

Prisoners are also accepted into the FWSP. The Federal Bureau of Prisons (BOP) is responsible for the security of these prisoner-witnesses. This protection includes separation from individuals and organizations known to be a threat, nondisclosure of their place of incarceration, and secure transportation to and from the court to testify.

Application process

Entry into the FWSP begins with the submission of a detailed application, which includes information on the case, the witness, the witness's anticipated or completed testimony, and the defendants and their criminal organization. The application must be endorsed and signed by the United States Attorney for the district in which the witness has testified or will testify. Upon OEO's receipt of the application, an initial review and analysis is conducted to ensure compliance with all of the statutory and administrative requirements.

Program limitations

The transition from private citizen to relocated witness is a difficult process. Before making an application for a witness, the prosecutor should ensure that the witness

understands that relocated participants are required to completely relinquish their identity and lifestyle, and must cut all ties with their family and friends.

B. Emergency Witness Assistance Program

The Emergency Witness Assistance Program (EWAP) was designed to give the United States Attorneys' Offices (USAOs) the flexibility to address a critical need: assistance to witnesses on an emergency basis to ensure their well-being and that they will be available for trial, other court proceedings, or activities related to an ongoing case. The program also addresses a witness's or prospective witness's physical, mental, or emotional reservations about participating in a specific matter before or after she or he agrees to cooperate with, testify, or be available for the government.

Eligibility

EWAP assistance may be provided to witnesses and victims where the more formal protection and security programs, administered under the provisions of the Witness Security Reform Act, are not available or appropriate. Assistance is only available for witnesses with fears, reservations, or concerns about being a government witness. Its purpose is not to provide physical protection for witnesses. It addresses a witness's fears about assisting the government. It seeks to promote the peace of mind of witnesses when they have relevant information to contribute, thereby enhancing their ability to testify.

Services

Each individual USAO has its own protocol outlining permissible uses of EWAP funds, and each USAO has its own allocation of EWAP funding. The decision as to how, when, and whether EWAP funds are used is entirely within the discretion of the United States Attorney. Generally, however, EWAP funds are used to provide the following services: transportation to enable a witness to leave his or her neighborhood, town, city, or state temporarily; temporary housing or moving expenses; temporary subsistence (a reasonable portion of federal per

diem standard); emergency telephone service to assist the witness to keep in contact with the USAO; child or elder care; other transportation costs, as reasonably necessary for school or immediate medical or counseling needs.

Application process

The process of obtaining assistance begins with an interview of the witness to ascertain his or her needs and to determine if the EWAP is the appropriate method. Interviews are conducted by the Victim-Witness Coordinator (VWC), the Assistant United States Attorney (AUSA), and the investigative agent. After determining that EWAP is an appropriate course, the VWC or the AUSA prepares a Request Form outlining key information about the witness, the circumstances justifying EWAP assistance, and the proposed use of EWAP funds. All requests are accompanied by the Acknowledgment Form which is signed by the witness and appropriate USAO personnel. The Acknowledgment Form outlines to the witness that EWAP is not a protection program and that they must continue all other obligations and responsibilities while receiving assistance.

Program limitations

There are some restrictions on the use of EWAP. This assistance does not include any protective services, custody arrangements, or law enforcement presence and does not relieve a recipient of any responsibility with regard to debt, custody, child support, court, or other obligations. The program only provides emergency financial and other assistance to witnesses for the purposes stated above. Such assistance will not exceed one month, unless there are extenuating circumstances. EWAP is considered a fund of last resort for witness assistance, and does not replace available case funds. The assistance funds are limited to frightened or endangered witnesses only and cannot be used simply because the witness is indigent or requires services. In addition, EWAP, like other kinds of government assistance provided to witnesses, must be disclosed to the defense as part of the discovery process.

C. Operation Safe Home

Since 1994, the Inspector General's Office (OIG) of the U.S. Department of Housing and Urban Development (HUD) has managed an initiative called "Operation Safe Home." This program is designed to assist in the relocation, at the request of the investigative agencies and the United States Attorneys' Offices, of threatened witnesses in violent crime cases in and around public and assisted housing.

Eligibility

The HUD initiative requires witnesses to qualify financially, and applicants may not be eligible for the program due to extensive criminal records. The initiative has limited resources and is reserved for cases involving violent crime committed in and around HUD housing. The decision to assist in relocation is within the discretion of the responsible HUD OIG Special Agent in Charge (SAC). Other restrictions apply, including the responsibility of the tenant to maintain the property. Parties may also be evicted from properties for criminal involvement.

Services

The initiative makes three separate HUD resources available to assist in the relocation of a threatened witness, including: providing up to 250 Section 8 vouchers annually that allow the witness to rent appropriate private housing; finding a unit in a public housing authority (PHA) outside of the danger area (the PHA has the right to reject the witness if he/she has a serious criminal record); and permitting the temporary use of property (ranging from six months to a year) as safe houses, with no rent required (up to 100 single family homes in HUD's nationwide inventory of foreclosed properties).

Most of the relocations in the HUD initiative are accomplished through PHAs absorbing the costs of the units used for the relocation. If the PHA does not have adequate funding, the OIG authorizes reimbursement of the PHA receiving the witness. If PHA units are not available, the OIG will turn to section 8 vouchers and then to safe houses as alternative resources to assist in the witness relocation.

Application process

Entry into the HUD program is made by application from the USAO or the law enforcement investigative agency to the SAC for the Regional HUD OIG. Since requests for witness relocation assistance may exceed the supply of premises available in a geographical area, applications must be coordinated and prioritized. Therefore, the USAOs serve as the point of contact for applications for admission into the HUD program. The SAC of the regional offices of HUD's OIG will administer the selection and entry into the program. While not all witnesses will qualify for entry into the HUD Operation Safe Home initiative, it serves as a valuable alternative or supplemental resource for those witnesses who do qualify and who may not meet the criteria for, or are awaiting placement in, an existing DOJ program.

VI. 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. While the severity of the problem may seem discouraging, there are methods to help prevent intimidation. Prosecutors who have used these approaches have made it possible for key witnesses to testify and have, as a result, convicted thousands of violent felons who might otherwise have gone free.***

Information for this article was taken from the National Institute of Justice, Issues and Practices, Preventing Gang- and Drug-Related Witness Intimidation.

ABOUT THE AUTHOR

Crystal Gaines has worked with the Executive Office for United States Attorneys' Law Enforcement Coordination/Victim-Witness Assistance Staff since April 1990. She works with several victim-witness committees and working groups which focus attention on witness intimidation, domestic violence, crisis response, and expert and fact witness issues. She is the administrator of the Emergency Witness Assistance Program.✉