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Victim and Witness Intimidation

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VICTIM AND WITNESS INTIMIDATION

Victim or witness intimidation is the practice of threatening, harming, or otherwise instilling fear in a victim of, or witness to, a crime, in an effort to prevent him or her from reporting a crime or testifying in court. It may also be used to convince a victim or witness to recant testimony that has already been made. The intimidation may involve physical violence, explicit threats of physical violence, implicit threats, and/or property damage. Threats may be made by the defendant or by his or her friends, family, fellow gang members, or other associates. Most victim and witness intimidation takes place in time either between the defendant's arrest and his or her trial or during the trial, in the courtroom.

The current practice of victim and witness intimidation can be categorized into two broad types. *Overt intimidation* takes place when a witness or victim or his or her family or friends are harmed or threatened explicitly, often in connection with a specific case. *Implicit intimidation* occurs when there is a legitimate but unexpressed threat of harm. In communities with high rates of gang or drug activity, actual threats may not need to be made. It may simply be understood that cooperation with criminal justice authorities will result in retaliation, and this may be sufficient to create a pervasive atmosphere of fear and silence.

Prevalence

Estimates of the prevalence of victim and witness intimidation vary widely. A 1990 study conducted by the Victim Services Agency (VSA) in the Bronx, New York, found that 36% of 260 victims who were interviewed reported having been threatened; the figure was higher (54%) for those who had romantic or blood ties to the offenders. A 1980 VSA study in Brooklyn found that 39% of witnesses who were surveyed feared revenge and

that 26% of 295 witnesses had been threatened. More recent surveys of prosecutors have found that victim and witness intimidation is suspected in upward of 75% of crimes committed in gang-dominated neighborhoods, and that the practice is increasing in frequency. According to *New York Times* reports, at least 19 witnesses were killed in New York City from 1980 to 2003. The British Crime Survey has found lower estimates of victim and witness intimidation in the United Kingdom than in the United States.

Researchers have found that victim or witness intimidation is more likely to occur in cases where guns, gangs, or serious violence is involved, the defendant has a personal connection to the witness, and/or the defendant and witness live in close proximity. The elderly, children, physically or mentally handicapped persons, and recent or illegal immigrants are especially vulnerable. Victim intimidation is also common in cases of domestic violence.

Victim and Witness Intimidation in Minority Communities

Community-wide implicit victim and witness intimidation has become particularly severe and widespread in neighborhoods dominated by gangs and drugs, including many predominantly African American and Latina/o inner-city areas. Asian gangs also engage in intimidation. A well-known example of implicit intimidation is a grassroots campaign known as "Stop Snitchin'," which began in Baltimore around 2004 and quickly spread to other urban areas by several means, including CDs and DVDs, websites, T-shirts, and rap lyrics. The movement's purpose is to urge community members not to cooperate with criminal justice authorities, and to remind them that "snitches wear stitches." Gang members have appeared in courtrooms wearing Stop Snitchin' T-shirts, provoking efforts to ban the shirts by judges and political officials. The success of the Stop Snitchin' movement can be attributed in part to some community members' anger regarding the high rate of incarceration among minority men, frustration over criminal justice authorities' use of informants from the community and jails or prisons to facilitate the prosecution and incarceration

process, and general mistrust of law enforcement officials, who often do not provide adequate protection for those who do cooperate and sometimes reward unreliable informants with leniency in prosecution or sentencing. The Stop Snitchin' mantra is redolent of the Italian Mafia's centuries-old code known as *omertà*, an oath of silence prohibiting cooperation with the authorities under any circumstances.

The culture and attitudes surrounding rap and hip hop music have perpetuated the practice of victim and witness intimidation and the implicit code of silence. Some well-known rap artists have refused to cooperate in criminal cases in which they or their friends or members of their entourage were victims or suspects. Other popular rappers have produced songs urging listeners not to speak with the police. The murders of several rap and hip hop stars, including Tupac Shakur, the Notorious B.I.G., and Jam Master Jay from Run D.M.C., remain unsolved because of witnesses' unwillingness to violate the "code of the street" by speaking to the police or testifying in court.

Consequences

The continuing practice of victim and witness intimidation has widespread and serious consequences. Witness intimidation forces prosecutors to drop or lose cases, often despite the fact that the crimes in question may have been observed by numerous bystanders and a suspect identified with certainty. It permits offenders to remain free and to continue committing crimes. It prevents victims and their families from experiencing closure or regaining a sense of security. It undermines confidence in law enforcement officials and criminal justice authorities by revealing the extent to which criminals and their associates exert control over the streets and even over the criminal justice process. Drug and gang activity and violent crime may continue unchecked and escalate when victims and witnesses are unwilling or afraid to cooperate with officials.

As a result of the inability to secure witness testimony or ensure the safety of those who do testify, some prosecutors now use civilian testimony only very rarely. Instead, their cases rely more heavily on evidence from sources such as police testimony, video surveillance, and sting

operations. Unfortunately, without witness testimony, prosecutors are often unable to proceed with cases involving powerful gang members or drug dealers suspected of serious offenses such as homicide, assault, or kidnapping.

Policy Responses and Remedies

Many efforts have been made, with limited success thus far, to prevent victim and witness intimidation. Approaches include requesting high bail or pretrial detention of defendants, aggressive prosecution of those accused of tampering with witnesses, and providing information, protection, relocation, material support, and other services to witnesses.

Pretrial detention of defendants has limited effects on victim and witness intimidation, because threats are often made and carried out by parties other than the defendant. This is particularly true in cases involving gang members. Although witness tampering and obstruction of justice are illegal, these crimes are not always punished. Some jurisdictions have made efforts to prosecute or revoke the probation or parole of those who threaten or harm witnesses or attempt to influence their testimony. Efforts have also been made in some states to increase penalties for those offenses.

The proactive management of witnesses is essential to reduce intimidation and its consequences. Some law enforcement agencies have encouraged victims and witnesses to file reports at the police station rather than at the scene of a crime, so their cooperation with the authorities will be less obvious. Some police officers have even led witnesses away from crime scenes in handcuffs to conceal their role in the process. Greater availability of 'round-the-clock, confidential, or even anonymous avenues for crime reporting would allow witnesses and victims to speak up with less fear of retaliation.

Witness relocation programs are sometimes used in criminal cases when victim or witness intimidation is a problem. Witnesses are commonly relocated temporarily to hotels or motels in undisclosed locations, or are asked to stay with relatives or friends outside their neighborhood before or during a trial. More rarely, they may be housed in a hotel or motel for a longer period of time, provided a nominal sum of money for

moving expenses, or given assistance moving from one public housing development to another. The success of these approaches depends largely on the witnesses' ability to refrain from returning to their old neighborhoods or reestablishing communication with former contacts while they remain at risk. Due to resource constraints, district attorneys usually cannot provide sustained financial support for permanent relocation or 24-hour police protection of witnesses. Incarcerated witnesses, often disparagingly labeled "jailhouse snitches," can be protected by being separated from the defendant and his or her known associates who are held in the same facility or by being moved to a different correctional institution. Incarcerated relatives or friends of nonincarcerated witnesses may require similar protection.

Judges have taken steps such as prohibiting the use of cell phones to take photographs or send text messages in the courtroom and banning Stop Snitchin' shirts from courthouses. Removing or barring spectators from courtrooms is not commonly used because it conflicts with the defendant's right to a public trial and might increase the likelihood that a conviction would be overturned on appeal. Likewise, the use of videotaped testimony from victims and witnesses conflicts with the defendant's right to cross-examine witnesses and therefore is usually not used.

Other approaches that have been taken to reduce courtroom intimidation include escorting witnesses to and from court appearances, allowing witnesses to be "on call" rather than making unnecessary trips to court, providing separate waiting areas for defendants and witnesses, arresting gang members entering the courtroom if they have outstanding warrants or are in violation of the terms of their probation by associating with other known gang members, and filling courtroom audiences with members of community support groups to counterbalance the influence of spectators who side with the defendant.

Reducing community-wide intimidation is clearly very difficult. Relatively new approaches to combating victim and witness intimidation include the use of federal racketeering laws, formerly used mainly in organized crime cases, to prosecute street gang members. This method allows for use of the federal witness protection program and more severe penalties, including federal prison

time, for those who are convicted. Some prosecutors' offices have introduced the practice of "vertical prosecution," where the same attorney or team follows a case from beginning to end; among other benefits, this can make it easier to maintain contact with witnesses, who may otherwise abscond. Assignment of police officers or prosecutors to multiple cases involving the same community or gang can also promote the development of expertise and relationships. Increased application of injunctions, civil suits, local ordinances, and other legal remedies has also played a role in broader efforts to reduce gang activity. Innovations such as gang-tracking databases, crime-mapping software, and gun- or bullet-tracing technologies have also been used.

In addition to gang suppression measures, successful efforts to reduce community-wide intimidation also require criminal justice officials to establish and build relationships of trust with members of crime-ridden neighborhoods. This process can be initiated through increased community outreach and public relations efforts. Interagency cooperation and communication between prosecutors, law enforcement agencies (including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, the Department of Housing and Urban Development, and other federal agencies), correctional authorities, code enforcement offices, social service organizations, public housing authorities, tenant associations, religious organizations, and community groups can enhance victim support and prevent intimidation. For example, one approach sometimes taken by district attorneys is *community prosecution*, where attorneys work closely with community policing units and form partnerships with neighborhood residents and local groups. Some police departments and prosecutors' offices have gang units whose role can be not only to arrest and prosecute gang members but also to develop in-depth understanding of local gangs and to try to build a positive rapport and earn the trust and respect of local youth. Greater efforts by criminal justice authorities and public officials to increase the public's awareness of available legal and social resources would help combat victim and witness intimidation as well.

See also *Brown v. Mississippi*; Drug Cartels; Drug Dealers; Drug Trafficking; Jamaican Posse; Stop Snitching Campaign

Further Readings

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VICTIMIZATION, AFRICAN AMERICAN

African Americans have higher rates of victimization than any other race in the United States. The most basic definition of a *victim* is someone who has been harmed in some way; a crime victim, then, is an individual who has been victimized by a criminal. Criminologists historically have focused on criminals rather than on victims. With the recent advent of the field of victimology, more attention has been given to victims, although much of the early research focused on defining the ways in which victims had contributed to their own victimization. In the late 1960s, criminologists began to devote more attention to victims, particularly child abuse and domestic violence victims. However, it is only in recent years that criminologists have begun to devote more attention to African American victims. Fully understanding the plight of African American victims requires that consideration be given to six different areas:

1. The extent of victimization against African Americans
2. Patterns of victimization
3. Risk factors for victimization among African Americans
4. Consequences of victimization
5. Factors related to help-seeking behavior
6. Problems inhibiting understanding about the victimization of African Americans

Extent of Victimization Against African Americans

Table 1 shows the victimization rates of African Americans and Whites for several different offense categories, according to the National Crime Victimization Survey. The National Crime Victimization Survey is an annual survey conducted by the U.S. Department of Justice that assesses self-reported victimization among individuals 12 years of age and older in the United States.

Several patterns can be readily seen in these data. First, the overall rates of violence for African