

Field Guide to Witness Intimidation: A Reference for Identification

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Witness intimidation affecting the criminal justice system can take many forms and arise in many contexts. Its presence and effects are not always self-evident, either to professionals working in the system or to the witnesses themselves. While overt threats may be easily recognized and categorized, other forms of intimidation may be subtle or disguised, or too easily overlooked in the course of responding to what has been identified as the primary criminal offense. The term witness includes victims of crime and anyone who is in a position to make a report or to testify about a crime.

This *Field Guide to Witness Intimidation* is intended to be a convenient reference to assist professionals in identifying acts of witness intimidation that may affect their work with victims and witnesses vulnerable to such pressures. For more comprehensive information, as well as suggestions and promising practices for preventing and responding to intimidation, readers are referred to the resources listed at the end of this document.

For purposes of the present document, and the [Combating Witness Intimidation \(CWI\)](#)¹ project, witness intimidation is defined as:

Anything done with the intention or purpose of preventing or altering a witness's testimony or report to law enforcement, or to retaliate against a witness for such testimony or report. In addition to overt threats (including threats of any kind of harm to the victim or another), violence, or other harm, it includes implied threats, as well as emotional manipulation. It may be a specific act in connection with a specific criminal event, or it may amount to creation or exploitation of a setting that will discourage reports and testimony in connection with any future criminal activity (e.g., a community climate of fear that will discourage "snitching," or an ongoing course of violent conduct in the household to discourage a victim of intimate partner violence from seeking the aid of law enforcement).

¹ *Combating Witness Intimidation to Improve Victim and Witness Cooperation, Law Enforcement Investigation & Prosecution*, AEQUITAS, <http://www.aequitasresource.org/Combating-Witness-Intimidation-to-Improve-Victim-and-Witness-Cooperation-Law-Enforcement-Investigation-and-Prosecution.cfm> (last visited Feb. 22, 2018).

What (Types of Crimes)

Intimidation can occur in virtually any type of crime, though it most commonly occurs in cases where the offender is in a position to readily exert ongoing pressure on the witness. Witnesses in cases involving gang crime (or closely related gun-violence or drug crimes) are likely either to be members of a community dominated by one or more criminal organizations or to be, themselves, gang members (whether of the same or of a rival group). Victim-witnesses in domestic violence or human trafficking cases are likely to continue to be tied to the offender legally/socially, economically, or because they have children in common. Additionally, human trafficking victims may feel bound to their trafficker through the criminal activity they are compelled to engage in. Among the crimes where intimidation features prominently are:

- Gang crime
- Gun crime
- Drug crime
- Domestic violence
- Human trafficking
- Sexual violence
- Stalking
- Child abuse
- Elder abuse
- Hate crime
- Other (white-collar crime, racketeering, environmental crime, etc.)

How

Intimidation may be explicit or implied; it may be conducted in plain view (as when the goal is to intimidate not only a single witness, but to also send a message to other would-be witnesses) or hidden behind closed doors. It may be so subtle that only the intended target recognizes the meaning of a threatening word or gesture. In domestic violence or human trafficking, where victim-witnesses are subjected to intimidation and manipulation on a more-or-less constant basis, they may have difficulty recognizing such acts for what they are. Among the ways offenders may intimidate or manipulate witnesses are:

- Harm or threats of harm (express/implied)
 - Physical (e.g., assaults or threats to assault)
 - Emotional/psychological (e.g., threats to disclose personally embarrassing information)
 - Economic (e.g., threats to leave the witness penniless in a divorce)
 - Immigration-related (e.g., threats to report the victim to ICE)
 - Abusive legal tactics (e.g., filing false charges; meritless motion practice)
 - Show of force/solidarity with offender at court proceedings (e.g., gang members show up in force; police officer offender's supporters show up in uniform)
 - Social media (e.g., bullying; posting images of witness in court or disseminating protected discoverable materials online)
- Stalking (e.g., driving by witness's home; tracking witness)
- Vandalism (e.g., keying car; burning down house)
- Graffiti (e.g., spray-painted gang messages)
- Symbolic acts (e.g., mailing a dead rodent to the witness)
- Cultural/religious pressure (e.g., encouraging others to shun witness; cultural humiliation)
- Emotional manipulation
 - Promises (e.g., to change, to marry, to stop drinking, to seek counseling)
 - Apologies
 - Threats of self-harm/suicide

Who

Although most intimidation is committed by the offender against the witness directly, indirect intimidation is common. In an effort to avoid consequences, offenders may enlist family, friends, or allies/associates to engage in intimidation. Sometimes the witness's own family will exert pressure on the witness—particularly in domestic violence cases, where the offender may be manipulating the family in an effort to appear blameless or to make the victim appear to be unstable. When crimes occur in insular communities (e.g., religious or ethnic communities, schools, law enforcement, the military), leaders or authority figures may pressure witnesses not to put the community in a bad light. In cases of gang/gun/drug violence, particularly in communities where there is distrust of law enforcement or where witnesses are treated as “snitches,” there may be community pressure on witnesses not to cooperate with law enforcement. The targets of intimidation are not limited to the witnesses themselves; many witnesses are more fearful of harm coming to someone they care about more than they are about their own safety. Thus, intimidation may threaten the witness's family, friends, pets, or others.

- Intimidators
 - Offenders
 - Allies of offenders
 - Family members of offenders
 - Family members of witness
 - Cultural authority figures
 - Institutional authority figures
 - Community
- Targets
 - Witness
 - Witness's family
 - Witness's friends
 - Others (witness's attorney, employer, pets, etc.)

Where

Intimidation can occur anywhere the witness can be found or can be contacted. While most intimidation takes place outside the immediate control of law enforcement, it also occurs in police stations and courthouses, particularly when witnesses must use public/common waiting areas and facilities. It is also known to happen in the courtroom itself, while the witness is testifying in court. Offenders may accompany victims to the emergency room and stand by to ensure that the victim is unable to provide truthful information to medical professionals. The use of online communication and social media by intimidators is a growing concern.

- Crime scene (including institutional settings such as schools, prisons, military)
- Witness's home/school/workplace
- Locations frequented by witness
 - Child's school/day care
 - Gym
- Police station
- Hospital
- Courthouse
- Larger community
- Phone
- Internet (e.g., email, social media)

When

Criminals who engage in repetitive offenses such as domestic violence or gang activity often work to create a pervasive sense of fear in witnesses to discourage them from coming forward. During or immediately after the crime, offenders may threaten witnesses not to say anything. Intimidation may escalate during the pretrial period, and the longer the wait before trial, the more time the intimidator has to pressure the witness. Witnesses may be pressured during the trial itself, as they are accosted on the way to court, while waiting to testify, or while on the stand. After a trial, witnesses may be subject to retaliation or may be intimidated in an effort to secure a recantation of trial testimony.

- Prior to crime
- During crime
- During medical treatment
- Pretrial
- During trial
- Post-trial (e.g., retaliation or seeking recantation)

Why

Witness intimidation is always an effort to avoid consequences for criminal activity. The aim may be to dissuade a specific witness or witnesses from reporting or testifying; to pressure a witness to recant or alter a previous report, statement, or testimony; or to punish a witness for reporting or testifying. There is often a larger aim, however; intimidators may make a show of what will happen to a witness who cooperates with law enforcement for the purpose of making an impression on other would-be witnesses and discouraging them, as well.

- Particular witness
 - Prevent report/testimony
 - Alter report/testimony
 - Retaliate for report/testimony
- Other potential witnesses
 - As an example to others

An Additional Consideration: Incidental Institutional Intimidation

The criminal justice system itself is intimidating to most victims and witnesses, particularly those who are especially vulnerable as a result of crime-related trauma, those who live in communities where there is distrust of law enforcement, or those who are otherwise marginalized (including, e.g., immigrants, incarcerated witnesses, and the elderly). Police, prosecutors, and allied professionals can diminish the incidence and effects of this type of institutional intimidation by being especially mindful in their interactions with victims and witnesses.

Helpful practices include:

- Interviewing witnesses in private, out of view of those who might use their cooperation with law enforcement against them.
- Taking care to house, hold, or transport incarcerated witnesses separately from the offenders against whom they are to testify (or allies of the offenders).
- Providing safe and secure transportation to, and waiting areas in, police stations and courthouses.
- Providing access to advocacy and other services, as well as available shelters or public housing resources for temporary relocation where necessary.
- Offering information about U-Visas and T-Visas where appropriate to undocumented witnesses.
- Avoiding the suggestion that children might be removed if the witness refuses to participate in the investigation and prosecution.

- **Witness Intimidation: Meeting the Challenge:**² Discussion of the various manifestations of witness intimidation that affects the ability of witnesses to safely and truthfully report and testify about criminal offenses, as well as the ability of police and prosecutors to investigate and prosecute the offenders.
- **The Prosecutors' Resource on Witness Intimidation:**³ Strategies for effective prosecution of cases where witness intimidation is, or may be, a factor. It is intended both as a checklist of actions that can increase the likelihood of successful prosecution and as a reference to assist the prosecutor in handling typical problems and legal issues that arise in prosecuting cases involving intimidation. The Resource further provides guidance for prosecution practices that will enhance the safety of victims and witnesses.
- **Improving Witness Safety and Preventing Witness Intimidation in the Justice System: Benchmarks for Progress:**⁴ Broad-based resource for safeguarding witness safety in three parts including: an overview of witness intimidation; tools for identifying solution and integrating victim and witness safety into criminal justice systems; and implementing change with processes for witness safety assessment and response improvement. In this resource, criminal justice leaders will find a step-by-step guide to assessment and diagnosis, action planning, and monitoring and sustaining change.

For case consultation, training opportunities, and additional resources, please contact AEquitas at info@aequitasresource.org or at (202) 558-0040.

² Teresa M. Garvey, *Witness Intimidation: Meeting the Challenge*, AEQUITAS (2013), available at www.aequitasresource.org/library.cfm.

³ The Prosecutors' Resource on Witness Intimidation, AEQUITAS (2014), available at www.aequitasresource.org/library.cfm.

⁴ Franklin Cruz & Teresa M. Garvey, *Improving Witness Safety and Preventing Witness Intimidation in the Justice System: Benchmarks for Progress*, AEQUITAS & JUSTICE MANAGEMENT INSTITUTE (2014), available at www.aequitasresource.org/library.cfm.

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