

NLWJC - Kagan

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Crime - Witness Intimidation



Office of the Attorney General
Washington, D. C. 20530

Crime -
witness
intimidation

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

THROUGH: THE ASSOCIATE ATTORNEY GENERAL

FROM: Kent Markus *[Signature]*
Counselor to the Attorney General

SUBJECT: 1) Summary of NJ Witness Intimidation Report
2) Proposals for possible inclusion in the President's radio address regarding witness intimidation and gang prosecutions.

PURPOSE: To obtain approval for the President to use the four proposals below in his weekly radio address (with appropriate DOJ follow-up).

TIMETABLE: The address will be taped tomorrow - Friday, January 10. Accordingly, action requested during the 2:30 p.m. meeting on Thursday, January 9, 1997.

DISCUSSION:

The President will use the NJ's new report regarding witness intimidation as the jumping off point for his weekly radio address this week. We have been asked to provide specific action steps which the President could announce during the speech. Below is a summary of the key points in the NJ report along with four proposals for follow-up action (three legislative and one administrative).

I. THE NJ REPORT

This report discusses the impact of witness intimidation on criminal prosecutions. It is intended as a practical guide for assisting prosecutors, police investigators and administrators, and victim/witness coordinators to improve their efforts to prevent witness intimidation. It also has a section intended for judges which deals with preventing intimidation in the courtroom. It focuses on special efforts undertaken by law enforcement and prosecutors to prevent witness intimidation in gang and drug-related cases. It discusses the nature and types of intimidation, the necessary components of an effective witness security program, and suggestions for developing and improving witness security programs.

The report finds that most jurisdictions have at least the primary components of a witness security program, but that often times these components operate in an ad hoc way. Historically, investigators and prosecutors have used four basic elements to protect witnesses from intimidation and harm:

- * high bail for intimidators
- * prosecution of intimidators
- * witness management
- * victim/witness program services

Today however, many jurisdiction are finding that these basic tools are not enough to protect witnesses from the organized and pervasive intimidation of gangs and drug organizations. The report suggests that the following innovative elements be included in a modern and effective witness protection program:

- * witness relocation (emergency relocation, short-term relocation, and permanent relocation)
- * better courtroom and jail control to prevent intimidation
- * increased efforts by investigators and prosecutors to reduce community-wide intimidation

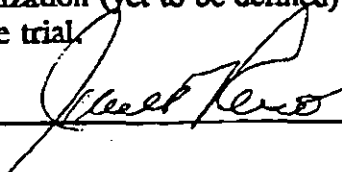
After identifying the necessary elements of an effective witness security program, the report offers a "blueprint" to jurisdictions for restructuring their efforts to develop a comprehensive, coordinated program. It discusses the logistical as well as the legal issues involved in developing such a program. The report also contains the names, addresses and phone numbers of organizations, potential funding sources, and individuals that could be of help in formulating an effective program. The report ends with a section of sample program guidelines, sample program forms, sample state legislation, sample evaluative reports, and sample public housing authority procedures for expediting transfers of intimidated witnesses.

II. THE PROPOSALS

- 1) Expand the circumstances under which persons accused of gang and other violent crimes may be detained pending trial.

Currently, pretrial detention of adult defendants may be ordered when the defendant has been previously convicted of certain serious offenses and is under indictment for any federal felony. This proposal would expand the list of prior offenses to include: (1) serious federal or state juvenile adjudications (like juvenile adjudications for manslaughter or assault with a deadly weapon); and (2) certain firearms offenses (like the illegal theft or transfer of a firearm). In addition, federal law would be amended to specify that judges ^{shall} must consider membership or participation in a criminal organization (yet to be defined) when determining whether to detain a defendant before trial.

APPROVE: _____



DISAPPROVE: _____

- 2) Create a new offense of conspiracy to intimidate or retaliate against a witness or informant.

Currently, there is no such conspiracy offense. Those who would engage in a conspiracy to undermine a trial through intimidation or retaliation against a witness or informant, must be punished with the same penalties as the penalties available for the crimes originally charged.

APPROVE:

DISAPPROVE: _____

- 3) Amend federal law to provide stiff penalties against those who travel in interstate commerce with the intent to intimidate or retaliate against a witness or informant, in a federal or state criminal prosecution (either through amending the Travel Act or through a separate statute.)

APPROVE:

DISAPPROVE: _____

- 4) Direct the Attorney General to study, along with other cabinet officers, ways of changing current laws and policies, and to utilize existing programs and grant funds, to better assist federal, state and local prosecutors with difficulties stemming from witness intimidation.

APPROVE:

DISAPPROVE: _____