Witness Intimidation Report
in Submitted Support of ABA Resolution regarding Witness Intimidation

In 1895, the United States Supreme Court articulated the rights and obligations of a crime witness in a manner that is relevant to this day. The Court held that “it is the duty and the right … of every citizen, to assist in prosecuting, and in securing the punishment of any breach of the peace of the U.S.” In return, it is the duty of government to see that a witness may pursue this right and duty freely, and “to protect him from violence while so doing, or on account of so doing.” Though the rights and duties of a crime witness are not found in the Constitution, the Court made clear that they come from the “the establishment by the Constitution itself of a national government.” “It does not arise solely from the interest of the party concerned, but from the necessity of the government itself, that its service shall be free from the adverse influence of force and fraud practised [sic] on its agents.”

Thus, it is well established that a crime witness has both a right and a duty to participate in the criminal justice system and should feel free to come forward and to present evidence of criminal behavior without fear of harm or retribution. However, too often, witnesses refuse to participate in the process. Indeed, witness intimidation continues to be a common occurrence and, alarmingly, it is increasing, in large part as a result of the Internet.

The 2014 Resolution on Victim and Witness Intimidation recognizes the growing concerns surrounding the integrity of the criminal justice process due to increased witness intimidation. In light of the exponential increase in using social media to prevent witnesses from coming forward or honestly testifying at trial, the fair and proper functioning of the criminal justice system is at risk. The Resolution urges criminal justice practitioners at every level, including defense counsel and judges, along with those entrusted to draft legislation, to make new and enhanced efforts to deter and punish intimidation, while addressing vulnerabilities that make it easier for intimidators to harm and deter victims and witnesses. This Resolution builds on the August 2012 Resolution, passed by the ABA House of Delegates, which addressed the role of the prosecutor in protecting victims and witnesses from intimidation and emphasized that those responsible for the intimidation should be held accountable for their actions.

In support of the ABA Resolution on Victim and Witness Intimidation, this report addresses how witness intimidation is seriously affecting the criminal justice system today. The report has four parts. Part I is an overview of witness intimidation, including who intimidates and who is intimidated. Part II discusses the three main types of witness intimidation: acts or threats of physical violence, witness tampering, and chilling of witness testimony. Part III explains the various sources of witness intimidation, such as gangs, lawyers and investigators, religious organizations, the stop snitching culture, and workplace intimidation. Finally, Part IV introduces the new threat posed by social media and other innovations.

Part I: Overview of Witness Intimidation

Witness intimidation is an effective tool used to discourage victims and witnesses from reporting a crime, providing information during an investigation and testifying during court
proceedings. It appears in every type of criminal case: homicide, gang crime, drug trafficking, sexual abuse and domestic/intimate partner violence, as well as public corruption and white collar criminal cases. The goal of the intimidation is to avoid prosecution and conviction. Where successful, witness intimidation results in unsolved crimes or in the inability to hold a known criminal accountable.

Intimidation can lead to a variety of outcomes. Persons known to have been present during a crime may refuse to speak with investigators, claim to have seen nothing or deny having been present at a crime scene. When forced to testify, they may “forget” everything about the crime, claim a Fifth Amendment privilege or actually testify for the defendant. Many more simply disappear prior to trial, or never come forward at all. In the most extreme cases, witnesses and at times, their families, are executed — usually publicly and violently.

While physical violence is considered classic witness intimidation, according to victims and witnesses who have participated in studies over the past 20 years, threats are much more common than actual physical violence and are highly effective in deterring cooperation. Intimidation may also involve an escalating series of threats and actions that become more violent over time. Some witnesses do not experience intimidation directly, but rather fear the possibility of retaliation and refuse to cooperate with police. Whether the intimidation is direct or indirect, witnesses are deterred from offering relevant information that might assist with solving a case and holding a criminal accountable. Unfortunately, even if a witness does come forward, failed attempts at intimidation can escalate to retaliation after the criminal proceeding is over, regardless of whether or not a defendant is convicted.

Witness intimidation can also have a chilling effect on cooperation by others. Physical violence against one witness serves not only to silence that individual, but it also sends a powerful warning that will deter other witnesses, in both related and unrelated cases, from coming forward or cooperating with law enforcement. The message has a ripple effect that can result in intimidating potential jurors, who will be too frightened to serve or, even if chosen, will be too scared to remain impartial.

Who Intimidates? There is no scientifically valid method for predicting which suspect or defendant will, directly or indirectly, target a victim or witness. For some, it may be a rational cost/benefit analysis. If the cost of apprehension, conviction and incarceration is higher than the potential cost to neutralize a victim or witness, the defendant may engage in intimidation or procure others to do so. It is the cost of doing business. Compared to the penalties for violent crime, penalties for intimidation (assuming it is even reported) remain relatively light. As a result, offenders may feel they have little to lose and much to gain by avoiding conviction through intimidation. The increasing use of DNA and other effective evidence, such as surveillance videos, means that deterring witness cooperation may be one of the only ways left to weaken the prosecution’s case. For others, the motivation is more complex and personal, involving family, reputation and control. In addition to gang- and drug-related crimes, intimidation is particularly prevalent in cases involving domestic violence, bias crime, harassment and sex offenses.
Threats of violence can be made by anyone, including white collar criminals. While some may use verbal intimidation to encourage witnesses to stay silent, others will resort to physical intimidation or retaliation. In Fall River, Massachusetts, a dentist who was indicted for defrauding Medicaid of $130,000 and using paper clips in root canals, was also charged with and convicted of witness intimidation. In another case, the head of a multi-million dollar cigarette smuggling operation was charged with attempting to hire a contract killer to kill witnesses who were cooperating with the authorities.

Who Are the Intimidated? Victims of certain types of crime, specifically violent crime, domestic violence, organized crime and sex crimes, are already traumatized by the crime itself, thus making it easier for them to fall prey to intimidation. Others are particularly vulnerable because of their family ties, residence, age, economic or immigration status. Those with close ties to an offender, whether family members, co-workers or members of the same community, are often at a greater risk of intimidation. Victims and witnesses with criminal records, active warrants, or active parole and probation conditions may be particularly hesitant to assist police. Prosecutors and law enforcement have consistently reported that the highest rates of witness intimidation exist in cases involving domestic violence, gangs and drug dealing. However, witness intimidation can occur in any type of case, from white collar crimes to petty offenses.

Domestic and intimate partner violence cases arise from the complex web of family and intimate relationships. Witness intimidation comes most often directly from close family and friends who are personally known to all parties. Ensuring the safety and cooperation of these victims and witnesses presents specific types of challenges. In cases of domestic abuse, law enforcement officials have long observed a tragic pattern: a battered woman will report abuse by her partner to authorities, only to later refuse to cooperate in the prosecution of the abuser. The most common reasons given for withdrawing cooperation include “safety, a desire to save the relationship and economic pressures.” Between 25 and 75 percent of women seeking help in shelters return to their partners shortly after leaving. Unfortunately, women who drop charges against their abuser “are four times more likely to suffer future violence than those who do not.”

Gang and drug trafficking cases present a different dynamic and set of dangers to victims and witnesses. Intimidation is a key feature of gang and drug-related violence. Gangs, like other criminal enterprises, exist to accumulate power and profit. The prosecution of any member, particularly for a serious offense, threatens all members. Gang associates can be instructed to carry out orders of intimidation and retaliation against witnesses, including orders of execution. In one example in Baltimore, a convicted murderer ordered the execution of a trial witness as well as the witness’s daughter and the daughter’s boyfriend. Even members of loosely affiliated gangs and local dealers are known to protect their interests through intimidation. Residents of communities dominated by gang- and drug-related crime see gang members’ willingness to do violence first-hand. Gang members who are convicted eventually return to the community, and when they return, or even while incarcerated, are fully capable of ordering violence and retaliation.

Victims and witnesses who live near offenders are at a greater risk of intimidation than those who live elsewhere. When gang members make a credible threat of violence, including
against the witness’s family, friends and loved ones, the threat becomes an effective tool to wield against any potential witness. Additionally, in inter-gang violence, the roles of offender, victim and witness are often interchangeable and revolving; the same individual may, at different times, be a victim, a witness and an offender, and rather than cooperate with law enforcement, he/she may choose to retaliate.

**Part II: Types of Witness Intimidation**

There are three main categories of witness intimidation: intimidating by acts or threats of physical violence, tampering through non-physical acts or threats aimed at influencing or preventing witness testimony and cooperation, and chilling and dissuading testimony by fostering a general atmosphere of fear and non-cooperation in the community. The three forms of witness intimidation are not mutually exclusive and can operate separately or in tandem to accomplish the same overall effect of intimidation.

*Witness Intimidation by Acts or Threats of Physical Violence.* Of the various forms of witness intimidation, threats of violence or actual physical violence most commonly come to mind as the primary means to convince a witness in a specific case to withhold, change or falsify testimony. A 1990 study in Bronx, New York (the “Bronx Study”) found that witness intimidation through physical acts or threats occurred in 25 percent of all self-reported witness intimidation incidents. To influence a witness, intimidators direct physical acts or threats against the witness himself, his family or his friends. Nearly any act, accompanied by clear intent, can frighten or intimidate witnesses or victims. Assaults, homicides, drive-by shootings, arson, slashed car tires and property damage are common tools.

Physical intimidation can occur anywhere - large urban areas, small towns, rural communities. In Binghamton, New York, a mother and her 14-year-old daughter were shot and killed in their home by the man who was accused of sexually abusing the daughter two years earlier in Maryland. To prevent the case from going forward, the defendant and an accomplice drove 260 miles from Baltimore to commit the murders. In Georgia, a man beat a 16-year-old boy unconscious for taking photos at the scene of a car accident to stop the boy from collecting evidence of the accident and reporting it to the police. In Albany County, New York, a witness in a drug sale case was assaulted and burned with a heated grill fork and told not to testify at an upcoming grand jury presentation.

Frequently, orders for physical intimidation are initiated from within jails and prisons. In Ventura County, California, a defendant in the county jail admitted to “writing at least 10 letters to members of a skinhead gang…asking them to ‘take out’ grand jury witnesses whose testimony helped secure an indictment” against her. One of those letters asked a skinhead gang member in state prison to “[t]ell all the brothers in the yard…to take that deal-making, wire-wearing punk out,” after an inmate at that prison testified against the defendant. In another case, after his first trial resulted in a mistrial, a Prince George’s County, Maryland defendant facing a vehicular manslaughter charge in connection with the death of a police officer during a high-speed chase sent a letter from jail soliciting a hit against a witness expected to testify at his retrial.
Violence against witnesses can occur even after a defendant has been acquitted. In a May 2014 Louisville, Kentucky case, a man was acquitted of beating his 14-year old stepbrother to death. Not long after being released, he sought out and punched a witness who had testified for the prosecution in his trial.

Threats of physical violence are even more common than actual physical violence.50 Verbal threats are made by direct confrontation, or to third parties, such as family, friends, co-workers or neighborhood contacts.51 Threats are often just as effective in deterring cooperation where, particularly in gang- and drug-dominated communities, such threats are credible.”52 The content of such messages has changed little over the past 30 years. In a number of Oakland, California gang cases, witnesses were sent beeper messages with the number of the local mortuary.53 In Los Angeles, gang members have been observed in the courtroom during hearings or trials “slowly mov[ing] an index finger across their throats in a slashing motion as a witness is taking the stand.”54 In Brooklyn, one criminal defendant gave multiple witnesses “rhyming threats,” telling them to: “[t]ake my money and lie or take my bullet and die.”55

**Witness Tampering through Non-Physical Acts or Threats.** Intimidators have many effective tactics to frighten witnesses that do not involve physical violence or threats of physical violence. Spoken warnings, disciplinary actions at work, economic threats, symbolic gestures, anonymous phone calls or texting, intimidation through social media,56 loitering near the witness’s house or workplace, public display of discovery documents near the witness’s house, threats regarding child custody or deportation and the withholding of addictive drugs or medically necessary treatments all clearly convey the intimidator’s message.57 During a homicide trial in Rochester, New York, one witness returned home to find the witness’s own statements taped to the walls of the apartment complex.58 In New Jersey, intimidators have canvassed a witnesses’ neighborhood wearing T-shirts printed with the witnesses’ photographs or distributing copies of their statements.”59 In Tompkins County, New York, copies of witness statements from the defense’s discovery files were circulated throughout the community, which resulted in people branding the witness as a snitch and placing a $50,000 bounty on his head.60 Of particular note, in Aspen, Colorado, cycling champion Lance Armstrong approached a potential witness at a restaurant, repeatedly asked, “how much he had been paid to appear on ‘60 Minutes,’” and told him that his lawyers would “(expletive) destroy you,” “tear you apart on the witness stand,” and “make your life a living (expletive) hell.”61

Some intimidators try to influence witnesses through softer forms of tampering, such as pleas for mercy or simple persuasion.62 For example, just days after hitting a 16-year-old bicyclist with his car and fleeing the scene, a Lowell, Massachusetts man learned that a witness saw him throw the victim’s bicycle over a fence. He went to the witness’s home and begged her not to talk to police.63 Intimidators might also use bribery to influence a witness’s testimony. A Massachusetts witness was offered up to $25,000 if he agreed to ‘tweak’ his testimony; the defendant was ultimately acquitted.”64 In Bryn Mawr, Pennsylvania, a private school trustee allegedly “offered a witness….a ‘scholarship’ for the witness’ child, in exchange for testimony favorable to the defendants.”65

Witness tampering activities can also extend into the courtroom, where intimidators can pack the courtroom to show solidarity with the defendant, wear black to symbolize death,66 wear
clothing with targeted messages like “stop snitching” or “not guilty,” stare at the witness in the courtroom, direct threatening looks or hand signals at the witness during a hearing or at trial, or “take or pretend to take pictures of the witness with a camera or cell phone.” The sole witness to an ambush gang killing in Newark, New Jersey “changed his story” and testified that “he had heard the shots but never saw who fired them” after “a phalanx of gang members glar[ed] at him in open court.” In a murder trial in San Francisco, eight reputed gang members stood up in unison, crossed their arms and stared at the “case’s star witness as she was asked whether she could identify the gunman.”

Chilling Witness Testimony through Community-Wide Pressure. In another form of witness intimidation, intimidators can discourage an individual from even stepping forward as a witness by promoting the community-wide or social perception that any cooperation with criminal justice authorities is dangerous or treasonous. Many actions can contribute to a neighborhood atmosphere of fear and non-cooperation, such as capitalizing on the violent nature of the initial crime; instilling fear of retaliation or public humiliation in potential witnesses; leveraging strong community ties or geographic proximity to litigating parties; community shunning; exploiting the victim’s vulnerable status, such as the elderly, children, or recent or illegal immigrants; or emphasizing “a deep-seated distrust of law enforcement.” The mere fact that a crime is gang-related can be sufficient to prevent an entire neighborhood from cooperating.

The effects of witness chilling aimed at the community at large are powerful and far-reaching. According to the Denver District Attorney, in gang cases, including murders, “easily in three-fourths of those cases we see some kind of intimidation… [p]eople who are willing to intimidate witnesses are attacking the criminal justice system. It strikes at the heart of our system.” In a highly-publicized case in Trenton, New Jersey, at least 20 people were within sight when a stray bullet from a gang fight struck a 7-year-old girl in the face. However, the case remains unsolved because “not a single one will testify or even describe what they saw” to investigators or journalists. Ten months after the shooting, another person was shot and killed on the same corner during a robbery, but none of the identified witnesses could or would identify the gunman.

Part III: Sources of Witness Intimidation

Witness intimidation can come from a variety of sources in connection with any type of criminal or civil dispute and in any community. In addition to the defendants and their families and friends, other social structures and relationships are frequently implicated in witness intimidation cases.

Criminal Organizations and Street Gangs. Witness intimidation is historically associated with organized crime and criminal enterprises. Whether referred to as “Organized Crime” or “Criminal Street Gangs,” individuals involved in narcotics, firearms, human trafficking and the full range of violent crimes necessary to control and protect their “territory,” communal self-interest necessarily includes aggressively deterring and punishing cooperation with law enforcement. Even if a particular gang member is incarcerated, other members are honor-bound -- and sometimes ordered -- to take any action required to thwart potential witnesses.
Judicial officials in California, Maryland, Pennsylvania and Illinois have made similar observations with regard to gang-related intimidation – that “witness intimidation has become so pervasive that it is ruining the public’s faith in the criminal justice system to protect them.” In New Jersey, dozens of “murder cases have been undone over the past five years after witnesses were killed, disappeared before trial or changed their stories.” Senator Charles Schumer of New York pointed to the gang culture of intimidating witnesses across the state, making it tougher to ensure witness safety and resulting in credible witnesses remaining quiet. According to California Attorney General Kamala Harris, “the data suggest a troubling increase in witness intimidation compared to a decade ago... [and] prosecutors across the country believe that the issue of witness intimidation is the single biggest hurdle facing any successful gang prosecution.”

Workplace Intimidation of Whistleblowers. Whistleblowing, whether in the private sector or within government agencies or organizations, can have a profound effect on the ability to hold legal entities and individuals responsible for a broad range of criminal conduct, including fraud and money laundering. However, like many other communities, neighborhoods, or groups, the corporate culture dissuades corporate whistleblowers.

In a classic example of corporate whistleblowing, Sherron Watkins, then an employee of Enron, wrote a memo in 2001, to then-CEO Kenneth Lay, questioning certain accounting practices in use at the company. Watkins later discovered that months after her meeting with Lay, he sent a memo to Enron’s corporate counsel “to determine how he could fire her without risk to the company.” Watkins certainly was not the first employee to raise concerns. Enron’s former head of risk and research tried “telling top executives when he believed Enron conducted risky business;” by 1999, his concerns “got him pushed out of the company’s risk squad.”

 Watkins’ treatment is not unique. The “vast majority of corporate whistleblowers face negative outcomes as a result of their actions: revenge, reassignment, firing, and personal distress” and are often ostracized. These actions also delay, or entirely thwart, the discovery of serious and pervasive corporate criminal conduct that may, and does, result in profound injury to thousands of victims.

Lawyers and Investigators. The vast majority of lawyers and investigators who work within the criminal justice system do so with respect for victims and witnesses. Unfortunately, there are a few who do not. Unscrupulous defense attorneys and their investigators have the ability to interfere with potential witnesses due to their unique access to police reports, witness statements and the accused. In 2013, a high-profile defense attorney and former federal prosecutor, Paul Bergrin, was convicted in federal court in New Jersey of conspiring to kill a key government witness in his client’s drug-dealing case. Bergrin, whose mantra reportedly was “no [witness], no case,” was found guilty in of nearly two dozen counts of murder, conspiracy, racketeering and cocaine trafficking, and received six life sentences. In Rhode Island, a defense attorney was convicted for paying $10,000 to a stabbing victim and instructing him on how to change his testimony – or, as he called it: “a playbook on how to lie without getting caught.” While working on a case to overturn a homicide conviction, a defense investigator was found guilty of witness tampering and bribery, and was sentenced to four years in prison. The investigator gave the key witness in the murder trial, a former prostitute and drug addict, a
television, cash and food, and convinced her to lie at a habeas corpus hearing by contradicting her trial testimony.\textsuperscript{85}

Law enforcement can also be involved in witness tampering. In Santa Ana, California, a trial court judge reprimanded prosecutors for “contemptible conduct toward witnesses” and dismissed the securities violation case after the prosecutors called a witness’s employer and “spread innuendo” that resulted in the witness losing her job.\textsuperscript{86} Afterward, the prosecutors “pressured her into pleading guilty” to an offense that occurred seven years earlier, and conditioned the guilty plea on her “changing her story to support the prosecution” in the securities violation case.\textsuperscript{87} In his reprimand, the judge said he had “absolutely no confidence that any portion of [the witness’s] testimony was based upon her own independent recollection of events as opposed to what the government thought her recollection should be on these events.”\textsuperscript{88}

\textit{Religious Organizations.} Religious organizations, like families and other closely-knit social organizations, can demonstrate a strong preference for policing the conduct of their members from within and often shun “outside” law enforcement interference. Rogue members of religious organizations can use their positions of trust to perpetrate and cover up their crimes. The risks of adverse publicity, as well as the loss of reputation, status, public trust and economic power, lead to formal and informal efforts to derail investigations, cover up known criminal conduct and discourage witnesses from coming forward.

In Philadelphia, four “whistleblower” priests explained that while they wanted to aid the prosecutors in a sex abuse trial, there was an archdiocesan policy that prevented them from doing so.\textsuperscript{89} The policy, which requires them to notify church lawyers before notifying law enforcement, put pressure on the priests to refrain from coming forward as witnesses.\textsuperscript{90} Allegations of child sexual abuse dogged Chicago-area priest Russell Romano over a span of 18 years. Even after church officials ordered Romano to stay away from children, more allegations surfaced. Records show that the Church hierarchy knew he hugged and kissed boys and provided them with alcohol and pornography.\textsuperscript{91} Still, the Church made no effort to inform law enforcement. Records even show that one Church official wrote: “[w]e don’t want to be snitches.”\textsuperscript{92}

Officials of other religions have demonstrated the same pressure to choose institutional loyalty over official criminal prosecution. In 2010, the Crown Heights Beth Din, a Jewish rabbinal court in Brooklyn, forbade the Lubavitch Hasidic community from speaking to the media about anything that could “lead to an investigation…by any law enforcement agency.”\textsuperscript{93} Seven months later, the religious court adopted a narrow exception, where in instances of child sex abuse only, community members were allowed to report to authorities.\textsuperscript{94} In a 2012 high-profile case, a powerful member of the ultra-Orthodox Jewish community in Williamsburg, New York was convicted of 59 counts of sexual misconduct, including oral sex with a child younger than 13 years old.\textsuperscript{95} In connection with that case, one man pled guilty to offering the witness’s husband $500,000 in exchange for the witness’s silence.\textsuperscript{96} During trial, four men were arrested for taking pictures of the witness during her testimony and for posting them to Twitter.\textsuperscript{97} Each of these efforts was apparently part of an effort to protect the defendant, a prominent member of the Satmar Hasidic community.
Anti-Snitching Culture. Across the country, intimidators have turned to massive, community-wide “anti-snitching” initiatives to dissuade potential witnesses from testifying.98 The “anti-snitching” sentiment has spread from coast to coast through phrases such as, “snitches get stitches and then end up in ditches,”99 and “nobody talks, everybody walks.”100 In Baltimore and Boston, rap artists and gang leaders organized “stop snitching” campaigns and promoted underground videos encouraging people to murder “snitches.”101 In Philadelphia, supporters of the “Don’t Snitch” culture have used cellphone cameras to secretly take pictures of witnesses on the stand or outside the courtroom and post them to social media or on telephone polls in the community, to scare witnesses out of testifying in criminal cases.102 In San Francisco, “a ‘Stop Snitching’ phenomenon has developed in youth culture, reflected in the underground DVD’s and the ‘Stop Snitching’ t-shirts people wear in courthouses across the country.”103 Denver police suggested that “an ‘anti-snitch’ atmosphere is letting some killers go free.”104

In 2011, a Charleston, South Carolina a witness to the murder of a young woman was approached by two drug dealers. One urged him not to testify in the case and the other offered cash. Shortly after the witness refused the money, he was gunned down. This was just one of a long series of incidents detailed by Charleston police to illustrate the serious challenges they face due to the pervasive anti-snitch culture that encourages the most violent forms of intimidation.105

Part IV: Social Media and Technology – Major Changes in the Intimidation Landscape

Social media has become a fundamental part of modern life. The most commonly used social media websites – Facebook106, YouTube,107 Instagram,108 Twitter, Snapchat,109 and dozens of other multi-media social networking sites – have become a primary method for information sharing and self-expression. Unfortunately, social media also has a dark side, having become a simple and effective way to intimidate witnesses.110

Social media has been used by defendants, their families, friends and associates to attack potential witnesses in every imaginable way: publishing “tweets” aimed at a named witness; lining up a series of cartoon ‘emoji[s]’(i.e. a rat, a gunshot, and a gun) to deliver a readily understood threat;112 and posting witnesses’ names and personal information, some of which are accompanied by images of secret grand jury testimony and police reports, and denouncing them as “snitches” deserving of general disdain and retribution.113 Also, due to the public nature of social media, the threatening postings contribute significantly to the chilling effect among other potential witnesses who can fully expect similar treatment if exposed.114

Social media makes it easy to intimidate a witness. Individuals who might not participate in physical attacks or deliver personal threats can now intimidate a witness from the comfort of their own homes.115 Cellular networks provide Internet connectivity virtually everywhere, enabling users to easily post threatening content instantly.116 User accounts can be established under any name, real or fictitious, and within minutes, posts are added and others can join in on the abuse with the click of a button. Cell phones and smartphones that can convey threats or take picture have become so problematic inside courtrooms that a number of courts have adopted new, more restrictive cell and wireless policies.117 The problem also extends to prisons,
smuggled cell phones and smart phones make it easy for inmates to harass their victims or accusers using e-mail, text and social networks.\(^{118}\)

In November 2013, a seventeen-year-old Pennsylvania high school student was arrested and charged with witness intimidation and terroristic threats after he was linked to a Twitter account that named witnesses in several 2012 shootings and a June 2007 homicide.\(^ {119}\) The Twitter account contained pictures of sealed court documents, and one photo had the caption “EXPOSE ALL RATS.”\(^ {120}\) Police believed, but it has not been confirmed, that the same individual may have created the “rats215” Instagram account (which has been shut down)\(^ {121}\), which contained pictures, police reports and witness statements and disclosed the identities of more than 30 witnesses to violent crimes in Philadelphia.\(^ {122}\) He ultimately admitted to the (Twitter) intimidation, and was sentenced to four years in a juvenile facility.\(^ {123}\)

Technology and social media have also been very effective in nurturing and spreading the anti-snitch culture. The number of websites promoting the anti-snitch culture and the ferocity of its message is a good indicator of just how dangerous this phenomenon has become.\(^ {124}\) Anti-snitch music videos and videos exposing snitches have proliferated on YouTube, amassing hundreds of thousands of views.\(^ {125}\) YouTube videos of so-called snitches being jumped and beaten are easily accessible.\(^ {126}\) Facebook groups with names like “Snitches get stitches,” “The snitch list,” and “Snitches R Us” are made with the dual purpose of tampering with specific witness testimony and denouncing snitching in general.\(^ {127}\) Blogs such as “SnitchWire,”\(^ {128}\) databases and other websites\(^ {129}\) are gathering spaces for users to post anonymous, threatening messages to expose anyone the users consider “snitches.”\(^ {130}\) Instagram has also been used to expose “snitches.” For example, in December 2013, a Delaware Instagram account, using the name “wilimington_snitches,” contained posts claiming to contain the names and addresses of people cooperating with law enforcement.\(^ {131}\) When the account was brought to the attention of Instagram, the company removed the account.\(^ {132}\)

As social media grows and the loss of privacy becomes more apparent, all participants in the criminal justice system, including judges, attorneys, court personnel and jurors, have become more concerned for their safety. For example, the illegal dissemination of court documents has instilled fear in trial and grand juries. In 2013, an Albany County, New York grand jury foreman did not want to sign an indictment because he was afraid that his name would be leaked.\(^ {133}\) Identifying the source of illegally disseminated court documents and police reports alone raises a number of difficult issues, including: access to, and security of, court records and documents; the responsibility of defendants and attorneys when discovery documents are posted on social media or copied and used to intimidate witnesses; the responsibility of social media companies when their venues are used to commit a crime; and many more.

Law enforcement is also the target of social media intimidation. At one time, the website WhosARat.com carried profiles of at least 400 undercover law enforcement officers, and 4,300 police informants.\(^ {134}\) This material is available to anyone willing to pay for a membership.\(^ {135}\) In part because of the success of WhosARat.com, the Department of Justice asked the U.S. Judicial Conference (USJC) of the United States, to restrict public access to plea agreements, some of which could yield clues to confidential informant. However, the USJC opted for a more limited approach: restricting access to plea agreements only on a case-by-case basis.\(^ {136}\)
Witness intimidation through the Internet will only grow as the intimidators become more sophisticated and as the technology develops in ways that law enforcement and legislatures cannot even anticipate. Staying ahead of the curve will be extremely difficult. However, the criminal justice system will have to meet this great challenge in order to protect victims and witnesses and hold the intimidators responsible.

**Conclusion**

The ABA Resolution on Victim and Witness Intimidation highlights the threat to the integrity of the criminal justice system as a result of victim and witness intimidation. Meaningful participation in the criminal justice system cannot exist when victims and witnesses are too fearful to come forward. Further, the Internet has created an explosion of new methods by which a victim or witness can be intimidated with ease, thus making witness intimidation a graver problem than ever before. The prevention of witness intimidation requires renewed, dedicated focus and should be a high priority for all members of the criminal justice system, including defense counsel and judges. Legislatures must also address this problem so that practitioners can ensure that intimidators will be held accountable.

The ABA Resolution urges that intimidators be held accountable. Further, criminal justice practitioners should examine current practices and procedures to determine where there are vulnerabilities that can negatively impact the meaningful participation of victims and witnesses in the criminal justice process. This will require a multi-disciplinary approach to preventing and responding to victim and witness intimidation. Finally, research on this topic is sparse and outdated. The ABA Resolution calls on researchers to study the extent of the problem and to evaluate the many programs designed to protect victims and witnesses.
1 The report was prepared by Kristine Hamann, Visiting Fellow, Department of Justice/Bureau of Justice Assistance, with excellent assistance from Margaret O’Malley, Esq, NYU law students David Angelatos, Christina Liu, and Alexander Louis from the NYU Center for the Administration of Criminal Law, under the direction of Nancy Hoppock, Executive Director; and law student Catherine Ingram, American University, Washington College of Law.

2 In Re Quarles, 158 U.S. 532, 535 (1895).

3 Id., at 536.

4 Id.

5 Id.


11 Dedel, Witness Intimidation, at 3.

12 Id.

13 Id.

14 See, e.g., Kocieniewski, A Little Girl Shot.

15 Finn and Healey, Preventing Gang- and Drug-Related Witness Intimidation, at 16.


17 Dedel, Witness Intimidation, at 21.


19 Healey, Victim and Witness Intimidation, at 1-2.

20 AP, Ex-Chief of WorldCom Convicted of Fraud Charges, New York Times (Mar. 15, 2005) (stating that the prosecution argued that the defendant, Bernard Ebbers, intimidated WorldCom CFO Scott Sullivan into “covering up billions of dollars in out-of-control expenses and recognizing improper revenue”).


22 Soltis, Jailed Cigarette Smugglers ‘Plotted to Kill Behind Bars’. Ramadan Gets Six Year Sentence for Enterprise Corruption, Maryland Coastal Dispatch (Jul. 10, 2014), http://mdcoastdispatch.com/2014/07/10/ramadan-gets-six-year-sentence-for-enterprise-corruption/ (stating that the ringleader, Basel Ramadan, has been charged with conspiracy to commit murder for his murder-for-hire plot that targeted the witnesses).
26 Dedel, Witness Intimidation, at 7.
28 Risiking a life for $35,982? Witness Intimidation: Cases such as shoplifting-related shooting threaten justice system, Baltimore Sun (Aug. 7, 1997), http://articles.baltimoresun.com/1997-08-07/news/1997219030_1_witness-resper-shoplifting (stating that a witness to a shoplifting trial and her sister were shot the night before the trial by the defendant).
29 Judicial Oversight Demonstration Initiative, Prosecuting Witness Tampering, at 3-4.
32 Id., at 414.
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38 Healey, Victim and Witness Intimidation, at 1, 4.
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41 Davis, Smith, and Henley, Victim/Witness Intimidation in the Bronx Courts.
42 Healey, Victim and Witness Intimidation, at 4.
48 Wilson, Conspirator in Merriman Case Is Sentenced.
49 Brad Bell, Mistrial declared in Kvon Neal vehicular manslaughter trial, ABC News 7 (Jan. 9, 2014), http://www.wjla.com/articles/2014/01/mistrial-declared-in-kevon-neal-vehicular-manslaughter-trial-99068.html (explaining that a mistrial was declared when a juror failed to disclose during voir dire that, due to religious beliefs, she could not stand in judgment of another.)
Witness Intimidation


[50] Davis, Smith, and Henley, Victim/Witness Intimidation in the Bronx Courts (stating that the Bronx Study found that only 6% of intimidated witnesses experienced physical harm, compared to a staggering 90% of witnesses who faced verbal threats to cause physical harm or property damage).

[51] Connick and Davis, Examining the Problem of Witness Intimidation, at 442.


[54] Verhovek, Gang Intimidation Takes Rising Toll of Court Cases.


[56] See Infa, Part IV.


[58] New York State Association of Chiefs of Police, Presentation to Justice Task Force.


[60] New York State Association of Chiefs of Police, Presentation to Justice Task Force.


[72] Kocieniowski, A Little Girl Shot, and a Crowd That Didn’t See.

[73] Id.


[77] Harris, Testimony Before the Committee on the Judiciary.

Emoji Death Threats Are Admissible

that the origin of “emoji” is Japanese and was formed from “e,” picture, and “moji,” letter or character).

Enforcement’s Growing Problem


Terms of Use, Snapchat, https://www.snapchat.com/terms/ (noting that Snapchat is a photo-sharing service with one key distinguishing feature was that photos sent via the application disappear within seconds after opening ‘snaps’ and the images were to be deleted from the company’s servers). Andrea Peterson, Why privacy advocates say you shouldn’t trust Snapchat to have your back online, Washington Post (May 15, 2014), http://www.washingtonpost.com/blogs/the-switch/wp/2014/05/15/why-privacy-advocates-say-you-shouldnt-trust-snapchat-to-have-your-back-online/ (expressing that Snapchat’s mission statement is not entirely accurate).


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117 Anderson, Gang-Related Witness Intimidation, at 5.


120 DiFilippo and Leach, Police Arrest teen behind anti-snitching Twitter account.


122 DiFilippo and Leach, Police Arrest teen behind anti-snitching Twitter account.


127 Snitches R Us. Snitches get stiches. The Snitch List. Indiana Snitch Watch.

128 Mission Statement, SnitchWire, http://snitchwire.blogspot.com/ (stating the blog’s Mission Statement: “SnitchWire exists solely for the purpose of investigating and objectively reporting on the existence and actions of known informants, infiltrators, rats, snitches, and provocateurs. This blog is to be used as a tool for people wishing not to associate with such unsavory, treacherous scum. Individuals pursuing a ‘snitches get stiches’ policy do so on their own accord and are in no way affiliated with this publication”).

129 See, e.g., Earth First!, Informant Tracking. Wolfe, RATS!.


131 Parra, Website that outed Wilmington ‘snitches’ removed.

132 Id. (noting that according to an Instagram spokeswoman: “Instagram has a clear set of community guidelines which make it clear what is and isn’t allowed. This includes prohibiting content that bullies or harasses...we encourage people who come across content that they believe violates our terms to report it to us using the built-in reporting tools next to every photo or video on Instagram”).

17
135 Who’s a Rat, *About Us*.
136 Liptak, *Websites Listing Informants Concern Justice Dept.* (explaining that several judges and law professors have emphasized the importance of access to court documents in general and plea agreements specifically, but they generally fail to acknowledge the danger).