

TESTIMONY
OF
KAMALA D. HARRIS
DISTRICT ATTORNEY
SAN FRANCISCO, CALIFORNIA

AND

MEMBER OF THE BOARD OF DIRECTORS OF THE
NATIONAL DISTRICT ATTORNEYS ASSOCIATION

April 24, 2007

**STATEMENT OF THE HONORABLE KAMALA D. HARRIS
DISTRICT ATTORNEY OF THE CITY AND COUNTY OF
SAN FRANCISCO, CALIFORNIA AND
MEMBER OF THE BOARD OF DIRECTORS,
NATIONAL DISTRICT ATTORNEYS ASSOCIATION
BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
PRESENTED ON APRIL 24, 2007**

Introduction

Chairman Scott, Member Waters, Member Forbes, and Members of the Committee on the Judiciary:

My name is Kamala D. Harris, and I am the District Attorney for the City and County of San Francisco. I have served in this capacity for the last three years and have been a career prosecutor for the last seventeen years. Prior to being elected District Attorney, I served as a prosecutor in Alameda County, California specializing in the prosecution of child sexual assault cases, homicides, and other violent crimes. I also served as Chief of the Career Criminal Unit of the San Francisco District Attorney's Office and the Chief of the City Attorney's Division of Families and Children. I currently serve on the board of the National District Attorneys Association.

I would like to extend my sincere thanks to Chairman Scott for inviting me to speak on these urgent issues. I am very grateful for the opportunity to address the Committee regarding House Resolution 933, the "Witness Security and Protection Act of 2007," H.R. 1700, the COPS Improvement Act of 2007, and H.R. 916, the "John R. Justice Prosecutors and Defenders Incentive Act of 2007."

H.R. 933: Witness Intimidation – The Scope and Impact on Criminal Prosecution

It is fitting that we are considering the pressing matters of witness intimidation and witness security during National Crime Victims' Rights Week. Nationwide, witness intimidation is among the most urgent and important challenges facing prosecutors in the pursuit of justice for crime victims.

Simply put, across the country, witnesses are increasingly refusing to come forward to provide information to law enforcement or to testify in serious and gang-related criminal cases. Many witnesses simply refuse to cooperate with law enforcement and are fearful of being labeled a "snitch" or becoming victims of violence themselves. Many have received threats or have been otherwise intimidated.

This problem of witness intimidation strikes at the very heart of the American criminal justice system. Without witnesses coming forward to provide information leading to the arrest and prosecution of violent criminals, law enforcement cannot apprehend and prosecute those accused of serious and violent crimes. Indeed, the structure of our adversarial system presumes that witnesses will be available and willing to testify. The Sixth Amendment to the United States Constitution guarantees the accused the right to confront witnesses against him because it assumes that witnesses will come forward. But in an increasing number of cases, witnesses are being intimidated, threatened or even killed.

While it has been difficult for researchers to quantify the scope of witness intimidation, the vast majority of prosecutors and police believe that witness intimidation is a paramount concern. The available data strongly support their view. District Attorney Daniel Conley of Suffolk County, Massachusetts reports that 90% of his office's gun and gang-related cases involve some form of witness intimidation. Baltimore's State's Attorney, Patricia Jessamy, estimates that 90% of her office's homicide prosecutions involve some form of witness intimidation or coercion. Between 2000 and 2005, the Los Angeles Police Department reported a yearly average of more than 778 gang-related witness intimidation offenses.

The data suggest a troubling increase in witness intimidation compared to a decade ago. According to the National Institute of Justice's 1995 study of witness intimidation, only 51 percent of prosecutors in large jurisdictions and 43 percent in small jurisdictions said that the intimidation of victims and witnesses was a major problem.¹ Prosecutors across the country believe that the issue of witness intimidation is the single biggest hurdle facing any successful gang prosecution.

Perhaps the most compelling evidence of the broadening scope of the witness intimidation problem is its impact on the attitudes of teens and young adults toward testifying. Their attitudes toward law enforcement and testifying are critical, as young people are often the eyewitnesses to gang-related crimes in their neighborhoods. The

¹ Johnson, Claire, Barbara Webster, and Edward Connors, "Prosecuting Gangs: A National Assessment," Research in Brief, National Institute of Justice, United States Department of Justice, February 1995.

mere perception of retaliation profoundly impacts their willingness to cooperate with law enforcement. In a recent study, “Snitches Get Stitches: Youth, Gangs, and Witness Intimidation in Massachusetts,” sponsored by the Massachusetts Executive Office of Public Safety and the National Center for Victims of Crime, 641 young people between 12 and 18 years old who attend Boys and Girls Clubs in Massachusetts were surveyed. Twenty-five percent of survey participants said that none of their neighbors would report a gang-related crime, and 64 percent said that people will not report such crimes because they are afraid of retaliation or being killed. The number of young people who reported these attitudes was far higher than the 12% of participants who had actually been threatened for reporting a crime.

There is a very high level of fear of retaliation, fear which may often be driven by recent, high-profile crimes committed against witnesses who participated in witness relocation and protection programs.

Local Law Enforcement’s Need For Expanded Witness Relocation and Protection Services

As H.R. 933 recognizes, witness relocation and protection programs are law enforcement’s primary tool to respond to witness intimidation. Unfortunately, most local and state-level witness relocation and protection programs are temporary, severely underfunded, and provide few services to witnesses. Above all, these relocation programs are voluntary, and witnesses can, and often do, leave at any time. Indeed, in several recent cases, witnesses have left relocation programs against advice, returned to

their old neighborhoods, and were killed. As detailed below, one such case occurred in San Francisco, others have occurred around the state of California, and there are other similar examples across the nation.

- **San Francisco, CA.** Last year, an heroic young witness, Terrell Rollins, was killed by three masked gunmen after leaving my office's Witness Relocation and Assistance Program and returning to his old neighborhood. Mr. Rollins had testified before a grand jury in a homicide case in which he had also been shot and severely injured. His life was threatened for testifying, so he agreed to be relocated from his old neighborhood. Tragically, he returned to that neighborhood and was gunned down in broad daylight. He was a hero, and his death sparked a major outcry from the community. I convened a citywide summit of faith, community and law enforcement leaders after he was killed to develop a community-based plan for supporting victims and witnesses who agree to testify in court. The homicide case in which Terrell was to testify was dismissed. Meanwhile, no witnesses have come forward to help the police solve Terrell's murder.
- **San Bernadino, CA.** Two witnesses in San Bernadino were killed after coming forward to testify in violent criminal cases. Eighteen year old Melquiades Jose Rojas testified against two alleged gang members in a murder case in San Bernadino. Shortly after he testified, he was found shot to death on the side of a road. He had been shot twenty-five times in the head and chest. He had qualified for witness relocation, but he had returned home and had not relocated at the time he was killed. In another case, a defendant broke into the home of a witness who had testified against him. The defendant also killed the witness's father and wounded his infant son.
- **Baltimore, MD.** A 17-year-old cooperative witness to a gang murder was shot in the back of the head by two members of the suspect's gang.
- **Shenandoah County, VA.** In 2003, a 17-year-old girl, who was four months pregnant, was found stabbed to death on the banks of the Shenandoah River. She had been a witness to a gang murder in the state of Texas and had been in the federal witness protection program, which she voluntarily left and rejoined her gang, the notorious Mara Salvatrucha gang, commonly known as MS-13. She was apparently killed for past cooperation with law enforcement. Four MS-13 members were charged in federal court for her murder.

These cases are tragic, and they contribute to the climate of fear and intimidation in communities under siege by gangs and violence. These cases also dramatically underscore the urgent need for H.R. 933 and additional resources for local law enforcement to relocate and protect witnesses who courageously come forward.

Many local witness relocation, assistance and protection programs are severely underfunded, to the extent they even exist as formal programs. Operating on shoestring budgets, local law enforcement agencies often can only provide temporary services for no longer than the duration of the underlying criminal prosecution. Even in California, our state only budgets \$3 million per year for witness protection for the entire state. In 2005, 184 families were relocated from Baltimore, but the city only has a \$400,000 budget for witness relocation. In smaller jurisdictions and states, witness relocation or protection consists of giving a witness rent money for a hotel or helping them move in with relatives or friends.

Effective witness relocation, support and protection are essential to our ability to respond to a rising tide of violence in our country. If law enforcement is unable to ensure safety for its own witnesses, who can we protect? It is unacceptable for us to ask heroic witnesses to come forward, putting their lives and the lives of their families on the line, if we are not willing to dedicate the resources necessary to keep them safe. The problem of gang violence and intimidation is most acute in our nation's most struggling communities. We must make real the promise of safety for those neighborhoods. We cannot tolerate in America that there are zones of lethality in urban centers across the

country, zones of lethality a few miles from where we sit today, zones that those of us fortunate enough to have the option, never drive through, and where we certainly do not linger.

Law enforcement must have the tools necessary to bring order to those communities overrun by gang violence. And let us not suppose that the rest of us are immune from the effects of that violence simply because we may live in a different zip code. We are all at risk when murderers and violent gang members are left free to commit crime in a lawless environment. There must be consequences for violent crime. Accountability for the perpetrators so often rests on the ability of witnesses to participate in our criminal justice process.

I believe the Witness Security and Protection Act of 2007 will provide critical resources to local and state law enforcement agencies to shore-up local efforts to relocate and protect our witnesses. It would establish within the United States Marshals Service a short-term witness protection program to provide assistance to state and local prosecutors to protect their witnesses in serious criminal cases. This assistance will be especially critical for smaller jurisdictions and in states where there are few, if any, existing resources for witness relocation and protection.

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Additional Suggestions For Witness Relocation and Protection Services

In addition, I suggest that the Committee consider funding a more comprehensive, victim-centered approach to witness relocation and protection. Relocation must be a long-term option for witnesses and their families. Many witnesses have left their neighborhoods for the first time, and they often return home to danger against the advice of law enforcement because their participation is voluntary. To ensure that witnesses remain in their new, safer communities, witnesses and their families should receive comprehensive advocacy to connect them with services and opportunities in their new environment. In my office, I assign a Victim Advocate to each witness and family in relocation. The Victim Advocate works to connect witnesses and their families with counseling, treatment, education, recreation programs, and local service providers, so they can productively occupy their time and become grounded in their new host community while they are relocated. The goal is to meaningfully connect them to their new community so they are more likely to resist the pull of the familiar and return to their old neighborhood where they face danger. It is imperative to make this investment, so that witnesses remain relocated, available to testify at trial, and murderers can be brought to justice.

H.R. 1700: The Critical Importance of Community-Oriented Policing Services and Improving Cooperation with Law Enforcement

Addressing intimidation and retaliation is necessary but, on its own, not sufficient to ensure broad and sustainable cooperation from witnesses. Across the country, in large

and small communities, witnesses are simply are not coming forward and will not cooperate with law enforcement. This is a community-wide problem that requires a community-wide approach, particularly federal support for community policing efforts.

The primary evidence of this broad reluctance to cooperate with law enforcement is the high number of unsolved murders in urban and suburban America. While the impact is most severe in predominantly poor, minority neighborhoods in major American cities, smaller and more rural areas have been impacted as well. In many unsolved murder cases, there were several, if not many, eyewitnesses to the murders, none of whom have been willing to come forward.

For example, in San Francisco, out of 181 murders occurring in 2005 and 2006, police have only cleared 30%. There have been murders in my city committed in broad daylight where we know there were 10 or more eyewitnesses, yet no one has come forward and the crimes remain unsolved. The killers remain on the loose, surely prepared to kill again. In Philadelphia, half of the murders since 2002 remain unsolved. According to my good friend and colleague Professor David Kennedy at the City College of New York, who is among the nation's leading experts on criminal justice issues, recently stated that the solve rates for homicides in some urban communities have dipped into single digits, far below the national standard of roughly 60%. A similar trend is occurring in smaller and medium-sized jurisdictions. In Palm Beach County, Florida, all of the county's seven murders this year remain unsolved. In Pomona, California, only 44% of the city's homicides had been solved at the end of 2006.

Many witnesses perceive cooperating with law enforcement as “snitching.” Over the last few years, a “Stop Snitching” phenomenon has developed in youth culture, reflected in underground DVD’s and the ubiquitous “Stop Snitching” t-shirts people wear in courthouses across the country, including parents who have worn the shirts to their children’s court hearings in our juvenile courthouse in San Francisco. In Boston, the presiding judge saw so many of the t-shirts in his courtroom that he banned “Stop Snitching” attire from the court building and property.

My experience with young people in my jurisdiction also reflects the strong influence of the “Stop Snitching” attitude and refusal to report crime. In the aftermath of the murder of Terrell Rollins that I described earlier, I organized a citywide summit on witness intimidation with faith, community, youth and law enforcement leaders. We held a focus group with four young adults between 16-28 years old, who said that fear of ostracism from their community was a primary reason for refusing to “snitch” on others.

This suggests that entire communities are experiencing a reluctance to come forward. Witnesses fear being cast out of their communities and labeled “snitches” in addition to literal retaliation. This requires a broad, community-based response from police and prosecutors in close partnership with a broad cross-section of partners – in other words, an aggressive commitment to community policing.

Community policing is the cornerstone of efforts to build the bond of trust between police and prosecutors and the communities we serve. I strongly support restoration of the cuts imposed on the COPS program and urge the Committee to support the program.

Community policing promises a durable, meaningful partnership between police and citizens to prevent crime, solve problems and conditions that encourage crime, and work together to hold perpetrators accountable for committing crimes. Most models of community policing focus on the delivery of police services that includes aspects of traditional law enforcement, as well as prevention, problem-solving, community engagement, and partnerships.

Community policing is the most important component of the very best response to crime, preventing it in the first place. Significant spikes in violent crime in many urban centers threaten to reverse many years of tremendous improvement in crime rates. Restored funding for the COPS program will increase the number of police officers on the street at a time when we face a critical juncture in crime control for our country. This funding is, again, vital to our duty to protect from crime and violence every citizen, every neighborhood, no matter how poor or marginalized. But we cannot be shortsighted enough to think that the recent increases in violent crime will remain isolated in pockets of poverty. Crime is on the rise and our response must be swift and substantial so that violence is quickly brought under control before it spreads and becomes more acute.

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H.R. 916: The Law School Student Loan Debt Problem for Prosecutors and Public Defenders

It is imperative that prosecutors' offices are able to recruit the best and brightest attorneys and retain the most qualified and experienced prosecutors in their offices. The "John R. Justice Prosecutors and Defenders Incentive Act" will provide a modest incentive to attract prosecutors and public defenders to public service and help them maintain that commitment throughout their careers.

This is an issue on which the National District Attorneys Association believes urgent Congressional action is needed. I should note that I am also advocating on behalf of both prosecutors and public defenders. We are united in this effort to ensure that our offices are fully staffed with trained and experienced attorneys because we have an equally strong interest in maintaining confidence in the criminal justice system.

Prosecutors continue to be paid low salaries compared to those in the private sector. In 2006, Equal Justice Works reported in *Financing the Future, Responses to the Rising Debt of Law Students* that starting salaries for state and local prosecuting attorneys averaged approximately \$44,000.² Prosecutors' offices simply cannot compete with private firms to attract the best and brightest lawyers. With major law firms offering starting salaries of over \$125,000 per year, the modest salaries young prosecutors earn pale in comparison. And it is not a lack of commitment to public service that draws

² Heather Wells Jarvis, *Financing the Future, Responses to the Rising Debt of Law Students*, 2nd Edition, Equal Justice Works, 2006, *citing* National Association for Law Placement (NALP) 2006 Public Sector and Public Interest Attorney Salary Report.

many law school graduates away from public service, but their student loans. Burdened with loan debt from undergraduate and graduate studies, the Equal Justice Works study concluded that the “average amount borrowed in law school by the class of 2005 was \$78,763 at a private school and \$51,056 at a public school. Many lawyers in my office owe over \$100,000 in law school debt alone.

This unfortunate combination inevitably causes high turn-over rates that result in less experienced prosecutors in courtrooms across this country handling more and more serious criminal cases. Neither the safety of victims and the public, nor due process protections for the accused, should be short-changed while a new prosecutor or public defender “learns the ropes.”

Survey of the Nation’s Prosecutors Regarding Student Loan Debt

In 2005, the National District Attorneys Association’s Office of Research and Evaluation and the National Association of Prosecutor Coordinators conducted a national survey of prosecutors on law school student loan debt and the associated issues. Researchers received 2,119 responses from prosecutors all over the country, most of whom graduated from law school between the years 1998 and 2003 and had worked as prosecutors for an average of four years.

Analysis of the survey results revealed that more than 50 percent of the responding chief prosecutors and supervisors had between one and five prosecutors leave their offices in

2005. This may seem like an insignificant number, however, it becomes quite significant when you learn that 64 percent of prosecutors' offices that responded to the survey were comprised of ten or fewer assistant prosecutors. The end result is that attrition was 50 percent or higher in the responding small offices.

In addition, 53 percent of the chief prosecutors reported in the survey that law school student loan debt was a very significant factor in their ability to retain staff and 62 percent of the chief prosecutors reported that student loan debt is a very significant factor in their ability to recruit staff. Chief prosecutors reported on average that low salaries and student loan payments were the causes for nearly a third of the prosecutors who left their offices. Two-thirds of the responding prosecutors advised that law school student loan debt is an important consideration in deciding to become a career prosecutor. More than 55 percent of the respondents reported that they would continue prosecuting for 20 to 30 years if law schools loans were forgiven.

Public defenders are subject to the same difficulties in retaining attorneys. With starting salaries of about \$35,000, new defenders cannot afford to repay their student loans. As a result, over a three and a half year period, the Saint Louis, Missouri Public Defender's Office saw 36 attorneys exit their office that employs only 28 defenders.

These unfortunate retention figures signify that inexperienced attorneys are handling cases beyond their capabilities and training. There are numerous criminal cases that are particularly difficult because of the dynamics involved. To name just a few – child

abuse, elder neglect, domestic violence, identity theft and public corruption. The stakes are simply too high to allow any attorney other than experienced prosecutors to handle these matters.

A memo from an Assistant District Attorney (“ADA”) to a supervisor in Pennsylvania illustrates this very problem, stating:

“Nearly half of the ADAs in the Major Trials Unit and in the Family Violence and Sexual Assault Unit were hired in 1995 or after. In the Felony Waiver Unit, our most experienced ADA has been in the unit for approximately 4 months, and we have 8 lawyers who have been in the office 15 months or less. For the first time since I have been chief of the Felony Waiver Unit, there is not one lawyer currently assigned here who is ready to try a Major case (one will be ready in another month or so). There is no question that the departure of a significant number of lawyers with 3-5 years experience would have an adverse impact on this office, especially since most of the ADA’s in this unit are 6 months or more away from being capable of trying the complex and serious cases in the more advanced units.”

Beyond recruitment and retention difficulties caused by the high cost of attending law school and the low salaries paid to local prosecutors, chief prosecutors and supervisors cited other effects in their offices such as increased caseloads per prosecutor, increased costs for training, decreased morale, and increased risk of prosecutorial error.

The questions then become “How can society, in good conscience, ask prosecutors and public defenders to sacrifice so much for so little pay?” How long should they be required to postpone purchasing a home, getting married, starting a family, or buying a car? In some instances prosecutors are sacrificing even more.

Some may be unable to purchase safe housing. Some may be driving unsafe cars because they cannot afford repairs or replacements. Some may even be unable to pay for necessary medical and dental care. Falling behind in their loan payments due to inadequate salaries leads to accrued interest, making the task of paying the debt off even more daunting. Trying to pay off student loan debt may also leave many unable to pay for utilities, food, and clothing. In the end, there is simply no solution to the impending financial disaster except a move to the private sector.

Following are just some of the comments from New York prosecutors made during a student loan survey conducted by the Office of the Queens County District Attorney's Office, Information Services (March 2001),³ illustrating their dire financial situations:

- “My wife and I live paycheck to paycheck ...”
- “I can only afford to pay \$400 a month ... this payment does not cover the interest. Therefore my balance keeps going up!”
- “I currently have all of my loans in forbearance because of an inability to pay due to inadequate earnings. Forbearance will cause my total indebtedness to increase as interest accrues.”
- “I have had to obtain a waitressing job on the weekends to supplement my income.”
- “... I am forced to choose between paying rent or paying off my loans. I cannot afford to live in an area where I feel safe and pay off my loans at the same time.”

³ A Survey of Assistant District Attorney Student Loan Indebtedness in 16 New York State Counties, The Office of the Queens County District Attorney, Information Services, March 2001.

- “I had to obtain part-time employment in an effort to make sufficient money to remain an ADA.”
- “Please make sure this bill is passed. I’m currently living in poverty.”
- “Nearly half of my take home pay goes towards my loans.”
- “... I am treading water until I can make more money.”

A Proven and Sound Loan Repayment Assistance Program

The “John R. Justice Prosecutors and Defenders Incentive Act” is modeled after a similar program currently used effectively by many federal agencies as a recruitment and retention tool. The program would allow the repayment of up to \$10,000 of student loan debt per year for state and local prosecutors and public defenders with a limit of \$60,000 imposed. Because the program requires that a recipient commit to employment for at least three years, the problems with attrition and inexperience will certainly be alleviated. As a career prosecutor and on behalf of the nation’s prosecutors, I strongly believe that the “John R. Justice Prosecutors and Defenders Incentive Act” is a wise and urgently needed investment in the integrity of the criminal justice system.

Conclusion

I deeply appreciate this opportunity to discuss these important issues with the Committee. I thank you for your time and attention, and I welcome any questions from the Committee.