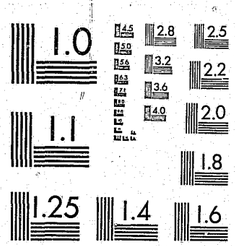

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WITNESS INTIMIDATION: AN EXAMINATION OF THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO THE PROBLEM

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WITNESS INTIMIDATION: AN EXAMINATION OF THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO THE PROBLEM

by Elizabeth Connick

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PREFACE

Witness Intimidation has been a major concern of the Victim Services Agency (VSA) since we began providing assistance to victims in 1978. We had long suspected that intimidation was one of the causes for non-cooperation of witnesses in urban courts. Research conducted in 1976 by the Vera Institute of Justice suggested that one-fourth of witnesses in Brooklyn Criminal Court were victims of intimidation. The more VSA court staff have become involved in cases and gained the confidence of victims, the more often they have learned of attempted intimidation.

In June, 1979, VSA provided testimony at hearings to examine witness intimidation conducted by the American Bar Association Committee on Victims. The consensus of that gathering was that the responses of the criminal justice system to intimidation were inadequate and further measures to combat the problem were needed. Beyond anecdotal evidence, however, data on witness intimidation were scarce. This study was undertaken to gather more information about witness intimidation to guide VSA in the development of our programs and to inform other policy-makers concerned with improving the criminal justice system's response to the problem. We examined 153 cases of intimidation of witnesses in Brooklyn Criminal Court, Supreme Court, and Family Court.

The results indicate that witness intimidation is a more complicated problem than we anticipated. We had expected to find that few witnesses suffered retaliation from defendants. In fact, the data suggest that significant proportions of witnesses from Brooklyn Criminal Court (5 percent), Supreme Court (3 percent),

and Family Court delinquency cases (3 percent) were burglarized, vandalized, threatened with a weapon, or attacked after initiating court cases.

The study also revealed that witnesses are significantly more vulnerable than anticipated. We had expected that most threats would occur during arrest or at the courthouse--points where the paths of witnesses and defendants are likely to cross and where contact between them can be regulated. Instead, we learned that the majority of witnesses were threatened in their personal domains--their homes, neighborhoods, workplaces, and schools.

The typical response of the criminal justice system to reports of attempted intimidation was a warning to the defendant. Prosecutors and judges interviewed said they are inhibited from taking stronger measures due to lack of resources and evidence. In most instances the system was unable to act unless the defendant committed an additional crime against the witness. Even then, it was frequently impossible to prove who was responsible for retaliatory actions.

Although intimidation appeared more intractable than anticipated, there were also grounds for optimism. There are indications that admonishments by judges, the most common response of the system, successfully deter intimidation in some cases. The data also suggest that officials could reduce intimidation by routinely separating defendants from witnesses at the scene of the arrest and at the courthouse, and by restricting defendants' access to witnesses' addresses. Furthermore, the findings indicate

witnesses need information about their court cases and help in moving or changing their phone numbers, jobs, or schools. These services could be developed with little expense.

At VSA we already provide several services to intimidated witnesses. In Brooklyn Criminal Court we operate a reception center where witnesses may wait securely until their cases are called. We also counsel witnesses in Criminal and Family Court who experience emotional problems as a result of the crime, and refer victims to other social service agencies, when necessary. In addition, we supply taxi and escort service in some instances to witnesses. We will use the results of this study to guide us in further program development.

Two bills introduced this year in the New York State Legislature seek to strengthen the criminal justice system's response to witness intimidation. It is encouraging that the problem of witness intimidation is receiving more attention. As this research indicates, however, much more needs to be done. We hope that this study will focus further attention on the gravity of witness intimidation and will inspire new approaches to reducing the problem.

Lucy N. Friedman
Executive Director
Victim Services Agency
April, 1982

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This research would not have been possible without the active cooperation of the New York City Criminal Justice Coordinating Council, the Kings County District Attorney's Office, the Kings County Corporation Counsel's Office, and numerous judges from Brooklyn Criminal, Supreme, and Family Court. Special acknowledgment is due to Alan Trachtman, First Deputy Chief of the Supreme Court Bureau, and Joseph Greenberg, Borough Supervisor of the Corporation Counsel's Office in Kings County Family Court, for providing access to information and kindly tolerating the inconveniences caused by researchers' intrusions. Special thanks are also owed to Albert D. Koch, Ronald Goldman, and Michael Belsen (all of the District Attorney's Office), the Honorable Judge Becker and the Honorable Judge Williams, for sharing their insights on witness intimidation with the study.

Chapter Four, "Criminal Justice Officials' Perspectives on Intimidation," was largely based on a report written by Gilda F. Epstein, of the New York City Criminal Justice Coordinating Council. Dr. Epstein analyzed data from interviews with twenty-five criminal justice officials which she conducted for this study, assisted by Sydney Brink, also of the New York City Criminal Justice Coordinating Council.

Special thanks should be made to several persons from the Victim Services Agency who participated in the research presented in this report. Diane Metzger, Anna Szterenfeld, Fay Kahan, and Juan Vidal conducted the interviews with intimidated witnesses and contributed important insights on the data they gathered. Larry Thomas helped design data collection instruments and coordinated data collection for the project. Lindley Huey, Karen Morello, and Lana Flame provided information on legal issues connected with witness intimidation. Christine Ondracek cheerfully typed numerous drafts of the report. Lastly, Robert Davis, VSA's former Research Director, was influential at all stages of the study -- helping design the research, supervising the data collection, and providing valuable guidance in shaping the final report.

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SUMMARY

WITNESS INTIMIDATION:
AN EXAMINATION OF THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO THE PROBLEM

Witness intimidation--that is, threats made by defendants to discourage victims or eyewitnesses of crimes from reporting or testifying--has increasingly been recognized to be a widespread problem. Its pervasiveness was highlighted by special hearings to examine witness intimidation held in June, 1979, by the American Bar Association Committee on Victims. In part, the Committee's recognition of the extent of the problem was based on data reported by the Institute for Law and Social Research (INSLAW) and by the Victim Services Agency (VSA). The INSLAW study found that 28 percent of witnesses in Washington, D.C.'s Superior Court feared reprisal (Cannavale and Falcon 1976:55). VSA presented data from a 1976 survey (conducted by the Vera Institute of Justice) that revealed an even higher proportion (39 percent) of complainants in Brooklyn Criminal Court feared retaliation and 26 percent had been threatened.

After hearing the testimony of 34 witnesses and numerous members of the criminal justice system, the Committee reported:

> Intimidation of victims and witnesses of crime is a persistent problem with two unique aspects: It is the one crime in which only unsuccessful attempts are ever reported or discovered. It is also a crime which inherently thwarts the process of the justice system itself....intimidation's impact is particularly harsh on the poor and disadvantaged. It is a crime which is very common - yet one for which there is no probability of punishment. (American Bar Association Committee on Victims 1979:1)

The Committee (1979:1) also concluded that, "the criminal justice system is presently unable to respond adequately to intimidation

and that action proposals are thus urgently needed."

Although there was consensus at the hearings that the response of the criminal justice system is inadequate, little was known about the nature of witness intimidation and the effectiveness of the current response. The present study was designed to gather more information on the problem in order to better inform policymakers concerned with improving the criminal justice system's response to witness intimidation. The goals of the study were (a) to ascertain what is currently being done by the criminal justice system--that is, the police, the District Attorney's Office, the judiciary and the Victim Services Agency--to aid witnesses who are intimidated; (b) to evaluate the effectiveness of the criminal justice system's actions; and (c) to develop recommendations for strengthening the criminal justice system's response.

The study examined the response to intimidation of witnesses in three courts: Brooklyn's Criminal, Supreme, and Family Court. Two types of data were collected: 161 witnesses who had been threatened during their involvement in cases being heard in one of the three courts were interviewed by VSA staff; and 25 criminal justice officials were interviewed by staff of the New York City Criminal Justice Coordinating Council.

The sample of threatened witnesses was obtained by contacting and screening samples of witnesses whose cases had been disposed in the Brooklyn Court system. Interviews were completed with 109

witnesses from Criminal Court, 31 witnesses from Supreme Court and 13 witnesses in juvenile delinquency cases from Family Court. The data in the report and the concluding thoughts were largely derived from the Criminal Court witness interviews. Findings regarding Supreme Court, and especially Family Court, should be viewed with particular caution because of the small samples.

Rates of Witness Intimdiation

Contacting and screening witnesses from the three courts revealed that a significant proportion were threatened. For the purposes of this study, witness intimidation was defined broadly as any act that the witness perceived to be a threat, regardless of the apparent motivation of the threat. Of the witnesses contacted, 15 percent (109 of 747) in Criminal Court, 12 percent (31 of 249) in Supreme Court and 8 percent (13 of 156) in Family Court reported that they were threatened. There is reason to believe, however, that the true rates of witness intimidation in these courts are higher than the rates reported in this study. In other Vera and VSA studies higher proportions of witnesses from these three courts have reported threats. The 1976 Vera survey showed that 21 percent of 194 witnesses whose cases were disposed in Brooklyn Criminal Court were threatened, and 48 percent of the 27 witnesses whose cases were transferred to the Grand Jury (and presumably the Supreme Court) received threats. In a 1981 VSA survey of Brooklyn Family Court, 19 percent of 59 witnesses interviewed said they were threatened.

In the Vera and VSA studies, witnesses were interviewed twice by the same interviewer and at least one interview was conducted in person. These factors probably increased the witnesses' confidence in the interviewers and made them more willing to disclose that they had been threatened than witnesses in the present study, who were contacted just once by telephone. Thus, the higher rates of reported intimidation are probably more accurate than those reported in the present study. Even these higher rates may underestimate the incidence of intimidation, however, since intimidation is least likely to be discovered when it is successful.

Data from the 1976 Brooklyn Criminal Court survey revealed that women, witnesses who knew the defendant before the crime, and witnesses involved in more severe cases were more likely than others to receive threats. Data from the present study could not be used to determine who is more likely to be threatened because only threatened witnesses were interviewed. It seems possible that defendants were more likely to threaten women than men because they believed that they were more vulnerable and thus more susceptible to coercion. In addition, defendants who knew witnesses were probably more likely to make threats because they could more easily locate the witnesses. It is not surprising that defendants in more severe cases were more likely to threaten witnesses, as these defendants had more to lose if witnesses testified against them.

Most of the individuals in the Criminal, Supreme, and Family Court intimidation samples of the present study were both victims of and eyewitnesses to the crime. The majority of cases involved

allegations of violence--either assault or robbery. Approximately half of the witnesses were women and more than half were Black or Hispanic.

Description of the Threats

The threats received by witnesses in the interview samples ranged from ominous looks or gestures to rumors circulated around the neighborhood to direct verbal and physical confrontations.

- Most (61 percent) witnesses were threatened more than once and more than one-third of witnesses in the Criminal and Supreme Court samples reported that they were threatened six or more times.

- The most common way in which witnesses were threatened was a direct verbal confrontation (e.g., statements such as, "I'm going to get you," or, "You'll be sorry," or, "I'll kill you if you go to court.")

- Phone calls were the second most common mode of threat in the Criminal and Supreme Court samples, occuring in 23 and 32 percent of the cases respectively.

- Threatening looks or gestures were reported by 5 percent of the Criminal Court witnesses, 16 percent of the Supreme Court witnesses, and 1 of the 13 Family Court witnesses.

- Approximately 10 percent of the witnesses received indirect verbal threats conveyed by rumors through the neighborhood or by their friends.

- Subsequent to the arrest, 25 (23 percent) of the 109 Criminal Court witnesses, 2 (6 percent) of the 31 Supreme Court witnesses, and 2 (15 percent) of the 13 Family Court witnesses were burglarized, vandalized, threatened with a weapon or attacked. These figures, in conjunction with the data on the frequency of witness intimidation, suggest rates of revictimization of, at a minimum, 5 percent of all Criminal Court witnesses, and 3 percent of all witnesses in Supreme and Family Court.

Thus, the likelihood that a witness will suffer some form of retaliation by the defendant, although not high, is hardly remote.

Witnesses were threatened in a variety of locations, including the scene of the arrest, the courthouse, and their homes and neighborhoods.

- A surprising and disturbing finding was that the majority (approximately three-fourths) of the witnesses were threatened in their homes, neighborhoods, schools, and workplaces, rather than areas, such as the courthouse, where contact between defendants and witnesses can be regulated.

Although witnesses who knew the defendant were significantly more likely than others to be threatened in their personal domains, a large proportion of witnesses in stranger-to-stranger cases (60 percent in the Criminal Court sample) were threatened in their homes, neighborhoods, workplaces, or schools. Thus, a large number of defendants either knew where the witnesses lived or worked, or sought out this information in order to intimidate them.

There were quantitative and qualitative differences between threats in cases in which there was a prior acquaintance between the witness and defendant and cases in which they were strangers.

- Witnesses who knew the defendant were threatened more frequently and over a longer period of time than witnesses in stranger-to-stranger cases.

In many instances the intimidation in prior relationship cases seemed to be symptomatic of an ongoing problem between the two, rather than a function of the court case itself.

- Witnesses who knew the defendant were more frequently attacked subsequent to the crime (12 percent) than those with no prior relationship (1 percent).

Still, the vulnerability of witnesses in stranger-to-stranger crimes cannot be minimized.

- Four percent of witnesses in stranger-to-stranger crimes were threatened with a weapon compared to two percent who had a prior acquaintance with the defendant.

Informal Measures Taken by Threatened Witnesses

Almost one-third (29 percent) of witnesses interviewed took some sort of precautions on their own to deal with threats, including curtailing their outside activities (8 percent), installing new locks or making other improvements in the security of their homes (7 percent), and, in two instances, carrying a weapon (1 percent). Seven percent had moved and an additional four percent said they were planning to move.

The Criminal Justice System's Response

Among threatened witnesses, 63 percent (69) from Criminal Court, 68 percent (21) from Supreme Court, and 46 percent (6) from Family Court reported the threats to criminal justice officials--police, prosecutors, VSA staff, or judges. Their accounts of the criminal justice system's response are summarized below:

- The primary response of criminal justice officials was to speak with witnesses about the problem. This was the strongest response received by more than one-third of Criminal Court witnesses and more than two-thirds of Supreme Court witnesses. These actions usually were aimed at calming or reassuring witnesses.

- Defendants were admonished by the judge in 49 percent of the 69 Criminal Court cases reported, 19 percent of the 21 Supreme Court cases reported, and all 6 of the Family Court cases reported to criminal justice officials.

- The case was reopened in one of the 6 instances reported by Family Court witnesses to criminal justice officials. None of the Criminal or Supreme Court witnesses reported a reopening of their case.

- The defendant received a stiffer sentence according to one Criminal Court witness who reported threats. None of the Supreme or Family Court witnesses reported stronger sentences resulting from reports of threats.

- The defendant was rearrested in 2 (3 percent) of the Criminal Court cases reported, but in none of the Supreme and Family Court cases. In both instances the defendants were rearrested for new crimes against witnesses, not for witness tampering.

- Investigation of threats occurred rarely. Only one witness reported that police attempted (unsuccessfully) to observe additional threats.

- Witnesses were offered some form of protection in 4 percent of Criminal Court cases, 5 percent of Supreme Court cases, and 1 of 6 Family Court cases. The types of protection offered included increased police patrols in witnesses' neighborhoods, escort service to and from court, and relocation to a new neighborhood.

The Impact of Intimidation on the Prosecution of Cases

Conviction rates in the threatened witnesses' cases were similar to overall conviction rates in the three courts. According to most witnesses interviewed, the threats did not affect their willingness to cooperate with the courts. The majority were asked to attend court and most said they attended at least once.

- Only 8 percent in the Criminal and Family Court samples and 4 percent of the Supreme Court sample said that they did not attend court because they were frightened, i.e., were successfully intimidated.

Nevertheless, cases of successful witness intimidation were probably underrepresented in this study.

The Impact of the System's Response on Recurrence of Problems

After reporting threats, 22 percent of the Criminal Court sample, 35 percent of the Supreme Court sample, and 33 percent (2) of the Family Court sample were again bothered by defendants.

- Witnesses who knew the defendant experienced more problems after reporting threats than witnesses who had no prior acquaintance with the defendant. In the Criminal Court sample, witnesses who knew the defendant were more than twice as likely (30 percent) to experience further problems than witnesses in stranger-to-stranger cases (12 percent).

Admonishments by judges, the primary response of the criminal justice system, were associated with almost a 50 percent reduction in problems (when controlling for the defendant-witness relationship), although the reduction was not statistically significant. Twenty-seven percent of 30 witnesses in relationship cases in which an admonishment was given reported recurring problems in contrast to 50 percent of 16 witnesses in relationship cases in which the defendant was not admonished. In stranger-to-stranger cases, a similar pattern was observed: 10 percent of 10 defendants who were admonished bothered the witness again versus 18 percent of 33 defendants who were not admonished.

It was not possible to identify any relationship between recurrence of problems and other types of actions taken by criminal justice officials, because they did not occur in a sufficient number of cases for statistical analysis.

Several witnesses interviewed expressed the belief that criminal justice officials' actions, such as admonishments and increased police patrols, discouraged defendants from continuing the harassment. Others felt it was through luck or precautions they had taken on their own that they had averted serious problems. Some witnesses still feared that the defendants would attempt to harm them.

Witnesses' Assessments of the System's Response

Overall, the majority of witnesses evaluated the system's response positively. More than half felt it had helped to report threats to officials, and most also said the response had increased their willingness to cooperate with the court.

Still, a sizeable minority of the Criminal (33 percent) and Supreme (38 percent) Court witnesses, and 3 of the 6 Family Court witnesses who reported the problem to criminal justice officials felt more could have been done by the system to stop the threats. Witnesses who experienced further problems after reporting threats were significantly more likely than others to feel that the system should have done more; 57 percent of 23 who were bothered again felt the system's response was inadequate versus 27 percent of 66 who had no further problem.

- The most frequent criticisms of the system's response--cited by roughly half of the intimidated witnesses who felt more could have been done--were that the case outcome was not strong enough or the defendant should have been denied bail.

- One fourth of those who felt more could have been done to stop the threats said that the court should have told the defendant not to make threats, i.e., admonished the defendant.

Others complained that their reports of threats were treated too casually; that the court did not keep them informed about the case; that the defendant should have received counseling; that they should have been given assistance in relocating; that they should not have been required to tell their address when they testified in court; and that they should have been given physical protection (one witness).

Although some of the criticisms made by witnesses, such as that the court should have admonished the defendant, derived from their specific needs as intimidated witnesses, most criticisms were similar to those voiced by victims in general about the criminal justice system. The 1976 survey of Criminal Court witnesses revealed that 73 percent of complainants were not satisfied with the case outcome and approximately half of these felt that the case outcome was too lenient (Davis, et al., 1980). Moreover, many witnesses in the 1976 survey also complained that they had not been kept informed of the proceedings in their cases.

Criminal Justice Officials' Perspectives on Intimidation

The 25 criminal justice officials interviewed included judges and prosecution staff from all three courts and VSA Criminal Court staff. They described a wide range of assistance that could be

provided by the criminal justice system to aid intimidated witnesses.

Police were seen as able to help intimidated witnesses by:

1. investigating complaints of intimidation;
2. arresting persons making threats;
3. patrolling and checking on witnesses and making themselves visible in the community; and
4. talking to respondents or defendants involved in possible harassment.

Judges were described by the officials as able to help intimidated witnesses by:

1. verbally admonishing defendants;
2. issuing Orders of Protection when appropriate;
3. increasing or revoking bail or remanding defendants to jail; and
4. ensuring speedy dispositions by moving cases up in the court calendar.

Assistant Corporation Counsels and prosecutors were seen to serve as the "liaison between witnesses and judges," by:

1. informing judges of intimidation;
2. requesting verbal admonishment of the defendant; and
3. requesting that bail be increased or revoked.

According to the officials interviewed, detective investigators from the District Attorney's Office provide the following services to threatened witnesses in Criminal and Supreme Court:

4. interviewing witnesses to determine if there is evidence of intimidation or harassment.
5. if evidence is sufficient to support an arrest, calling the police or making arrests themselves;
6. calling the police to request protection for witnesses;
7. escorting some witnesses to and from court; and
8. helping relocate threatened witnesses in some cases.

Like the Assistant Corporation Counsels and prosecutors, VSA staff also seemed to serve an important function as liaison between the witness and other criminal justice officials. According to VSA staff interviewed, they could help threatened witnesses in Criminal Court by:

1. informing the prosecutors, detective intvestigators, or, in some instances, the police of threats;
2. advocating for admonishments and Orders of Protection;
3. escorting frightened witnesses from the court to the subways or arranging for taxi cab service for witnesses to and from court; and
4. explaining the court system to witnesses, counseling witnesses as to what to expect from the court, and generally reassuring witnesses.

Because it was not feasible for researchers to observe criminal justice officials respond to cases of witness intimidation, officials were asked to describe how the system would respond in hypothetical cases. The cases were designed to test whether either the severity of the original crime or the severity of the threat affected officials' responses. Six hypothetical cases were created; the severity of the original crime was varied along two dimensions (an assault in conjunction with a burglary versus a simple burglary) and the severity of the threats was varied along three dimensions. (fear, but no threat; an anonymous threat to commit arson; and threats followed up by an anonymous act of arson). Each official was asked how the criminal justice system would respond in three of the hypothetical cases. Analysis of their responses revealed:

- Neither the severity of the original crime nor the severity of the threat appeared to affect officials' hypothetical responses. However, responses were stronger in cases in which threats were made and/or carried out than in cases in which witnesses were afraid, but not threatened.

Officials' responses in the 25 hypothetical cases in which threats were issued, but not acted upon, were examined more closely as these cases were most comparable to the cases of the threatened witnesses interviewed. Comparison of the officials' hypothetical responses with the responses in the threatened witnesses' cases revealed:

- The rate of admonishments by judges or police in the hypothetical cases (48 percent) was not greatly different from that reported by Criminal Court witnesses (61 percent).
- The incidence of arrests or investigation of threats was much higher in the hypothetical cases (40 percent) than in the interviewed witnesses' cases (4 percent).
- Similarly, the rate of offers of protection or attempts to reduce witnesses' vulnerability was higher in the hypothetical cases (56 percent) than in the interviewed witnesses' cases (6 percent).

Officials' Views on Problems With the System's Response and Recommendations for Improvements

Although the officials interviewed may have exaggerated the level of the criminal justice system's response in the hypothetical cases, the majority (76 percent) agreed with the statement that, "greater efforts are needed to combat witness intimidation." They cited a variety of factors which inhibit the criminal justice system from responding to witness intimidation.

- The most significant constraint, cited by two-thirds of officials interviewed, was lack of resources including insufficient numbers of police and detective investigators, budgetary limitations and heavy caseloads.

Other problems mentioned by criminal justice officials included: lack of evidence to prove threats; insufficient penalties for witness tampering; legal constraints on officials' actions; witnesses' reluctance to testify or failure to report the problem; and insensitivity of criminal justice officials to intimidated witnesses. The officials offered a variety of recommendations to improve the criminal justice system's response to witness intimidation, many of which were incorporated as recommendations in this report.

Recommendations

There are constraints on the resources that the criminal justice system can apply to the problem of witness intimidation. Although certain measures--such as relocation of threatened witnesses and 24-hour police protection--would benefit intimidated witnesses, it is not economically feasible for the criminal justice system to provide such services on a large scale. Nevertheless, the data gathered for this study suggest that other steps that are not excessively costly could be taken to address the problem. These measures can be categorized in four ways: limiting defendants' opportunities to threaten witnesses; increasing official sanctions against witness intimidation; increasing protection for threatened witnesses; and providing witnesses with more assistance in coping with threats and cooperating with the court.

Limiting Defendants' Opportunities to Threaten Witnesses

Although not all threats could have been avoided, in some cases they could have been prevented if contact between witnesses

and defendants had been more restricted. Witnesses reported being threatened while riding to the precinct in the same police car as the defendant and while inside the precinct. One witness complained that he had had to identify the defendant at the precinct in a line-up face-to-face. Others were threatened inside or nearby the courthouse. These findings suggest that some threats could be avoided by adopting the following measures:

- Defendants and witnesses should be separated immediately upon arrest.
- A separate waiting area should be provided for witnesses at police precincts so that they do not have contact with either defendants or defendants' relatives.
- Identifications of suspects should be conducted through one-way mirrors.
- Witness reception centers should be provided in the Supreme and Family Court.
- In cases in which witnesses have been threatened or fear retaliation, they should be assisted in entering and leaving the courthouse through back or side exits.

These measures cannot be expected to eradicate witness intimidation since this study revealed that the majority of threats occur in witnesses' personal domains. Still, they could be important in reducing the incidence of threats.

It is not clear how defendants in more than half of the stranger-to-stranger cases knew how to locate witnesses. It is possible, though, that some defendants learned where witnesses lived from the court.

- Witnesses should not be required to divulge their addresses when they testify.

Although defendants still have the ability to learn witnesses addresses--either from the 61 Form filled out at the arrest, or by looking up witnesses' names in the telephone book--this procedure would lessen their opportunities to learn where witnesses live. Furthermore, it would probably reduce fear of retaliation among many witnesses who testify, not just those who are threatened.

Increasing Official Sanctions Against Witness Intimidation

Given the fact that many defendants can learn where witnesses live, it would seem important to develop other measures to deter them from making threats. Changes in the witness tampering law and the bail statute were proposed by the American Bar Association Committee on Victims and by officials interviewed for this study. These included making an agreement not to intimidate the witness a condition of pre-trial release and increasing the penalties for those convicted of witness intimidation. These measures, however, may not have much impact in the Brooklyn courts. As the law stands now, a stipulation not to harass the witness may be set as a condition of a defendants' pre-trial release and pre-trial release may be forfeited if the defendant harasses the witness. Furthermore, defendants convicted of witness tampering can be sentenced to up to one year in jail. Criminal justice officials, however, rarely invoke these sanctions. Increasing the penalties for witness intimidation would not be effective unless the penalties were applied more frequently.

Intimidators are rarely prosecuted for witness intimidation and rarely forfeit their pre-trial release because the legal evidence usually does not suffice to convict the defendant of witness tampering, and resources to investigate, prepare, and present evidence that threats had occurred are inadequate. However, other methods that largely circumvent problems of legal evidence and scarce resources could be used more frequently to discourage defendants from making threats. Prosecutors' offices exercise discretion in determining what charges to file against a defendant and what sentence to ask of the court. Most cases are not prosecuted to the full extent theoretically possible.

- If the District Attorney's office established a policy of prosecuting defendants who issue threats more fully than those who do not, defendants in certain circumstances might be discouraged from intimidating witnesses.

In the most serious cases, such as those heard in Supreme Court, in which the defendant is likely to receive a prison sentence, this policy might have little deterrent effect. In less serious cases, though, such as those disposed in Criminal Court, such a policy might succeed in reducing witness intimidation.

Existing measures could be more extensively used:

- Judges should routinely admonish defendants not to threaten witnesses.
- Orders of Protection should be issued in all cases in which threats are known or suspected to have occurred. When judges issue Orders of Protection they should make certain that defendants and witnesses understand their meaning. The orders should be written in Spanish as well as English.

Increasing Protection for Threatened Witnesses

Providing 24-hour police protection for threatened witnesses is neither necessary nor feasible in most cases. However, less expensive protective measures could be tried. One witnesses interviewed felt that the defendant was deterred from entering his neighborhood because the police gave special attention to his area in their regular patrols.

- Police should be systematically alerted when witnesses who live in their precincts are threatened so that they may direct special attention to these witnesses' areas.

Another form of protection received by two witnesses in this study was escort service by the police and VSA staff. Neither the police nor VSA, however, can provide escort service as frequently as they are needed.

- The possibility of enlisting the auxilliary police should be explored. Auxilliary police could provide escort service to threatened witnesses as well as direct special attention to threatened witnesses' homes in their patrols.

Helping Witnesses Cope With Threats and Cooperate With the Courts

Despite improved efforts, no witnesses can be fully protected from retaliation. Given the criminal justice system's limits on protecting witnesses, efforts should be made to help witnesses protect themselves.

- Witnesses should be informed whenever defendants are released by the system--whether before the trial or following the case disposition.
- The District Attorney's Office and VSA should develop liaisons with the Housing Authority, the telephone company, and school boards to facilitate relocation and changing phone numbers, jobs, and schools.
- Judges should be encouraged to expedite those cases in which threats are reported.

The American Bar Association Committee on Victims (1979:14) and several criminal justice officials interviewed for this study suggested that a special unit be developed to investigate cases of intimidation and provide protection and assistance to threatened witnesses.

- The possibility of developing a special witness intimidation unit should be explored. The unit could perform a number of activities, including notifying police to direct special attention to threatened witnesses' neighborhoods; securing escorts for intimidated witnesses; informing witnesses when defendants are released pending trial; informing threatened witnesses of the outcomes of their cases; developing liaisons with the Housing Authority, the telephone company, and school boards and assisting witnesses in moving or changing their phone numbers, jobs, or schools; and, to the extent possible, investigating threats.

If the recommendations presented here were implemented, the incidence and impact of intimidation, while not eradicated might be lessened. The criminal justice system is often inhibited in responding to threats by lack of resources and evidence. Defendants can often learn where witnesses live, and in many instances the criminal justice system can do little to protect witnesses from

retaliation. Even after retaliation occurs, it is often difficult to prove the defendant was responsible.

Witness intimidation should not be examined in isolation. Intimidation is one of a host of problems attendant upon victims of crime. It is necessary and important to ameliorate the problems following victimization and to improve the criminal justice system's responsiveness to crime victims. However, we cannot erase the victimization and we are often limited in our ability to deal with its corollaries, such as witness intimidation.

CHAPTER ONE

INTRODUCTION

Witness intimidation--that is, threats made by defendants to discourage victims or eyewitnesses of crimes from reporting or testifying--was only recently recognized as a widespread phenomenon. Cases of witness intimidation brought to the public eye by the media typically have involved witnesses who testified against members of organized crime and sensational or highly unusual cases. Witness intimidation, however, occurs in all types of cases.

The pervasiveness of the problem was highlighted by special hearings to examine witness intimidation held in June, 1979 by the American Bar Association's Committee on Victims. In part, the Committee's recognition of the extent of the problem was based on data reported by the Institute for Law and Social Research (INSLAW) and by the Victim Services Agency (VSA). The INSLAW study found that 28 percent of witnesses in Washington, D.C's Superior Court feared reprisal (Cannavale and Falcon 1976:55). The Victim Services Agency presented data from a 1976 study that revealed an even higher proportion (39 percent) of 295 complainants interviewed from Brooklyn Criminal Court feared threats, and 26 percent had been actually threatened.

After hearing the testimony of 34 people (witnesses and members of the criminal justice system), the Committee concluded:

> Intimidation of victims and witnesses of crime is a persistent problem with two unique aspects: It is the one crime in which only unsuccessful attempts are ever reported or discovered. It is also a crime which inherently thwarts the processes of the justice system itself. For that reason, intimidation can undermine public confidence in our legal processes. Further, when it is allowed to exist, our criminal justice system appears able and willing to take care of only the powerful and secure; intimidation's impact is particularly harsh on the poor and disadvantaged. It is a crime which is very common - yet one for which there is no probability of punishment. (American Bar Association Committee on Victims 1979:1)

The Committee also reported:

> There was virtual unanimity among those who testified that the criminal justice system is presently unable to respond adequately to intimidation and that action proposals are thus urgently needed...Existing state statutes are largely inadequate to deal with intimidation, as are procedures utilized by law enforcement and prosecutors. (American Bar Association Committee on Victims 1979:1)

With the scarcity of data on the problem, however, it is not clear what additional measures are needed to aid intimidated witnesses. Indeed, although there is consensus that the response of the criminal justice system is inadequate, little is actually known about the nature of the problem and the effectiveness of the current response.

VSA's 1976 study suggested that witness intimidation can assume a variety of forms. In its most obvious form, it can involve a direct threat of bodily injury or property damage against a witness if he or she testifies. Such threats may even occur in the court building. For example, one witness reported that the defendant yelled at her while she was testifying in court. Sometimes the threat is not so explicit. In one case the defendant drove past a witness' home with friends and said, in

a voice audible to the witness, "Pass the shotgun." In other cases, a witness may only suspect that the defendant is to blame for unexplained occurrences that appear to be directed at the witness' family or property. In one case in VSA's files the complainant became worried about his safety when he found the tires slashed on both his and his wife's car. Finally, in its most subtle form, intimidation can mean that witnesses fear for their safety even when there have been no threats against them.

Although the 1976 study was useful in revealing both the frequency and diversity of witness intimidation, it did not provide much depth to an understanding of the problem since intimidation was not the focus of the study. It did not address either how intimidation affects witnesses' lives or how the criminal justice system responds to reports of intimidation. In order to develop strategies and programs to further combat witness intimidation, more information on the problem was needed.

The present study was conceived as a partial response to this need. It was planned as a joint research study by VSA and the New York City Criminal Justice Coordinating Council. The goals of the study were (a) to ascertain what is currently being done by the criminal justice system--that is, the police, the District Attorney's Office, the judiciary and the Victim Services Agency--to aid witnesses who are intimidated; (b) to evaluate the effectiveness of the criminal justice system's actions; and (c) to develop recommendations for strengthening the criminal justice system's response to witness intimidation.

The study examined the response to intimidation of witnesses in three courts: Brooklyn's Criminal, Supreme, and Family Courts.

A. The Courts

Brooklyn Criminal Court has full jurisdiction over misdemeanor cases. Most felony cases are arraigned in Brooklyn Criminal Court too. After arraignment, felony cases are either reduced to misdemeanors and disposed in Criminal Court or presented to the grand jury for indictment and transferred to Supreme Court. Prosecutions in both Criminal and Supreme Court are handled by the Brooklyn District Attorney's Office. Brooklyn Criminal Court processes a large volume of cases; in 1980, almost 40,000 misdemeanor cases were disposed in the court and an additional 5,000 felony cases were transferred to the grand jury.

Brooklyn Supreme Court has jurisdiction over felony cases. The volume of cases is lower and the stakes for the defendant are higher in Supreme Court than in Criminal Court. Consequently, more attention is given to each case in the Supreme Court than in the Criminal Court. More cases go to trial (13 percent in Supreme Court vs. 5 percent in Criminal Court), and cases remain open for a longer time. In 1980 almost 5,000 indictments were filed for felony offenses in Brooklyn Supreme Court.[1]

New York State Family Courts handle 19 types of cases including adoptions, paternity suits, family offenses, and delinquency cases. Only delinquency cases were examined in this study. Delinquency cases involve persons from 8 to 15 years of age who committed acts that would be criminal offenses if committed by adults.[2] Less than half (41 percent) of juvenile delinquency cases in New York

City reach the court (Vera Institute of Justice, 1980:27); the majority of cases are adjusted by the Family Courts' probation departments or are withdrawn. In 1979, approximately 2,000 delinquency cases were disposed in the Brooklyn Family Court (Office of Court Administration, 1980:86-87).

Family Courts are not part of the Criminal Court system but are civil courts. Unlike criminal proceedings, Family Court proceedings are closed to the public. Nevertheless, the Family Court process is structured much like the criminal process. The case against the juvenile is presented by a Corporation Counsel, the counterpart of the prosecutor in criminal proceedings. The juvenile, who is called the respondent, is represented by a lawyer and the proceedings are administered by a judge. Case outcomes in Family Court, although they differ in terminology, are similar to those in criminal proceedings. A juvenile in Family Court is not found to be guilty, but found to be delinquent. Upon a finding of delinquency, a Family Court judge may order a juvenile to be placed in a secure facility, just as adults in Criminal Courts may be sentenced to jail.

B. Responses Available to the Criminal Justice System to Combat Witness Intimidation

There are a number of ways in which the criminal justice system can respond to witness intimidation. These measures largely fall into two categories: restrictions on defendants' behavior and procedures to reduce witnesses' vulnerability.

Theoretically, the most direct approach to dealing with witness intimidation is by prosecuting the offender under section 215.10 of the New York penal code, which makes tampering with a witness in

a criminal proceeding a class A misdemeanor. Upon conviction for witness tampering an individual can be placed on probation for up to three years, fined up to $1,000, or sentenced to a maximum of one year in jail.[3] This option is not available in Family Court, however, since Family Court does not have criminal jurisdiction.

An individual can be charged with coercion (Section 135.65 of the New York penal code) for threatening someone in order to prevent him or her from exercising a legal right. Both reporting a crime and testifying in court are legal rights. A charge of coercion, which ranges from an A misdemeanor to a D felony, could be applied to anyone who attempted to intimidate a witness in Family, Criminal, or Supreme Court.

For the police to make an arrest for witness tampering or coercion, they must, as in every arrest, have probable cause to believe that the individual committed a crime. If probable cause does not exist, the case may be further investigated at the discretion of the police department. In Criminal and Supreme Court the District Attorney's Office has special personnel, called Detective Investigators, who conduct investigations at prosecutors' requests and who have the power to make arrests. Detective Investigators can also investigate witness intimidation and make arrests. The Corporation Counsel in Family Court, however, has no such staff. Thus, investigation of witness intimidation in Family Court can only be conducted by the police.

Aside from arrest and prosecution, other measures may be taken by judges while a case is in progress to discourage the

defendant from retaliating against the witness. In Criminal and Supreme Court, judges may set conditions on a defendant's pretrial release restricting him or her from going near the witness. If the defendant violates the conditions, bail can be revoked. This would entail a hearing where a "preponderance of evidence" would be required to demonstrate that the defendant had violated the conditions.

Pre-trial detention of the respondent is possible in Family Court on the grounds that he or she is a menace to society. According to the Family Court Act a respondent may be detained if "there is a serious risk that he may before the return date do an act which if committed by an adult would constitute a crime" (Family Court Act, Section 739). Although there are no precedents on this issue, the statute would seem to authorize detention prior to juvenile delinquency proceedings when there is reasonable cause to believe that the juvenile would attempt to intimidate or retaliate against the witness.

Judges in Criminal and Supreme Courts, however, may not refuse bail to a defendant on the grounds that he or she is a danger to society. The bail statute only allows consideration of the likelihood that the defendant will appear in court to influence the decision whether to set bail.[5] In practice, however, judges can effectively detain defendants by simply setting bail at such a high amount that they cannot afford to pay it.

Warnings to the defendant not to harm or harass the witness may be given by judges in all three courts. These admonishments are usually given verbally. In Brooklyn Criminal Court, VSA has

designed a form to record the fact that the defendant has been instructed to stay away from the witness. Neither verbal nor written admonishments are legally binding; it is believed, however, that issuing admonishments may deter defendants from making threats by demonstrating to them that the court is concerned and would take strong action if something happened to the witness. Furthermore, it is believed that admonishments help to reassure witnesses.

An Order of Protection may be issued by judges in all three courts if the defendant and witness are related by blood or marriage. It may also be issued in Family Court if the witness and defendant have children in common. In September 1981, subsequent to this study, the law was changed so that any witness in Criminal Court may receive an Order of Protection, regardless of his or her relation to the defendant. Consequently, written admonishments have become obsolete, although verbal admonitions are still given, sometimes in conjunction with Orders of Protection. Under an Order of Protection the defendant may be prohibited from verbally or physically assaulting the witness, from harassing the witness by telephone, or from visiting the witness' home or place of business. An Order of Protection may be in effect from the duration of the case up to one year. Failure to adhere to any of the terms of an Order of Protection, even if the act itself would not constitute a criminal offense, can result in the defendant's arrest.

There are a number of measures available to the courts to discourage retaliation after the case is disposed, assuming the case is not dismissed. If a case is adjourned in contemplation of dismissal (ACD), charges against the defendant are

dropped after six months if the defendant has not violated the law or any particular conditions, such as not harassing the witness, which may be set by the judge. The case must be reopened, however, if the prosecutor or the Corporation Counsel requests it. Thus, a case could be restored to the calendar if the witness reported problems with the defendant within six months of the ACD.[6]

In Criminal Court and Supreme Court, if a defendant pleads guilty or is convicted of a crime, he or she may be sentenced to a conditional discharge. The defendant is bound to the terms of a conditional discharge for one year in misdemeanor convictions or three years in felony convictions. A comparable case outcome in Family Court is a suspension of judgment, to which a respondent may be bound up to one year. Stipulations may be attached to a conditional discharge or a suspended judgment, which include that the defendant stay away from or refrain from harassing the witness.

Similarly, in all three courts if defendants or respondents are put on probation, the probation officer may set restrictions on their behavior to insure that they "lead law-abiding lives." These restrictions could include that the defendant stay away from the witness. Violation of a conditional discharge or probation can result in the revocation of the sentence and the imposition of another, presumably harsher, sentence.[7]

In addition to restricting the defendant's behavior toward the witness, the criminal justice system may try to protect or reassure witnesses who feel threatened by reducing their vulnerability. In the most extreme cases, prosecutors may assign a bodyguard or offer other means of protection, such as civil jail, to witnesses. Witnesses may also be offered assistance in moving to a new neighborhood or

city. In other cases, witnesses may be provided with an escort to accompany them to and from court. Furthermore, the local police precincts may be asked by the prosecutor or judge to direct special attention to witnesses' homes or businesses in their patrols. If the judge learns of threats the case may be scheduled for a hearing at an earlier date than usual in order to secure the witness' testimony as quickly as possible.

VSA provides several services in Brooklyn Criminal Court to help reduce witnesses' vulnerability. VSA operates a reception center where witnesses may wait securely until their cases are called before the court. It may also provide taxi cab fare for special witnesses, such as those who are threatened, and may provide escort service to and from the court. Because VSA staff are responsible for notifying Criminal Court witnesses to come to court, they have the opportunity to learn of threats at an early point and may inform prosecutors or judges of the problem. VSA is also responsible for notifying witnesses in Family Court delinquency cases of court dates. There is no reception center for witnesses, however, in Brooklyn Family Court. VSA does not routinely provide any services for Supreme Court witnesses.

C. Research Design

The purpose of the present study was to ascertain to what extent these various measures are used to combat witness intimidation, to evaluate the effectiveness of these responses, and to develop recommendations based on the findings. In order to achieve these goals two types of interviews were conducted: interviews with witnesses who had been threatened during their involvement in cases being heard in Brooklyn Supreme, Criminal, and Family Court;

and interviews with various members of the criminal justice system. The witness interviews were carried out by VSA staff, while interviews with criminal justice officials were carried out by staff of the New York City Criminal Justice Coordinating Council.

Interviews were conducted with witnesses who were threatened to gain an understanding of (a) the range and frequency of witness intimidation; (b) the problems threatened witnesses experience; (c) the frequency with which they turn to the criminal justice system for assistance; and (d) the response they receive from criminal justice officials. Samples of threatened witnesses were obtained by contacting and screening samples of witnesses whose cases had recently been disposed in the Brooklyn Court system. Interviews were completed with 109 witnesses from Criminal Court, 31 witnesses from Supreme Court and 13 witnesses in juvenile delinquency cases from Family Court. In addition, eight threatened witnesses who received assistance from VSA staff in Brooklyn Criminal Court were interviewed to supplement the information regarding VSA's response to witness intimidation.

The number of interviews completed with witnesses from Supreme and Family Court was lower than the fifty interviews from these courts called for in the original research design. The two major reasons for this were that the method for selecting cases from the two courts was more time consuming and the reported rates of intimidation were lower than had been anticipated when the study was designed. (See Appendix A for more information about case selection and Chapter 2 for a discussion of the rates of intimidation reported in this study.) The data presented in this

report that are based upon the Supreme and Family Court witness interviews, especially data from the latter, must be viewed with particular caution, due to the small number of witnesses interviewed. To emphasize the tentative nature of certain findings, statistics based upon less than 16 witnesses' responses are placed in parentheses in the tables and figures of this report. Compared to the Supreme and Family Court interviews, the 109 interviews completed with Criminal Court witnesses provided a firmer basis for analysis. The bulk of data presented in this report and the conclusions arrived at by the study are largely derived from the Criminal Court witness interviews.

Interviews were conducted with members of various criminal justice agencies to determine (a) their understanding of the problems faced by witnesses who are threatened, (b) the procedures they use in dealing with witness intimidation, and (c) their suggestions for improvement in the handling of intimidation problems. Twenty-five interviews were completed with judges and prosecution staff from all three courts and with VSA Criminal Court personnel. Major components of the criminal justice system not represented in the interviews were the Police Department and Legal Aid defense attorneys. Had resources permitted, it would have been desirable to include interviews with members of each of these organizations. (See Appendix A for a more thorough description of the interview methods.)

The next chapter of this report provides a profile of the intimidated witnesses who were interviewed. Rates of witness intimidation and the types of witnesses threatened are discussed.

In addition, the threats that witnesses received are examined. Chapter Three reviews the interviewed witnesses' efforts to obtain assistance from criminal justice officials and the types of responses they received from these officials. Furthermore, the impact of the criminal justice system's response in these cases is assessed. In Chapter Four, the perspectives of the 25 criminal justice officials interviewed on the problem of witness intimidation are presented. Disparities as well as convergences in the officials' and witnesses' interviews are discussed. In the fifth chapter, reflections on the findings of this study are set forth and recommendations to improve the criminal justice system's response to witness intimidation are proposed.

FOOTNOTES: CHAPTER ONE

1. The Supreme Court cases examined in this study were drawn from the prosecutor's files in the Supreme Court Bureau, the largest bureau in Brooklyn Supreme Court. Cases from other bureaus, such as Rackets, Narcotics, Homicides, Economic Crimes, Consumer Fraud and Sex Crimes, were not examined.

2. In 1976, the New York State legislature created a category of serious felonies called "designated felony acts." Designated felony acts include certain acts (such as first and second degree murder, kidnapping, and rape and robbery) if committed by a 13,14,or 15 year-old, and other acts (first and second degree burglary, and second degree robbery) if committed by a 14 or 15 year-old. Juveniles who are accused of committing designated felony acts are treated differently from others in Family Court. Their cases may not be adjusted at probation without a judge's authorization, and their cases are handled by the District Attorney's Office rather than the Corporation Counsel. These cases were not included in the Family Court sample.

   In 1978, the legislature further reformed the procedures relating to juveniles by providing that fourteen and fifteen year-olds who commit designated felony acts, and thirteen year-olds who commit second degree murder may be prosecuted as adults. These cases also are not in the Family Court sample, although they could be in the Supreme Court sample. Since data on defendants' ages were not gathered, however, it is not known whether any defendants in the Supreme Court sample were juveniles.

3. If someone threatens a witness in order to discourage reporting of the crime itself, she or he can be charged with hindering prosecution (Section 205.50 - 205.65). The severity of this charge ranges from an A misdemeanor to a D felony depending on the severity of the original crime. This option is not available in Family Court.

4. "A preponderance of evidence" is a less rigorous standard of proof than "beyond a reasonable doubt."

5. In 1969, an amendment was proposed to the bail statute which would have added to the bail decision considerations of the danger the defendant posed to society. This amendment was opposed by both defense-oriented and prosecution-oriented people. Objections from the latter group "stemmed from the belief that a preventive detention procedure that could successfully meet constitutional requirements of due process would impose a whole new layer of hearings on the already overburdened local criminal courts, all out of proportion to the gains that could reasonably be expected to result from such a system" (CPL 510.30, Commission Staff Comment).

6. No hearing is required, nor is any standard of proof necessary to reopen an ACD, although a prosecutor would probably want to have some reason to make such a request.

7. To revoke either a conditional discharge or probation, a hearing must be held at which "the preponderance of evidence" indicates that the defendant has committed the violation.

CHAPTER TWO

WHAT HAPPENED

The concept of witness intimidation is not well defined. The term sometimes applies exclusively to cases in which the defendant successfully deters the witness from testifying. Other times the term includes any witness who is afraid of the defendant, regardless of whether he or she testifies. Witnesses often feel frightened even if no attempt has been made by the defendant to intimidate them. Dean Kilpatrick, a psychologist who has worked with rape victims, stated at the American Bar Association's hearings:

> Victims of violent crimes become quite disturbed by even the slightest contact with or potential contact with their assaulters.... The mere sight of the assailant or the sound of his voice will produce enormous fear in the [rape] victim, regardless of whether or not he makes an overt threat. (Kilpatrick, 1979)

Several criminal justice officials interviewed for this study stated that fear of revenge, in the absence of either direct or indirect threats, is more pervasive and detrimental to witness cooperation than are actual threats.

Counting instances of witness intimidation is also difficult. Threats are often ambiguous. For example, a glowering look by the defendant could be interpreted by one witness as a threat, and by another witness not as a threat, but as a manifestation of the defendant's distress. It may be unclear whether a menacing act by the defendant is designed to dissuade the witness from testifying or is a consequence of other motivations. The intention of the threats is particularly difficult to discern in cases in which the witness and defendant know each other and there is a history of conflict between the two parties.

For the purposes of this study, witness intimidation was defined broadly, as any act which the witness perceived to be a threat, regardless of the apparent motivation of the threat. The term 'threat' is used throughout this report to refer to menacing acts. It is important to note, however, that not all witnesses were threatened verbally and that some witnesses were vandalized or attacked without any forewarning. The determination of whether an act constituted a threat was made by the witness, not the interviewer. Cases in which anonymous phone calls or vandalism had occurred were included if the witness perceived that the acts were connected to the case. Witnesses who were frightened, but who did not feel that the defendant had either covertly or directly threatened them were not included in the samples.[1]

A. Rates of Witness Intimidation

In order to secure interviews with intimidated witnesses, samples of witnesses from Brooklyn Criminal, Supreme and Family Court were contacted by telephone and screened. Of the witnesses contacted, 15 percent (or 109 of the 747) in Criminal Court, 12 percent (or 31 of the 249) in Supreme Court and 8 percent (or 13 of the 156) in Family Court reported that they were threatened. There are several reasons to believe, however, that these rates of reported threats are lower than the true rates of witness intimidation in these courts.

The most obvious reason for underreporting is that, almost by definition, witness intimidation is least likely to be discovered when it is successful. That is, some witnesses frightened by threats were probably unwilling to reveal this either to

criminal justice officials or to interviewers for the study because of fear of reprisals. There was evidence that even some witnesses who did report an intimidation attempt to criminal justice officials were nonetheless reluctant to discuss the problem over the telephone with an interviewer. In 3 percent of Supreme and Family Court cases in which witnesses were contacted there were indications in the files of the prosecutor or the Corporation Counsel that the witness had been threatened although the witness denied to the interviewer that any such incidents had occurred.[2] Furthermore, a co-witness told an interviewer that threats had occurred even though the witness denied it in 2 percent of Criminal, 3 percent of Supreme and 1 percent of Family Court cases in the sample.

Another reason for underestimation in the reported rates of intimidation is that intimidated witnesses may be more difficult to contact than others. Six percent of witnesses in both Criminal and Supreme Court and five percent in Family Court could not be contacted because their telephones had been disconnected or changed to an unpublished number. It seems likely that a portion of these telephone numbers were changed because of threats.

The most persuasive evidence that the rates of witness intimidation in the present study are underestimates comes from other studies by the Vera Institute of Justice and VSA in which greater proportions of witnesses from these three courts reported threats. A 1976 study found that 21 percent of 194 witnesses

whose cases were disposed in Brooklyn Criminal Court reported threats--a significantly higher rate than the 15 percent arrived at by this study.[3] The 1976 study also found that 48 percent of the 27 witnesses whose cases were transferred to the Grand Jury were threatened--again, a substantially higher rate than the 12 percent of Supreme Court witnesses who reported intimidation in the present study.[4] In a 1981 study in Brooklyn Family Court, 19 percent of 59 witnesses interviewed said they were threatened--again, a significantly greater proportion than the 8 percent who reported threats in the present study.[5] Although these other studies were vulnerable to some of the same sources of error as the present study, their intimidation rates may be more accurate because more trust was created between interviewers and witnesses in a variety of ways. First, in both the 1976 Criminal Court study and the 1981 Family Court study, witnesses were contacted and interviewed in person at the onset of the case. Second, after the case was disposed the same interviewer contacted the witness by phone and interviewed him or her again. Third, questions concerning the threats occurred in the middle of the interviews, so interviewers had established rapport with witnesses before the sensitive topic was broached. It seems likely that these factors increased the witnesses' comfort and confidence in the interviewers, and consequently witnesses were more willing to disclose that they had received threats in the studies using in-person and repeated interviews than in the present study using one telephone interview.

The other studies indicated that relatively similar proportions of witnesses were threatened in Brooklyn Criminal Court (21 percent) and Brooklyn Family Court (19 percent). The rate for Supreme Court witnesses (48 percent), however, was more than twice as great as in the other two courts, suggesting that the severity of the case may be an important determinant of threats. In any event, the data (which probably still underestimate the number of witnesses threatened, for reasons discussed above) have revealed witness intimidation to be widespread.

It was expected that the rates of intimidation indicated by the present study would be underestimates. The purpose of the study was not to establish the frequency of witness intimidation, however, but rather to understand the criminal justice system's response to reported instances of intimidation. It seems likely that underreporting of threats to interviewers paralleled underreporting to criminal justice officials. Thus, although the samples used in the study are not representative of all threatened witnesses, they probably are representative of witnesses who report threats to criminal justice officials. One must bear in mind while reviewing these witnesses' experiences that the intimidation attempts in the samples are likely to reflect the less severe side of the spectrum of witness intimidation. Cases in which the threats appeared to be so serious that the witnesses refused to cooperate with the courts, moved, or changed their phone numbers are probably underrepresented here.

B. Who Is Threatened

This study did not attempt to determine whether certain types of witnesses were more likely to be intimidated than others, since only intimidated witnesses were interviewed. Data from the 1976 study of Brooklyn Criminal Court, however, which included both intimidated and non-intimidated witnesses, were used to determine which witnesses were more likely to be threatened. These data revealed that women, witnesses who knew the defendant before the crime, and witnesses involved in more severe cases were more likely than others to receive threats (see Table 2.1). It seems possible that defendants are more likely to threaten women than men because women appear to be vulnerable and more susceptible to coercion. In addition, defendants who know witnesses are probably more likely to make threats because they can more easily locate the witness. Lastly, it is not surprising that defendants in more severe cases are more likely to threaten witnesses, as these defendants may lose more if witnesses testify against them.

Most of the individuals in the Criminal, Supreme, and Family Court intimidation samples of the present study were both victims of and eyewitnesses to the crime. The majority of cases involved allegations of violence--either assault or robbery. Approximately half of the witnesses were women and more than half were Black or Hispanic.

The samples of intimidated witnesses from the three courts differed from each other in demographic and case characteristics. (See Appendix B for basic demographic and case characteristics of

TABLE 2.1

WITNESS CHARACTERISTICS ASSOCIATED WITH THREATS*

	Percent of Witnesses Threatened
Sex	
Male (n=124)	15
Female (n=97)	36
	$X^2 = 11.60$ ($p < .001$)
Relationship Between the Witness and Defendant	
Strangers (n=127)	20
Prior Relationship (n=83)	34
	$X^2 = 5.25$ ($p < .025$)
Charge Severity	
A Felony to C Felony (n=59)	34
D Felony (n=93)	24
E Felony to Violation (n=69)	17
	Pearson's r = .15** ($p = .01$)

*Source: Unpublished data of the Victim Services Agency from a 1976 survey of witnesses in Brooklyn Criminal Court.

**Although the charge severity was collapsed into three categories here, Pearson's r was computed using the eight categories of charge severity--from an A Felony through violations.

the three court samples.) These differences probably reflected differences in the caseloads of the three courts. For example, there was a greater number of witnesses involved in violent crimes in the Supreme Court sample than in the Family and Criminal Court samples, because the Supreme Court's caseload generally consists of more serious cases. Similarly, there were fewer cases in which there was a prior relationship between the defendant and the witness in the Supreme Court sample than in the Family and Criminal Court samples because cases involving people who know each other are less frequently sent to Supreme Court for disposition than stranger-to-stranger cases. Lastly, the Family Court witnesses in juvenile delinquency cases were younger, more likely to be female, and more likely to be students than the other two samples, again reflecting the make-up of that court.

C. Description of the Threats

The threats received by witnesses in the interview samples ranged from ominous looks or gestures to rumors circulated around the neighborhood to direct verbal and physical confrontations (see Table 2.2). Most witnesses were threatened more than once. Indeed, over one-third of witnesses in the Criminal and Supreme Court samples reported that they were threatened repeatedly (six or more times). The majority were threatened through a direct verbal confrontation. One of the most frequent threats made was, "I'm going to get you." Other witnesses were warned, "You'll be sorry" or even more explicitly, "I'll kill you if you go to court." In some instances--29 percent of Criminal Court, 9 percent

TABLE 2.2

TYPES OF THREATS RECEIVED BY WITNESSES*

	Criminal Court (n=109)	Supreme Court (n=31)	Family Court (n=13)
Looks, Gestures**	5%	16%	(8%)
Notes	2	10	(0)
Phone Calls	23	32	(0)
Indirect Verbal Threats***	11	7	(8)
Direct Verbal Confrontations	64	68	(92)
Property Stolen, Damaged, or Destroyed	17	3	(8)
Weapons Displayed	6	0	(8)
Physical Attacks	7	3	(0)

*The figures add up to more than 100% because some witnesses were threatened in more than one way. All figures in this and the following tables for which $n<16$ are enclosed in parentheses to emphasize their tentative nature.

**These figures are likely to be underestimates. In cases in which more severe threats occurred, these more subtle forms of intimidation were probably less likely to have been mentioned.

***Indirect verbal threats include rumors spread around the neighborhood or warnings delivered by a mutual friend.

of Supreme Court and 50 percent (6) of Family Court intimidation cases defendants threatened to harm witnesses' friends and family too.

After in-person verbal threats, phone calls were the second most common mode of threat in the Criminal and Supreme Court samples, occurring in 23 and 32 percent of the cases respectively. Approximately half of these witnesses reported anonymous calls. Some callers simply hung up. Others made strange noises or uttered obsceneties. In one Supreme Court case all three witnesses were called and told, "You have only four days to live." In another Supreme Court case, in which the defendant had allegedly sexually molested a ten year-old girl, the girl's mother reported that they received four or five calls every day at the same time. She said she knew it was the defendant, who lived across the street, because if her daughter answered the phone he would speak to her.

In roughly 10 percent of the cases in each sample, there were indirect verbal threats. In these cases threats were conveyed by rumors through the neighborhood or through the witnesses' friends. For example, in one Family Court case a woman reported, "We heard around that we should be careful and we'd better move if they went to jail." In some cases it was not even clear if the defendants themselves had actually made the threats, or if the warnings were simply expressions of the neighbors' and friends' belief that the witnesses had cause to be afraid.

Threatening looks or gestures were only reported by a few witnesses. It is likely, however, that other witnesses neglected to mention threats of this type if they were also threatened in more overt ways. Some reported unpleasant looks or hard stares.

Two female witnesses (involved in different cases) were followed on the street by the defendants. In one Criminal Court case the witness reported that the defendant made throat slashing motions at him in the courtroom.

Property was destroyed or stolen in 3 percent of Supreme Court and 8 percent (1) of Family Court cases. However, 17 percent of witnesses in the Criminal Court sample reported threats or retaliation of this nature. Vandalism experienced by witnesses included slashed tires and broken windows. During one Criminal Court case the witness' door was kicked in and the defendant's initials were carved in the floor. Several witnesses reported that they were victimized again after the first victimization and they suspected the second victimization was related to the first case. For example, two witnesses (one from Criminal Court and one from Family Court) reported that their apartments were burglarized a few days before they were to appear in court. In two other cases (both Criminal Court cases), witnesses reported that their businesses were burglarized again after the cases were disposed and that they believed it was done by the defendants.

In a few instances (five Criminal Court cases and one Family Court case) witnesses reported that they were threatened by the defendant with a weapon. The weapons used were guns (3 cases), baseball bats (2 cases), and swords (1 case). In three of these cases the threats occurred immediately after the crime and were meant to discourage the witnesses from reporting the crime. For example, one Criminal Court witness was robbed in his home by his neighbor. The neighbor, who displayed a gun, said he

would kill the witness if he called the police. In other cases threats occurred after the arrest, apparently designed either to dissuade the witness from going to court or to punish the witness for having pursued the case. For example, one witness, who caught the defendant committing the original crime (a burglary), was threatened repeatedly during and after the case was in court. The defendant, who was threatening to kill the witness for "ratting him out," once displayed a gun to the witness after the case was disposed.

Physical attacks, apart from the original crime, were reported in only a small number of cases (7 percent of Criminal Court cases, 3 percent of Supreme Court cases and no Family Court Cases.) A number of the attacks, however, were serious or potentially serious. In one Criminal Court case, the defendant tried (unsuccessfully) to run over the witness with his truck to keep him from reporting the crime to the police. Another Criminal Court witness reported that the defendant, his neighbor, attempted to stab him, but he evaded the attack. In one Supreme Court case, the witness was attacked by the defendant with a knife and stabbed in the arm. A 13 year-old boy was beaten up twice at school for having "squealed" on a schoolmate. A 22 year-old woman reported that her brother, the defendant, beat her up repeatedly. Other witnesses reported having bottles thrown at them, being pushed around, being choked, and being attacked with a bat.

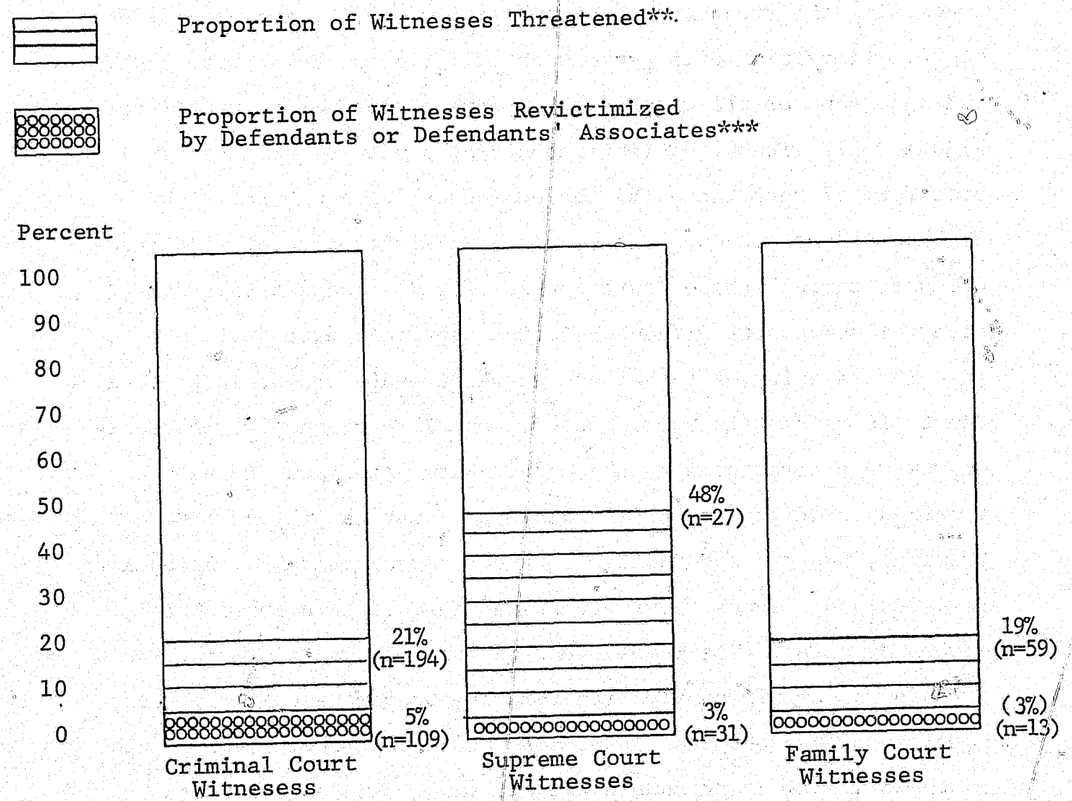
Subsequent to the arrest, 23 percent of the Criminal Court sample, 6 percent of the Supreme Court sample, and 15 percent (2) of the Family Court sample were burglarized, vandalized, threatened with

a weapon or attacked. These figures combined with the data from other Vera and VSA studies (discussed in the preceding section) concerning the frequency of witness intimidation, suggest rates of revictimization of 5 percent of all Criminal Court witnesses, and 3 percent of all witnesses in Supreme and Family Court (see Figure 2.1). Thus, the likelihood that a witness will suffer some form of retaliation by the defendant, although not high, is hardly remote. When one considers the thousands of witnesses who pass through these courts, these figures suggest that substantial numbers of witnesses suffer reprisals each year.

The majority of threatened witnesses--80 percent in Criminal Court, 16 percent in Supreme Court, and 77 percent (10) in Family Court--were threatened by the defendants. Anonymous threats occurred in 16 percent, 19 percent and 8 percent (1) of the Criminal, Supreme and Family Court cases respectively. Defendants' families and friends, however, issued threats in a substantial number of cases. The involvement of the defendants' families and friends was significantly higher in the Supreme and Family Court samples (52 percent[6] and 46 percent[7] of cases respectively) than in the Criminal Court sample (21 percent). In Supreme Court this phenomenon may be a function of both the greater severity of the consequences of the case on the defendant and the greater number of defendants who were incarcerated. In Family Court this finding may be a result of the fact that juvenile delinquents often act in concert, and that the juveniles' friends participated in the threatening.

FIGURE 2.1

RATES OF INTIMIDATION AND EXTRAPOLATED RATES OF REVICTIMIZATION* OF WITNESSES INVOLVED IN CASES IN BROOKLYN CRIMINAL, SUPREME AND FAMILY COURT



*Although technically any attempt to intimidate a witness is a crime, revictimization is defined here as having been burglarized, vandalized, threatened with a weapon, or attacked.

**The figures for Criminal and Supreme Court are based on unpublished data from a 1976 survey of witnesses whose cases were disposed in Brooklyn Criminal Court or transferred to the Grand Jury (Davis, et al. 1980). The figures for Family Court are based on unpublished data from a 1981 study of Brooklyn Family Court.

***These figures are extrapolated from data collected for the present study in which only threatened witnesses were interviewed.

Threats occurred at a variety of locations (see Table 2.3). The first point at which a witness may be intimidated is the scene of the crime. Indeed, it is likely that many crimes are not reported because of intimidation at the time of the crime. Threats at the scene of the crime were reported by 20 percent of Criminal Court witnesses, 10 percent of Supreme Court witnesses, and no Family Court witnesses.

The scene of the arrest, (i.e., any time after the arrival of the arresting officer) is a next logical point at which threats might occur. Threats at the scene of the arrest were reported by 11 percent of Criminal Court witnesses, 10 percent of Supreme Court witnesses and 15 percent (2) of the Family Court witnesses. It is striking that so many defendants were brazen enough to threaten witnesses in such proximity to the police, indeed sometimes in the presence of the officers. One witness was threatened while riding to the precinct in the same police car as the defendant. Several witnesses were threatened inside the precinct by defendants or defendants' relatives. One witness, although not threatened at this point, complained that he had to identify the defendant in a line-up face-to-face, rather than through a one-way mirror. It appears that in some instances threats could have been avoided if the police had separated the witness and defendant.

The courthouse is another site where witnesses and defendants have contact and threats occur. In Brooklyn Criminal Court, VSA operates a reception center where witnesses may wait securely before their cases are heard in court. In Supreme and Family Court, however, no such facilities exist. Generally witnesses in these courts must wait either in the courtrooms or in the

TABLE 2.3

LOCATIONS WHERE THREATS AGAINST WITNESSES OCCURRED*

	Criminal Court (n=107)		Supreme Court (n=31)		Family Court (n=13)	
Scene of the Crime	20%		10%		(0%)	
Scene of the Arrest**	11		10		(15)	
Court	15		26		(8)	
Witness' Home or Neighborhood	42		45		(54)	
Witness' School or Work Place***	15	72%	13	77%	(31)	(85%)
Telephone or Mail	25		39		(0)	

*Percentages add up to more than 100% because some witnesses were threatened at more than one location.

**The scene of the arrest includes the police car, the precinct, or the scene of the crime when the arresting officer was present.

***Threats in the witness' home, neighborhood, school or workplace are excluded if it was the scene of the crime.

halls, often near the defendants and their families. Overall, 15 percent of the Criminal Court sample, 26 percent of Supreme Court sample, and 8 percent (1) of the Family Court sample were threatened either inside or nearby the courthouse. Extrapolation of these figures (using the more accurate rates of intimidation obtained from other studies) suggests that 3 percent of Criminal Court witnesses, 12 percent of Supreme Court witnesses and 2 percent of Family Court witnesses in the general witness population are threatened at court. Although such extrapolations must always be viewed cautiously, they suggest that threats in court are a more significant problem in Supreme Court than in Criminal and Family Court.

The scene of the crime, the arrest, and the court are the three locations where the witness and defendant are most likely to have contact and, consequently, where opportunities for witness intimidation exist. A surprising and disturbing finding of this study, however, was that the majority of witnesses were not threatened at these locations, but in their homes, neighborhoods, schools, and workplaces. Approximately three-fourths of the Criminal and Supreme Court samples, and 85 percent (11) of the Family Court sample were threatened in these areas. These data indicate that a large number of defendants either knew where the witnesses lived or worked, or sought out this information in order to intimidate them. In either case, one would naturally expect witnesses to feel more vulnerable if it was evident that the defendant knew how to locate them.

There were quantitative and qualitative differences between threats received by witnesses who knew the defendant and threats received by those in stranger-to-stranger cases. In the Criminal Court sample, witnesses who knew the defendant before the crime were threatened significantly more frequently than those in stranger-to-stranger cases (see Table 2.4). Almost half (44 percent) of those who knew the defendant reported continuous threats, in contrast to 24 percent in stranger-to-stranger cases. (Similar trends occurred in the Family and Supreme Court samples.) Witnesses who knew the defendant were also more likely than others to be threatened after the case disposition (see again Table 2.4). In the Criminal Court sample, almost one-half (49 percent) of witnesses in relationship cases reported threats occurring after the case disposition in contrast to one-fourth (24 percent) of witnesses in stranger-to-stranger cases. Thus, intimidated witnesses who knew the defendant were subjected to threats more frequently and over a longer period of time than those in stranger-to-stranger cases.

One reason for the greater intensity of threats in prior relationship cases may be that some of these witnesses were experiencing ongoing problems with the defendant of which the court case was just one symptom. (Many of those in relationship cases were boyfriends or girlfriends, spouses, or ex-spouses. Other relationships included neighbors, siblings, landlords, tenants, schoolmates, and friends or relatives.) A large number of witnesses in prior relationship cases--41 percent in the

TABLE 2.4

PATTERNS OF THREATS BY DEFENDANT/WITNESS RELATIONSHIP

	Threatened Continuously (6 or More Times)	Threatened After the Case Disposition
Criminal Court		
Stranger-to-Stranger Cases (n=51)	24%	24%
Relationship Cases (n=57)	44%	49%
	Kendall's Tau C* = .28 p = .004	x^{2**} = 7.18 p < .01
Supreme Court		
Stranger-to-Stranger Cases (n=24)	33%	33%
Relationship Cases (n=7)	(43%)	(57%)
	Kendall's Tau C* = .09 (ns)	x^{2**} = 1.29 (ns)
Family Court		
Stranger-to-Stranger Cases (n=8)	(0%)	(0%)
Relationship Cases (n=5)	(60%)	(20%)
	Kendall's Tau C* = .47 p = .05	x^{2**} = 1.73 (ns)

*Kendall's Tau C is based on a trichotomy: threatened once; threatened 2 to 5 times; threatened continuously.

**Chi-squares are based on a dichotomy: threatened after the disposition; not threatened after the disposition.

Criminal Court sample, 57 percent in the Supreme Court sample, and 80 percent (4) in the Family Court sample--had experienced problems with the defendant before the crime. In fact, 9 percent of those with a prior relationship in the Criminal Court sample had been involved in a previous court case with the same defendant. In over half (56 percent) of the prior relationship cases in the Criminal Court sample the arrest was for assault or attempted assault, while this was the charge in only 22 percent of the stranger-to-stranger cases. Thus, in many of these cases harassment and threats were part of the original problem leading up to the case, rather than a result of the case. In some instances the threats were practically indistinguishable from problems preceding the crime. For example, one defendant, the witness' ex-boyfriend, continuously threatened to kill her if he saw her with another man, both before and after the crime (an assault).

Another reason for the greater frequency of threats in relationship cases may be that defendants who knew the witnesses were likely to know where the witnesses lived or to have regular contact with them. Indeed, witnesses who knew the defendants were significantly more likely than others to be threatened in their home, neighborhood, school, or workplace (see Table 2.5). Nonetheless, the number of witnesses in stranger-to-stranger crimes who were threatened in these areas was high considering they had no prior association with the defendant. Sixty percent of witnesses in stranger-to-stranger cases in the Criminal Court sample and three-fourths of those in the Family and Supreme

TABLE 2.5

PROPORTION OF WITNESSES THREATENED IN THEIR HOMES, NEIGHBORHOODS, SCHOOLS, OR WORKPLACES BY WITNESS/DEFENDANT RELATIONSHIP

	Percent Threatened in Their Homes, Neighborhoods, Schools, or Workplaces*
Criminal Court	
Stranger-to-Stranger Cases (n=49)	60%
Relationship Cases (n=57)	82%
	$x^2 = 7.03$ $p < .01$
Supreme Court	
Stranger-to-Stranger Cases (n=24)	75%
Relationship Cases (n=7)	(86%)
	$x^2 = .01$** (ns)
Family Court	
Stranger-to-Stranger Cases (n=8)	(75%)
Relationship Cases (n=5)	(100%)
	$x^2 = .18$** (ns)

*These figures include threats by phone or mail, and exclude threats at the scene of the crime.

**Chi-square statistic computed with Yates' correction.

samples were threatened in their home, neighborhood, school, or workplace. It is not clear how so many defendants in stranger-to-stranger cases were able to locate the witnesses. It is possible that some did not seek out the witnesses to make threats but simply took advantage of a chance meeting to intimidate them. Furthermore, it seems likely that some lived in the same neighborhood or passed the witnesses routinely, so although they did not know them before the crime, afterwards they knew where to find them. It also seems possible that some defendants learned where witnesses lived from court papers or from witnesses' testimony in court.

The existence of a prior relationship between the witness and the defendant appeared to enhance the likelihood that the witness would be attacked. Of the nine witnesses in the sample who were attacked subsequent to the arrest, eight knew the defendant. (Thus, 12 percent who knew the defendant were attacked versus 1 percent who had no prior acquaintance.) In five cases the defendants were landlords, tenants, or neighbors, in one the defendant was a schoolmate, in one the witness' brother and in one the witness' mother's boyfriend. In the case in which there was no prior relationship, the defendant attended the same school as the witness. Although most witnesses who were attacked had some prior relationship with the defendant, the risk for those in stranger-to-stranger crimes should not be minimized. Three of the four witnesses who were threatened with a weapon subsequent to the arrest had had no prior association with the defendant.

(Thus, 4 percent in stranger-to-stranger cases were threatened with a weapon versus 2 percent with a prior relationship.) In all three cases they were threatened with guns.

In summary, witnesses were threatened in a variety of ways, but most frequently in a direct verbal confrontation. In most instances the threats against witnesses were not carried out. Still, 23 percent of those threatened from Criminal Court, 6 percent from Supreme Court, and 15 percent (2) from Family Court were victimized again. These data, in conjunction with previous Vera and VSA research, suggest rates of retaliation of 5 percent of all Criminal Court witnesses, and 3 percent of all Supreme and Family Court witnesses.

There was a quantitative and qualitative difference between threats in cases in which there was a prior acquaintance between the witness and defendant and cases in which they were strangers. Witnesses who knew the defendant were threatened more frequently and over a longer period of time than witnesses in stranger-to-stranger cases. Furthermore, in many instances the intimidation seemed to be symptomatic of an ongoing problem between the two rather than a function of the court case itself. Witnesses who knew the defendant were more frequently attacked than those with no prior relationship. Still, the high number of stranger-to-stranger crime witnesses who were threatened in their home, neighborhood, school, or workplace, and the fact that 4 percent were threatened with a weapon, suggest a significant degree of vulnerability in these cases too.

FOOTNOTES: CHAPTER TWO

1. Cases in which the witness was frightened but had not been threatened were excluded because the purpose of this study was to assess the criminal justice system's response and it seemed unlikely that the system could give much of a response in cases where there was no direct threat. Nevertheless, the two phenomena--fear because of threats and fear in the absence of threats--are clearly related. An improvement in the criminal justice system's response to reports of threats might also reduce fear of retaliation among witnesses in general.

2. Criminal Court prosecutors' files were not examined. Refer to Appendix A for an explanation of the research method.

3. $x^2 = 3.93$; $p < .05$

4. $x^2 = 20.61$; $p < .001$

5. $x^2 = 4.07$; $p < .05$

6. Chi-square comparison of the rate at which defendants' friends and family issued threats in the Criminal and Supreme Court samples: $x^2 = 11.18$; $p < .001$.

7. Chi-square comparison of the rate at which defendants' friends and family issued threats in the Criminal and Family Court samples: $x^2 = 4.02$; $p < .05$.

CHAPTER THREE

WHAT THE SYSTEM DID

The interviewed witnesses' reactions to threats were diverse. Some appeared to have been untouched by the incident. As one witness asserted, "I wasn't afraid." Others, although not terrified, felt uneasy because of the threats and took precautions on their own or informed criminal justice officials of the problem. Still others were petrified of reprisals and moved or refused to cooperate with the court. Overall, most witnesses interviewed appeared to be at least somewhat concerned that the defendant might retaliate. As will be revealed in this chapter, many took informal measures to deal with the threats and the majority reported threats to criminal justice officials. In this chapter what the criminal justice system did for these witnesses who sought its help is described and the effectiveness of the system's reponse is assessed.

A. Informal Measures Taken by Threatened Witnesses

Almost one-third (29 percent) of witnesses interviewed took some sort of precautions on their own to deal with threats. Witnesses reported curtailing their outside activities (8 percent), installing new locks or making other improvements in the security of their homes (7 percent), and, in two instances, carrying a weapon (1 percent). One woman changed her hairstyle and type of glasses to avoid detection. Two percent of witnesses changed their telephone number and 7 percent moved. (An additional 4 percent said they were planning to move.) The last figures concerning the numbers of witnesses who moved are strikingly high.

Moreover, they as well as the figures concerning telephone numbers changed almost certainly underestimate the true rates at which threatened witnesses move and change their telephone numbers: there were probably a number of witnesses who could not be contacted for this study precisely because they had done so. Taken together these figures suggest a high level of anxiety about the threats among some witnesses.

In 18 percent of cases, witnesses said their friends gave them assistance in dealing with the threats. The types of assistance provided by friends included accompanying witnesses on the street, letting witnesses stay in their homes, or "watching out" for defendants (14 percent); warning defendants not to make threats (2 percent); and beating up defendants (2 percent). Thus, in some cases witnesses' friends offered them some degree of protection.

B. Who Was Told

The majority of threatened witnesses in the Criminal (63 percent) and Supreme (68 percent) Court samples, and almost half in the Family Court sample (6) said criminal justice officials learned of the threats. (Variations among the courts were not statistically significant.) Criminal justice officials learned of threats in a variety of ways. Most often they were told by the witnesses themselves. In some instances they observed the defendants make threats. In addition, some were informed of threats by other criminal justice officials involved in the case.

Most of the witnesses who did not report threats said they did not want help, they were not frightened, or they could handle the problem themselves. However, in a few cases--13 percent in Criminal

Court, 6 percent in Supreme Court, and 15 percent (2) in Family Court--witnesses said that they wanted help but did not report the threats. It may be that some of these witnesses were too afraid to ask for help although they wanted it. It is significant that when asked, these witnesses were willing to tell the interviewers about the threats. Only 18 percent of the witnesses reported that a criminal justice official (usually the police or prosecutor) asked if they had been threatened. These data suggest that if criminal justice officials had asked more witnesses if they had been threatened, more cases of attempted intimidation would have been identified.

Witnesses acquainted with the defendant prior to the crime had a greater tendency to report threats to criminal justice officials than those in stranger-to-stranger cases. In the Criminal Court sample, 71 percent of the 58 witnesses who had a prior acquaintance with the defendant reported threats versus 55 percent of the 51 witnesses in stranger-to-stranger cases.[1] Similar trends were found in the Supreme and Family Court samples.[2] It seems possible that witnesses who knew defendants were more likely to report threats both because they had more reason to be afraid and because they had fewer options. Witnesses who knew the defendant were more likely than others to have been assaulted in the original crime (Chapter 2). Moreover, in many instances it was found that there was a history of harassment between the two parties. Thus, failing to report the threats and dropping charges in cases in which there was a history of problems were not likely

to stop the harassment or assaults since these were the very problems which drove the witnesses to seek the courts' assistance in the first place.

The type of official who most frequently learned of threats--either directly from the witness or from another criminal justice official--differed among the three courts (see Table 3.1). These variations in reporting may be a function of variations in both the extent of officials' interactions with witnesses and the degree to which officials are attuned to the problems of witness intimidation. In the Criminal Court sample, police (53 percent) most frequently learned of threats. In the Supreme Court sample, prosecutors (58 percent) most frequently learned of threats--and at a significantly greater rate than prosecutors in Criminal Court (24 percent). This finding may be explained by the fact that witnesses in Supreme Court cases are likely to have more contact with prosecutors (at Criminal Court, the Grand Jury and Supreme Court) and consequently more opportunities to tell them of threats than witnesses in Criminal Court cases. In the Family Court sample, judges (39 percent - 5) most frequently learned of threats--and at a significantly greater rate than judges in Criminal Court (12 percent) and judges in Supreme Court (13 percent). It is not clear why this was so. It may be, however, that judges in Family Court were more attuned to the problem of witness intimidation than judges in the other courts.

It is possible that more officials were informed of threats than reported by interviewed witnesses. Prosecutors may have

TABLE 3.1

REPORTS OF THREATS TO CRIMINAL JUSTICE OFFICIALS

Percent of Cases in Which Threats Were Reported To:	Criminal Court (n=109)	Supreme Court (n=31)	Family Court (n=13)
At Least One Criminal Justice Official	63%	68%	(46%)
The Police	53	48	(31)
The Assistant District Attorney or Assistant Corporation Counsel	24*	58*	(31)
The Judge	12**	13**	(39)**
VSA Staff	6	—	—

*Threats were significantly more likely to be reported to the prosecutor in the Supreme Court sample than in the Criminal Court sample ($x^2 = 13.11$; $p < .001$).

**Threats were significantly more likely to be reported to the judges in Family Court, than to the judges in Criminal Court ($x^2 = 6.50$; $p < .025$) or Supreme Court ($x^2 = 3.68$; $p < .10$).

told judges of threats during bench conferences which witnesses could not have overheard. In addition, police may have told prosecutors of threats (or vice versa) when witnesses were not at court. The figure that 6 percent of Criminal Court witnesses reported threats to VSA staff seems particularly low when one considers that VSA notifies witnesses to come to court and operates the victim/witness reception center. Some witnesses may have mistaken VSA staff for prosecutorial staff, since VSA works closely with the prosecutors' office. (The figures for reports to prosecutors were probably not greatly inflated by this, however, since, as will be seen shortly, VSA often passed on information about threats to prosecutors.) Thus, the figures in Table 3.1 are likely to be underestimates and represent minimum levels of reporting of threats to criminal justice officials.

C. The Criminal Justice System's Response

There are two major limitations to witnesses' accounts of criminal justice officials' responses to threats. First, witnesses by and large were unfamiliar with court procedures. Consequently, they may not have always understood what the officials' responses were. Second, officials may have taken actions while the witnesses were not present about which the witnesses never learned. Nevertheless, witnesses' accounts of officials' actions are still useful because they reflect their perceptions--whether accurate or not--of how the criminal justice system responded to their reports of threats. Witnesses' perceptions of what is done undoubtedly affected their sense of safety and willingness to cooperate with the courts.

The criminal justice system's response to witnesses' reports of threats is summarized in Table 3.2. Overall, the most frequent response of officials was to speak with witnesses about the threats. Indeed, this was the strongest response received by more than one-third of the Criminal Court witnesses and more than two-thirds of Supreme Court witnesses. In many cases witnesses were told nothing could be done. For example, two witnesses involved in separate cases said police told them they could not do anything unless the witnesses were physically harmed. Similar responses included the official making a note of the threat in the police report or the case file; telling the witness to call back if anything more happened; advising the witness to tell another criminal justice official about the threats; and counseling the witness concerning how to deal with the threats. Many of these actions appeared to be aimed at allaying witnesses' fears. Several witnesses were assured by officials that the defendants would not carry out the threats.

Admonishments by judges were the most frequent actions taken, aside from speaking with witnesses. Defendants were admonished by judges in almost half (49 percent) of the Criminal Court cases, 19 percent of Supreme Court cases, and all 6 of the Family Court cases reported. (In 6 percent of the Criminal Court cases judges also issued Orders of Protection.) It is not clear why judges in Family Court most frequently admonished defendants and judges in Supreme Court least frequently did so. It may be, however, that Family Court judges, and to a lesser extent Criminal Court judges, are more attuned to the problem of witness intimidation than Supreme Court judges.

TABLE 3.2

THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO REPORTS OF THREATS*

	Criminal Court (n=69)		Supreme Court (n=21)		Family Court (n=6)	
Response Was Limited to Talking With the Witness About the Threats or Informing Another Official of the Problem	36%		71%		(0%)	
Defendant Was Admonished by the Judge or the Judge Issued an Order of Protection	49**	61	19**	24	(100)**	(100)
Defendant Was Admonished by the Police	15		5		(17)	
Witness Was Offered Some Form of Protection***	4		5		(17)	
Case Was Reopened, Defendant Was Rearrested, Threats Were Investigated, Defendant Received Stiffer Sentence	6		0		(17)	

*The percentages add to more than 100 percent because more than one type of response occurred in some cases.

**These differences were statistically significant: $x^2 = 12.49; < .01$.

***The types of protection offered were removing the defendant from the witness' house; escorting the witness to school or court; directing special attention to the witness' neighborhood during police patrols; and relocating the witness.

Surprisingly, two-thirds of witnesses in cases in which defendants were admonished said the judges were not informed of the threats. Although prosecutors and Assistant Corporation Counsels may have informed judges of threats more often than witnesses were aware, these data also suggest that judges routinely admonished defendants even when they had not learned of threats. Judges were significantly more likely to admonish defendants if witnesses and defendants knew each other than if they had no prior acquaintance; 68 percent of the 50 defendants in relationship cases were admonished compared to 22 percent of the 46 defendants in stranger-to-stranger cases.[3] In addition, judges were more likely to admonish defendants if witnesses were injured in the original crime than if witnesses were not injured; 60 percent of the 40 defendants who injured witnesses were admonished versus 36 percent of the 56 defendants who did not injure witnesses.[4] A prior acquaintance between witnesses and defendants as well as injury in the original crime are both factors which might suggest a greater likelihood that witness intimidation will occur. (As revealed in Chapter 2, threats are more likely to occur if witnesses and defendants know each other.) It seems possible that judges admonished defendants in these cases, often when no threats were reported to them, because they believed these witnesses were more likely than others to be threatened.

The police admonished defendants in 15 percent of Criminal Court cases, 5 percent of Supreme Court cases, and 1 Family Court case. Police admonishments were informal warnings to defendants

usually given at the scene of the arrest. In one instance, according to the witness, the warning was accompanied by physical abuse. In three cases police contacted defendants' relatives to suggest that they should help defendants control their behavior.

One Family Court case, which had been adjourned in contemplation of dismissal, was reopened by the Assistant Corporation Counsel after the witness reported the defendants continuously harassed her and damaged her property. However, none of the Criminal or Supreme Court witnesses reported a reopening of their case. (The Family Court case, described in more detail later, was again adjourned in contemplation of dismissal.)

One Criminal Court witness said he thought the defendant received a stiffer jail sentence because the judge learned of the threats. None of the Supreme or Family Court witnesses, however, reported stronger sentences.

The defendant was rearrested in only two instances--both Criminal Court cases. In each case the defendant was rearrested for a new crime against the witness. None of the defendants in the samples were arrested for witness tampering or for making threats.

Insufficient legal evidence may have partially accounted for the small number of cases reopened or arrests made. Although researchers did not gather enough information regarding the circumstances of the threats for a thorough assessment of the strength of the legal evidence, it would have been difficult to prove that specific defendants were responsible for certain types of threats (e.g. looks, gestures, anonymous telephone calls). In addition, even in cases where there was an overt threat by someone whom the

witness could identify, it would have been difficult to prove in court unless someone else had also observed it. Lastly, it seems possible that even if there were other witnesses to the threats they may have been particularly reluctant to testify against someone who had exhibited lack of fear to intimidate. Nevertheless, according to witnesses' reports, in only one instance did a criminal justice official attempt to gather evidence of threats or to catch the defendant in the act of committing additional threats. Although close to one-third of witnesses reported telephone threats, in none of these cases was a phone tap installed. (In one case, however, the witness told the defendant that she had tapped her own phone, even though this was not true. The defendant stopped calling her.) None of the Criminal or Supreme Court witnesses reported that detective investigators from the prosecutor's office were called in to investigate threats. In the one case that a witness reported criminal justice officials attempted to observe additional threats, police accompanied her to school for several days with the dual aims of protecting her and apprehending the defendant's friends in the act of threatening her. (They were not successful in apprehending them.) Thus, investigation of witness intimidation, according to the witnesses interviewed, was not a regular practice for police or other criminal justice officials.

Witnesses were offered some form of protection in only 3 of the 69 Criminal Court cases, 1 of the 21 Supreme Court cases and 1 of the 6 Family Court cases reported. In 4 of these instances the police provided some form of protection: removing the defendant, a witness' ex-husband, from her house; escorting a witness to school

for a couple of days; and in two cases, directing special attention to witnesses' neighborhoods during regular patrols. Prosecutors offered protection in one instance; a Supreme Court prosecutor found a place to which to relocate a witness, although the witness decided not to move. In one Criminal Court case VSA provided protection-escort service to and from court.

The responses of criminal justice officials to reports of threats according to their role in the system are summarized in Table 3.3. (In addition to the six witnesses in the Criminal Court sample who spoke with VSA staff about the threats, eight threatened witnesses whose names were obtained from VSA records and who were interviewed are included in the figures reporting VSA's response.[5] Furthermore, data from all three courts are combined here because the role of the criminal justice official appeared to determine his or her response more than the particular court in which the case was heard.) Police, Assistant District Attorneys, Assistant Corporation Counsels, and VSA staff appeared to have largely limited their responses to talking with witnesses in contrast to judges who were most likely to admonish defendants. Prosecutors, Assistant Corporation Counsels and VSA staff seemed to have played important roles as liaisons between witnesses and other court officials. Virtually all of their efforts, beyond speaking with witnesses, were directed toward bringing the threats to the attention of other criminal justice officials. In most instances prosecutors told judges and VSA staff told prosecutors of the threats. Prosecutors and VSA staff often not only communicated the fact that witnesses were threatened, but also advocated that judges admonish defendants or issue Orders of Protection. Thus, judges were seen by other

TABLE 3.3

RESPONSES OF CRIMINAL JUSTICE OFFICIALS TO REPORTS OF THREATS*

Responses of Criminal Justice Officials:	Police (n=74)	Assistant District Attorney or Assistant Corporation Counsel (n=41)	VSA** (n=13)	Judge (n=18)
Response Was Limited to Talking With the Witness About the Threats	72%	63%	(69%)	11%
Brought the Threats to Another Criminal Justice Official's Attention	5	37	(31)	6
Admonished the Defendant or Issued An Order of Protection	16	—	—	83
Provided Some Form of Protection***	5	2	(8)	0
Reopened the Case, Made an Arrest, Investigated Threats, or Stiffened the Sentence	4	2	(0)	6

*The percentages add to more than 100% because more than one type of response occurred in some cases. Responses from the three courts are combined.

**Eight interviewed witnesses whose names were obtained from VSA records and who were not in the Criminal Court sample were included here. Refer to Footnote 5 of this Chapter.

***The types of protection offered were removing the defendant from the witness' house; escorting the witness to school or court; directing special attention to the witness' neighborhood during police patrols; and relocating the witness.

officials as most able to help threatened witnesses, and indeed, they took strong actions more frequently than other officials.

D. The Impact of Intimidation on the Prosecution of Cases

Conviction rates in the threatened witnesses' cases were similar to overall conviction rates in the three courts: 50 percent of the Criminal Court threatened witnesses' cases (n=109) resulted in a guilty plea or conviction compared to 52 percent (n=36,524) of all cases disposed in Brooklyn Criminal Court in 1980; 90 percent of the Supreme Court threatened witnesses' cases (n=30) resulted in a guilty plea or conviction compared to 81 percent (n=4,737) of all cases disposed in Brooklyn Supreme Court in 1980;[6] and 25 percent of the Family Court threatened witnesses' cases (n=12) resulted in an admission or finding of delinquency compared to 19 percent of all delinquency cases (n=2,015) disposed in Brooklyn Family Court in 1979.[7] Thus, on an aggregate level, the threats had little apparent impact on the prosecution of cases.

According to most witnesses interviewed, the threats did not affect their willingness to cooperate with the courts. The majority were asked to attend court and most attended at least once (See Table 3.4). Although between one-third and one-fifth of the witnesses said they missed court on at least one occasion, only 8 percent in the Criminal and Family Court samples and 4 percent of the Supreme Court sample said that they did not attend because they were frightened, i.e., were successfully intimidated. (Variations in attendance and rates of successful intimidation among the courts were not statistically significant.) Nevertheless, as

TABLE 3.4

PATTERNS OF COURT ATTENDANCE BY THREATENED WITNESSES*

	Criminal Court (n=91)	Supreme Court (n=27)	Family Court (n=13)
Attended Court At Least Once When Asked to Attend	88%	89%	(85%)
Missed Court At Least Once When Asked to Attend	23	19	(31)
Did not Attend Court Because of Threats, i.e., Were Successfully Intimidated	8	4	(8)

*The figures in this table are based on only those witnesses who were asked to attend court. The majority of witnesses--100% in Family Court, 84% in Criminal Court, and 87% in Supreme Court--reported they were asked to attend. None of the differences among the courts shown in this table are statistically significant.

was previously mentioned, cases of successful witness intimidation were probably underrepresented in these samples. In this context the nine cases of successful intimidation were of particular interest because they may represent a greater proportion of witnesses than suggested by this study. They are described in greater detail below.

As was true for most witnesses in the samples, in eight of the nine cases in which witnesses were successfully intimidated the original crime was a violent one--assault, rape, or robbery. In five cases the witnesses knew the defendants before the crime: three were the witnesses' husbands, one was a neighbor, and one was an acquaintance. In four cases the defendant and witness had no prior acquaintance. Eight of the nine witnesses were told they would be beaten or killed if they pursued the case in court. Threats were delivered either in direct verbal confrontations (7) or by telephone (1); none were threatened with a weapon or attacked.

The threats in these cases were not markedly more severe than threats reported by other witnesses in the samples who cooperated with the courts. Indeed, in one Family Court case a witness ceased to cooperate with the court even though she was not overtly threatened:

> The witness' purse had been snatched by several juveniles with whom she had no prior acquaintance. On the second court date, the mother of one of the juveniles approached the witness inside the Family Court building. The mother asserted in a menacing tone of voice that her son had not done anything. The witness felt threatened and refused to return on subsequent court dates. She also began walking alternate routes to avoid the street where the crime occurred because the juveniles lived nearby. The case was dismissed because of the Corporation Counsel's inability to proceed without the witness.

In six of the nine cases the witness did not report the threats to criminal justice officials. One witness denied that she had been threatened when the prosecutor asked her. In three cases, however, witnesses told at least one criminal justice official about the threats and consequently the system had an opportunity to respond.

In one Criminal Court case the witness told the prosecutor at the onset of her case that the defendant, her ex-husband, continuously threatened to kill her. The prosecutor secured an Order of Protection for this woman, but she insisted upon dropping charges. The case was Adjourned in Contemplation of Dismissal (ACD). In this case it appeared that the prosecutor was concerned for the witness, but he did not urge her to press charges.

In another Criminal Court case, a rape by an acquaintance, the defendant threatened to kill the witness if she told anyone of the crime. She reported the crime and threat to both the police and Criminal Court prosecutor. The police gave her a telephone number to call should anything happen. The witness felt better because they had a record of the threat. Nevertheless, she was too afraid to attend court. The prosecutor may have taken this factor into account because he negotiated a guilty plea on the first court date. The prosecutor in this case appeared exceptionally concerned for the witness. After the case was disposed he telephoned her and told her the outcome and that the judge had admonished the defendant to stay away from her.

In the third case, a stranger-to-stranger robbery heard in Supreme Court, the defendant told the witness' sister that he would kill the witness if he went to jail. According to the witness the prosecutor came to her home to convince her to come to court. She said,"I told him I'd been threatened, but he said he couldn't do anything unless I was threatened face-to-face. So then I refused to go to court and he was angry." The charges against the defendant were dismissed. In this case the prosecutor wanted the witness to pursue the case, but apparently he could not do anything to sufficiently protect or reassure her.

The responses of criminal justice officials in these three cases--issuing an Order of Protection or an admonishment, making notes of the threats, or simply talking to the witness--were more active than the average response received by witnesses in the study. What was distinctive about these cases was neither the severity of the threats nor the responses of the criminal justice officials, but that the witnesses were afraid the defendants would carry out their threats. Although none of these defendants did carry through with the threats it is difficult to know what would have occurred if the witnesses had pressed charges. The attitudes of these criminal justice officials towards witness intimidation ranged from resignation to frustration, since they perceived that admonitions to the defendant were the strongest response they could make.

Seven of the nine cases in which witnesses were successfully intimidated were dismissed or adjourned in contemplation of dismissal. In two cases, however, defendants pled guilty.

The guilty plea may have resulted in one of these cases because another witness cooperated with the prosecution. In the other case (mentioned above) the prosecutor was informed of threats and may have extended a tempting plea offer to the defense in order to avoid a trial. Nevertheless, the data, although limited, suggest that when witnesses refused to cooperate the case was most likely to be dismissed.

Compliance with defendants' demands not to cooperate appeared to be more fruitful for witnesses in stranger-to-stranger cases than those in relationship cases. Five of the eight witnesses who were successfully intimidated were bothered again by the defendant after the case was disposed. Harassment in the two stranger-to-stranger cases in which problems recurred consisted of hostile stares and anonymous phone calls. Harassment in cases in which there was a prior acquaintance, however, was more severe than in the stranger-to-stranger cases: one defendant (a woman's husband) continued to threaten her, although he did not hit her (in the original crime he had assaulted her with a baseball bat and she had been hospitalized); another defendant (a woman's common-law spouse) continued to hit her, although he had promised to stop if she dropped charges; and one defendant (the witness' neighbor) repeatedly harassed and vandalized the witness. This last case is particularly instructive as to the problems experienced by witnesses threatened by people with whom they have some sort of relationship:

> The witness, a 38 year-old man, discovered his neighbor in the act of stealing his stero. The defendant told the witness that he would kill him unless he agreed to have the case mediated. The case went to mediation and was adjourned in contemplation of dismissal in Criminal Court. Nevertheless, the defendant still continued to harass the witness by ciphoning gas from his car, letting the air out of the tires, and telling the witness to get out of the neighborhood. The witness reported the vandalism of his car to the police and they told him he should file for a new arrest if anything else happened. At the time of the interview the witness was trying to find a new place to live in order to avoid further trouble.

It seems likely that if the witness had prosecuted the case in court the harassment would have been even more severe. Still, failure to prosecute the case did not produce a satisfactory result either. The case illustrates the dilemma faced by many witnesses who have a prior acquaintance with the defendant in which neither prosecuting nor dropping charges (nor mediating the case) is likely to resolve the problems between them.

E. The Impact of the System's Response on Recurrence of Problems

After reporting threats, 22 percent of Criminal Court witnesses, 35 percent of Supreme Court witnesses, and 33 percent (2) of Family Court witnesses were again bothered by defendants. The numbers who were burglarized, vandalized or attacked, however, were lower: 15 percent in the Criminal Court sample, 5 percent (1) in the Supreme Court sample, and none in the Family Court sample were revictimized after making a report. Still, several of those who were not revictimized were afraid that something might happen. The interviews were conducted an average of two to three months after the witnesses' cases were disposed. It is possible that some witnesses experienced retaliation subsequent to the interview.

There was a strong tendency in all three courts for witnesses who knew the defendant to experience more problems after reporting threats than witnesses who had no prior acquaintance with the defendant (see Table 3.5). Indeed, in the Criminal Court sample witnesses who knew the defendant were more than twice as likely (30 percent) to experience further problems than witnesses in stranger-to-stranger cases (12 percent). This finding is in accordance with data presented earlier which suggested that there was both a quantitative and qualitative difference between threats in cases in which there was a prior acquaintance and cases in which witnesses and defendants were strangers.

Admonishments by judges, the primary response of the criminal justice system, were associated with a reduction in problems (when controlling for the defendant-witness relationship), although the reduction was not statistically significant (see Table 3.6). The rate of recurring problems was almost twice as large in the 16 relationship cases in which no admonishment was given (50 percent) as in the 30 relationship cases in which the defendant was admonished (27 percent). In stranger-to-stranger cases, in which the recurrence of problems was generally low, a similar pattern was observed: 10 percent of the 10 defendants who were admonished bothered the witness again versus 18 percent of the 33 defendants who were not admonished.

It was not possible to measure the impact of other types of actions taken by officials, because they did not occur in a sufficient number of cases for statistical analysis. Nevertheless,

CONTINUED

1 OF 2

TABLE 3.5

RECURRENCE OF PROBLEMS AFTER THREATS WERE REPORTED BY WITNESS/DEFENDANT RELATIONSHIP*

	Percent of Witnesses Bothered By Defendants After Reporting Threats to Criminal Justice Officials**		
	Criminal Court	Supreme Court	Family Court
Stranger-to Stranger Cases	12% (n=26)	(29%) (n=14)	(0%) (n=3)
Relationship Cases	30% (n=37)	(50%) (n=6)	(67%) (n=3)
Total	22% (n=63)	35% (n=20)	(33%) (n=6)

*None of the differences between stranger-to-stranger cases and relationship cases reflected in this table are statistically significant.

**Witnesses who did not report threats are not included in this table because the primary purpose of this chapter was to evaluate criminal justice officials' responses. If threats were not reported, there was no opportunity for the system to respond. Witnesses who did not report threats experienced problems with the defendant after the case was disposed at the same rate as those who reported threats: one-third of each group had problems after the case disposition.

TABLE 3.6

IMPACT OF JUDGES' ADMONISHMENTS ON RECURRENCE OF PROBLEMS*

	Percent of Witnesses Bothered by Defendants After Reporting Threats	
	Defendant Was Admonished	Defendant Was Not Admonished
Stranger-to-Stranger Cases	(10%) (n=10)	18% (n=33)
Relationship Cases	27% (n=30)	50% (n=16)

*Cases from Criminal Court, Supreme Court, and Family Court are combined in this table. None of the differences between cases in which the defendant was admonished and cases in which the defendant was not admonished are statistically significant.

several witnesses interviewed expressed the belief that actions taken by the police had discouraged defendants from continuing the harassment. For example, in one case in which the police had spoken with the defendant's family about the threats, the witness reported "he (the defendant) is a little cooler now." In another case, in which the police gave special attention to the witness' neighborhood, the witness said, "The mere presence of the police car scares him (the defendant) off."

Still, some witnesses felt that it was through luck or measures which they took on their own that they had averted serious problems. For example, one witness in a stranger-to-stranger robbery case heard in Supreme Court said:

> One day after the case ended, I saw [the defendant] on the street. He came over and said I was a snitch. Then he and a friend came closer to me looking mean... for a fight. But when my brother showed up they disappeared. I think they were going to hurt me.

One Criminal Court witness who had been raped by an acquaintance said: "I heard in the neighborhood that he was looking for me and wanted to get back at me." She felt that it was only because she had moved that she had avoided retaliation. Thus, measures which witnesses took on their own may have also reduced the number of instances in which serious incidents of retaliation occurred.

F. Witnesses' Assessments of the System's Response

Overall, the majority of witnesses who reported threats evaluated the system's response postively. Variations among the courts were not statistically significant. Over half (58 percent) felt it had helped to report threats to at least one official

(the remainder either responded negatively or said they did not know if it had helped).[8] Two-thirds also said at least one official's response increased their willingness to cooperate with the court.[9]

The most common way in which witnesses said it had helped to report threats was that the defendant stopped bothering them. Another way in which they said it helped was that officials were alerted to the problem. As one witness said, "I was relieved that they [the police and prosecutor] had a record of these occurrences." In a few cases witnesses said it helped to report the threats because the court took stronger actions. For example, one witness said that it helped to report the threats to VSA staff because it resulted in a strong verbal admonishment from the judge. Another witness said it helped because the defendant received a stronger sentence as a result of reporting the threats.

Still, a sizeable minority (35 percent) of the 96 threatened witnesses who reported threats felt more could have been done by the system to stop the threats. Witnesses who experienced further problems after reporting threats were significantly more likely than others to feel that the system should have done more to stop the threats: 57 percent of the 23 who were bothered again felt the system's response was inadequate versus 27 percent of the 66 who had no further problem.[10] Surprisingly, however, there was no great difference in assessments of the system's response between witnesses who knew the defendant (38 percent felt more could have been done) and witnesses in stranger-to-stranger cases (33 percent felt more could have been done), despite the different rates of recurrence of problems between these types of cases.

The most frequent criticisms of the system's response cited by roughly half who felt more could have been done were that the disposition was not harsh enough or the defendant should have been denied bail. For example, one Criminal Court witness who was assaulted by a stranger, was told by the defendant at the time of the arrest,"I'll stab you if you press charges." According to the witness, however, it did not help to report the threats because, "The judge didn't take it too seriously...30 days [the defendant's jail sentence] is not enough." In one Supreme Court case, a woman, whose ten year-old daughter was raped, reported to the prosecutor that the defendant was making anonymous phone calls five times a day. The mother said the prosecutor told her not to worry because,"So long as I'm handling this he won't get out." The mother later learned, however, that the defendant was out on probation and she reported that the prosecutor refused to return her calls.

Other witnesses complained that the police did not respond adequately to the problem. In one assault case heard in Criminal Court the witness received several phone calls from the defendant in which he used obscene language and threatened to beat her up. According to the witness,"I kept calling the police but they didn't do anything. They always said to call them if we keep getting the calls but they never did anything. They said the calls would probably stop sooner or later." In one Family Court case the witness said she called the police on several occasions

because the defendants, some boys from the neighborhood, continuously harassed her and her children after the case was disposed. She said the boys followed them around, pretended that they were going to burglarize the house again, threw garbage in front of her house, chopped at the staircase in front of her house with an ax, and threatened to burn her house down. On several occasions when the police came, however, she said they told her they could not do anything unless she was injured. "They didn't even write up a report." When asked if it helped to report threats to the police she responded,"It only helped because it showed them [the defendants] that I meant business. The police themselves didn't help. The police spoke to the brother of one of the kids but that's all." Ultimately, however, the witness reported the harassment to the Assistant Corporation Counsel and the case, which had been adjourned in contemplation of dismissal (ACD), was reopened. The witness and Assistant Corporation Counsel agreed to an extension of the ACD.

Some witnesses felt that their reports of threats were treated too casually and complained that the court did not keep them informed about the case. In one case the police were informed at the time of the arrest that the defendant had threatened to kill one of the witnesses. According to another witness in the case: "[The police] said they'd take care of it at the trial and let us know. But I don't know whatever happened because no one ever called us about dates." Another Supreme Court witness was angry because the court did not inform her that the defendant was out on probation.

One fourth of those who felt more could have been done to stop the threats said that the court should have told the defendant not to make threats, i.e., admonished the defendant. In a few instances (9 percent) witnesses said the defendant should have received counseling. One witness felt that she should have been provided with a letter to help her move to a new housing project. Another felt he should not have been required to tell his address when he testified in court. Only one witness said that he should have been given physical protection.

Some of the criticisms made by witnesses in this study, such as that the court should have admonished the defendant, derived from their specific needs as intimidated witnesses. Nevertheless, most of the witnesses' criticisms of the system's response were similar to complaints voiced by victims in general about the criminal justice system. Witnesses are often not satisfied with the outcomes of their court cases. The 1976 study of witnesses in Brooklyn Criminal Court revealed that 73 percent were not satisfied with the case outcome and approximately half of these felt that the case outcome was too lenient (Davis, et al., 1980). Moreover, many witnesses complained, just as in this study, that they had not been kept informed of proceedings in their cases. Other issues, such as the reading of witnesses' addresses out loud in court are a concern not only of intimidated witnesses but of witnesses in general.

These findings suggest that threatened witnesses' concerns are not confined to the system's response to threats, but rather that threats intensify witnesses' interest in the general handling of their cases. Witnesses who cooperate with the criminal justice system apparently do so with the expectation that a wrong which was committed will be dealt with in a proper manner. Those who are threatened, however, are even more concerned that the matter be dealt with appropriately as their cooperation entails some risks. It is the proper functioning of the system that most witnesses who cooperate perceive as the goal for which they risk their well-being. If they feel the system has not dealt properly with their case they often may feel betrayed.

FOOTNOTES; CHAPTER THREE

1. $x^2 = 2.27$; $p = .13$

2. In the Supreme Court sample, 86 percent (n=7) with a prior acquaintance reported threats versus 63 percent (n=24) in stranger-to-stranger cases: $x^2 = .48$ (ns). In the Family Court sample, 60 percent (n=5) with a prior acquaintance reported threats versus 38 percent (n=8) in stranger-to-stranger cases: $x^2 = .05$ (ns).

3. $x^2 = 18.83$; $p < .001$

4. $x^2 = 4.61$; $p = .03$

5. Only six witnesses in the Criminal Court sample said they informed VSA of threats. In order to obtain more information on VSA's response to witness intimidation an additional sample of witnesses was drawn from VSA records and interviews with threatened witnesses were completed as in the other samples (see Appendix A). In this way, eight additional witnesses who had reported threats to VSA were interviewed. These eight witnesses' experiences are included in analysis of the response of VSA in particular, but excluded from analysis of the overall response received by Criminal Court witnesses.

6. The figures for guilty pleas and convictions in Brooklyn Criminal and Supreme Court were derived from data provided by the Office of Court Administration.

7. The figure for admissions and findings of delinquency in Brooklyn Family Court in 1979 is derived from data in the Second Annual Report of the Chief Administrator of the Courts 1980, p. 86-87.

8. Data were missing in 25 of the 96 cases in which threats were reported, due to careless interviewing: n=71.

9. Data were missing in 32 of the 96 cases in which threats were reported: n=64.

10. x^2 (with Yate's correction) = 5.20; $p < .025$

CHAPTER FOUR

CRIMINAL JUSTICE OFFICIALS' PERSPECTIVES ON INTIMIDATION

Twenty-five criminal justice officials were interviewed to probe their understanding of the problems faced by intimidated witnesses, the procedures they use in dealing with various forms of intimidation, and their suggestions for improvement in the handling of witness intimidation. These interviews were carried out by staff of the New York City Criminal Justice Coordinating Council. Officials interviewed included judges (two from each court), Assistant Corporation Counsels and prosecutors (four from each court), Detective Investigators (two each from Criminal and Supreme Court) and VSA staff (three from Criminal Court).

Researchers felt it was important to learn the views of officials since they are familiar with the workings of the criminal justice system and probably more able than anyone to pinpoint the system's problems. Although ideally it would have been best for researchers to observe officials responding to cases of intimidation, practically this was not feasible. Instead, they were asked their general views of the problem and how they would respond in hypothetical cases.

A. Officials' Perceptions of the Incidence of Intimidation

Those officials (n=15) who were willing to venture an estimate of the incidence of witness intimidation cited figures ranging from 3 percent to 50 percent of all witnesses. The discrepancies in estimates may have resulted in part because some officials

misunderstood the question and estimated how many witnesses fear retaliation rather than how many are threatened. The majority of those interviewed emphasized that fear of reprisal is much more pervasive among witnesses than actual threats or harassment.

Virtually all officials interviewed stressed the difficulty of estimating the true incidence of intimidation of witnesses. Many commented that, in their experience, the most frightened witnesses rarely reported the fact, seeking to avert danger to themselves and their families by remaining silent and avoiding further involvement in the case. However, rates of witness non-cooperation were not seen as accurate indicators of rates of intimidation. Several officials mentioned the difficulty in knowing how many witnesses refused to cooperate with the court because of threats or harassment, and how many "dropped out" for other reasons, such as not having the time to come to court, or failing to perceive any benefit for themselves in going through the legal process, or fearing reprisals by the defendant without having been threatened.

All the officials said they had encountered witness intimidation. The experiences reported by VSA staff and Criminal Court detective investigators, however, were very different from those of the other criminal justice officials interviewed. VSA staff reported that they had encountered hundreds of cases in their (two, three, and five) years of court experience. The Criminal Court detective investigators also reported that they dealt with fifty to one-hundred cases a year. The remainder of officials who responded (10 of the 25 officials did not answer) said they had encountered less than 10 cases per

year on average. These accounts suggest that intimidation is reported most frequently to detective investigators and VSA staff, or that these officials are most sensitive to the issue of witness intimidation. Nevertheless, none of the witnesses in the Criminal Court sample said they had told detective investigators of threats. Furthermore, the Criminal Court witnesses' interviews, in conjunction with the data concerning the frequency of witness intimidation, suggest that less than 1 percent of witnesses in the general witness population informed VSA of threats - fewer than reported threats to any other criminal justice official, aside from detective investigators. These discrepancies are perplexing. It is possible, though, that some interviewed witnesses who spoke with VSA staff and detective investigators improperly identified them as prosecutors.

Although there were disparities in their estimates of the incidence of intimidation, there was agreement among officials that certain witnesses were more likely than others to be threatened. Witnesses who know the defendant or live in the same neighborhood were mentioned as more likely to be threatened by several officials. Other types of witnesses who were identified as more susceptible were witnesses who appear to be especially vulnerable due to being elderly, young, or female; witnesses in robberies (versus burglaries); and witnesses in crimes involving more severe charges. The officials' observations corresponded closely to the findings from the 1976 study of Brooklyn Criminal Court witnesses, reported in Chapter 2. Data from that study suggested that women, witnesses who knew the defendant, and witnesses in cases involving more severe charges

were more likely than others to be threatened (refer back to Table 2.1).

B. Officials' Views of What Threatened Witnesses Want and the Type of Help They May Receive From the Criminal Justice System

Officials' perceptions of the type of help intimidated witnesses want were similar. Fourteen (56 percent) of the officials said witnesses want some sort of police action--either protection or an arrest. Six of these 14 officials said witnesses want 24-hour a day police protection. Ten (40 percent) of the officials believed that intimidated witnesses want defendants, or other threateners, incarcerated, both pending and after trial. In addition, 5 (20 percent) of the officials said witnesses desire to have criminal justice officials admonish defendants. Other types of assistance which officials said threatened witnesses want were Orders of Protection or "some kind of legal order" (2), reassurance (1), an increase in the bail amount (1), escort service to and from their homes (1), and, in some instances, to have the case dropped as "a way out" (1).

In general, officials who thought that witnesses expected police protection said that it was not usually possible to provide it. Most of those whose perception was that witnesses primarily wanted defendants to be incarcerated also said that it was usually not possible, unless there was sufficient evidence of intimidation to support a new charge. As one official said, "It's reasonable for them to want it, but it's impossible." Verbal admonitions by judges, verbal reassurance to witnesses, and increase or revocation of bail if evidence is sufficient were seen as reasonable expectations.

The officials' perceptions of what witnesses expected converged in some ways with the witnesses' accounts. Police action, incarceration of the defendant and admonitions were actions which many dissatisfied witnesses felt should have been taken, as revealed in the preceding chapter. Nevertheless, the emphasis officials placed on police protection, particularly 24-hour a day protection, was more extreme than what witnesses expressed. Only one of the witnesses interviewed said he should have received such protection. Furthermore, almost half of the witnesses interviewed felt that the criminal justice officials had done as much as possible to stop the threats. Thus, it seems that the criminal justice officials may have perceived witnesses as more demanding and dissatisfied than they actually are.

The officials described a wide range of assistance which could be provided to intimidated witnesses by the criminal justice system. Police--cited by two-thirds of the officials interviewed as among the best criminal justice officials for threatened witnesses to turn to for help--were seen as able to help by:

1. investigating complaints of intimidation;
2. arresting persons making threats;
3. patrolling and checking on witnesses, and making themselves visible in the community; and
4. talking to respondents or defendants involved in possible harassment.

Judges were described as able to help intimidated witnesses by:

1. verbally admonishing defendants;
2. issuing Orders of Protection;
3. increasing or revoking bail or remanding defendants to jail; and
4. ensuring speedy dispositions by moving cases up in the court calendar.

Assistant Corporation Counsels and prosecutors were seen to serve as the "liaison between witnesses and judges" by:

1. informing judges of intimidation;
2. requesting verbal admonishment of the defendant; and
3. requesting that bail be increased or revoked.

According to the officials interviewed, detective investigators from the District Attorney's Office in Criminal and Supreme Court provide the following services to threatened witnesses:

4. interviewing witnesses to determine if there is evidence of intimidation or harassment;
5. if evidence is sufficient to support an arrest, calling the police or making arrests themselves;
6. calling the police to request protection for witnesses;
7. escorting some witnesses to and from court; and
8. helping relocate threatened witnesses in some cases.

Like the Assistant Corporation Counsels and prosecutors, VSA staff were also seen to serve an important function as liaisons between witnesses and other criminal justice officials. According to the VSA staff interviewed, they help threatened witnesses in Criminal Court by:

1. informing the prosecutors, detective investigators, or, in some instances, the police of threats;
2. advocating for admonishments and Orders of Protection;
3. escorting frightened witnesses from the court to the subways or arranging for taxi cab service to and from court; and
4. explaining the court system to witnesses, counseling witnesses as to what to expect from the court, and generally reassuring witnesses.

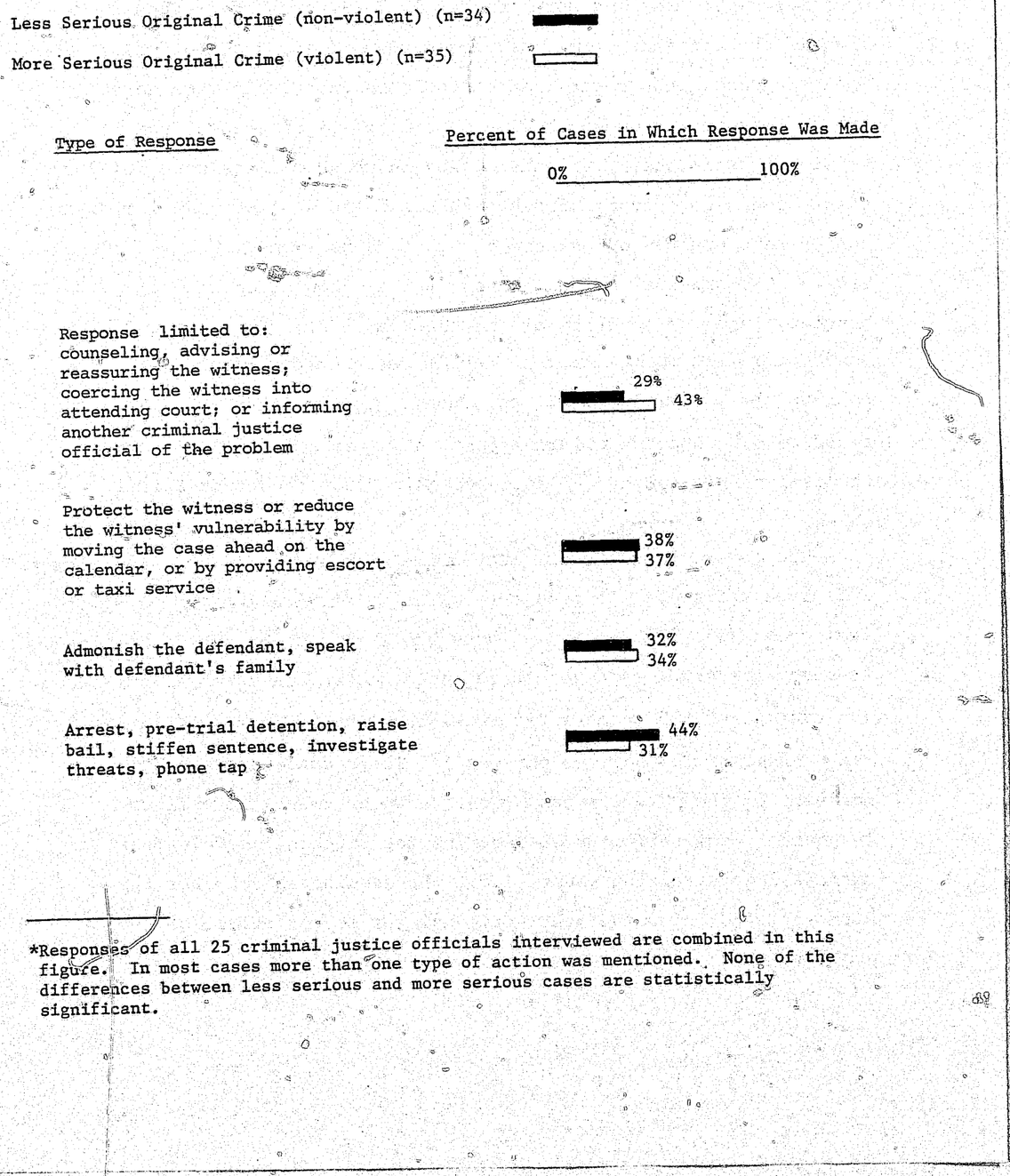
It was not feasible for VSA researchers to observe criminal justice officials respond to cases of witness intimidation. As a substitute, the officials were asked how they would respond in hypothetical cases. The hypothetical cases were designed to test two hypotheses. First, it was hypothesized that if the

original crime was more serious (eg., involved violence), officials would respond more concretely to reports of threats than if the original crime was less serious (eg., non-violent). The second hypothesis was that cases in which threats were more overt or dangerous would receive more concrete responses from criminal justice officials than cases in which threats were less overt or did not occur. Six hypothetical cases of witness intimidation were created and varied along two dimensions: The seriousness of the original crime (an assault in conjunction with a burglary) and the severity of the threats (i.e., fear, but no threat; an anonymous threat to commit arson; and threats followed by an anonymous act of arson). Each official was asked to describe the criminal justice system's response in three of the hypothetical cases[1] (see Appendix C for the hypothetical cases).

The severity of the original crime apparently did not significantly influence officials' responses to witness intimidation in the hypothetical cases (see Figure 4.1). There was a slight, but not significant tendency for more responses to be suggested in the more serious cases (an average of 2.5 actions per case) than in the less serious cases (an average of 2.3 actions per case). The responses which did increase in the more serious crimes, however, were the weaker responses: counseling and reassuring the witness; coercing the witness into attending court (i.e., threatening to subpoena the witness); and informing other criminal justice officials of the problem. Officials may have felt that witnesses involved in

FIGURE 4.1

OFFICIALS' RESPONSES IN HYPOTHETICAL CASES IN WHICH THE SEVERITY OF THE ORIGINAL CRIME VARIED*



*Responses of all 25 criminal justice officials interviewed are combined in this figure. In most cases more than one type of action was mentioned. None of the differences between less serious and more serious cases are statistically significant.

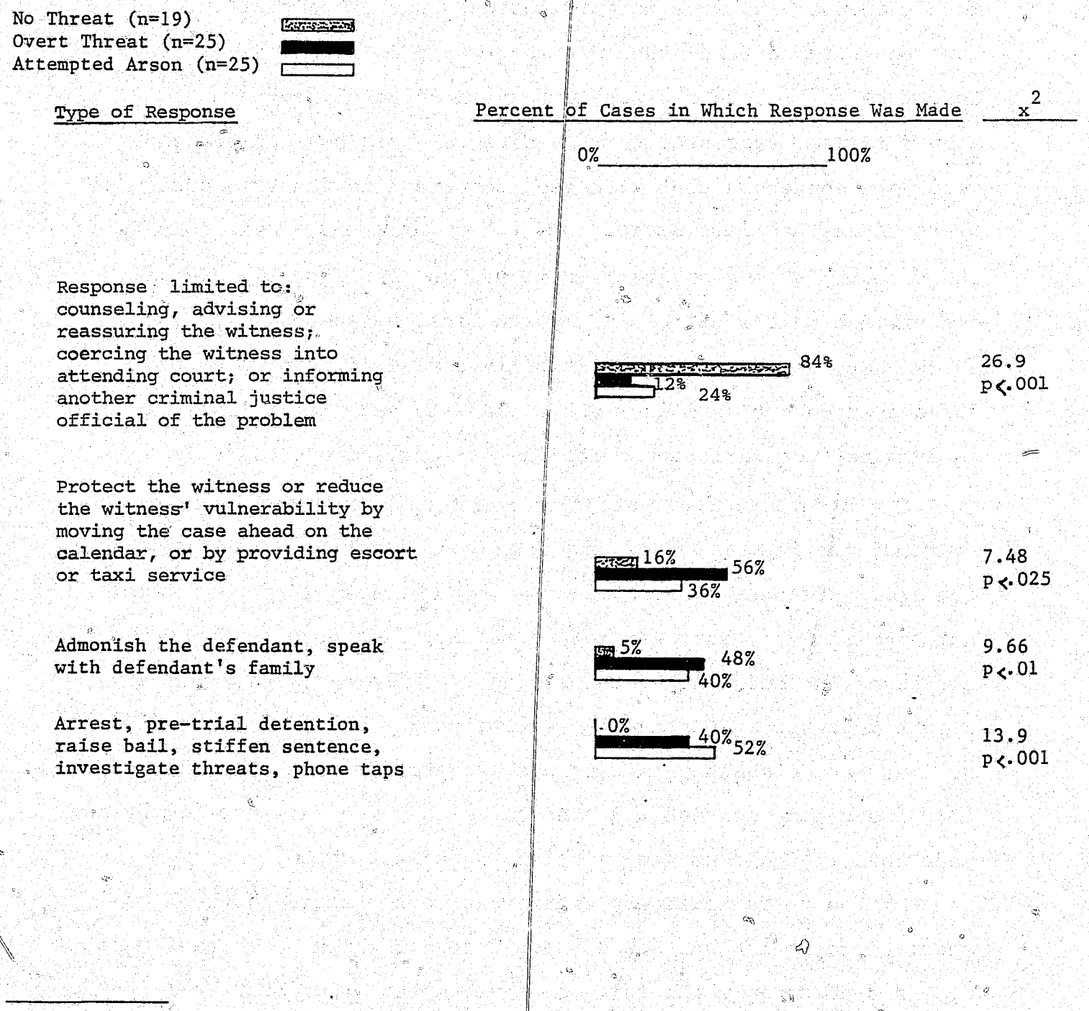
more serious cases were more frightened and consequently needed more reassurance than other witnesses. It is also possible that more efforts to reassure witnesses or to coerce them to cooperate were suggested in more serious cases because officials were more concerned that witnesses cooperate in the prosecution of these cases than less serious ones. In any event, variations in the severity of the original crime had no statistically significant impact on the officials' hypothetical responses. (In fact, there was a slight, but statistically not significant tendency for the strongest actions--such as arrests and pretrial detention--to be more frequently mentioned in the less serious cases.)

The severity of threats also had little impact on the criminal justice officials' hypothetical responses (see Figure 4.2). Contrary to expectation, officials' hypothetical responses were not significantly stronger in the attempted arson cases than in the cases in which only threats occurred. Indeed, there was a slight (but not statistically significant) tendency for certain actions--admonishments and measures to protect witnesses--to be more frequently mentioned in the cases in which only threats were made than in the cases in which arson was attempted.

The only statistically significant differences in the hypothetical responses existed between cases in which no threats were made and cases in which threats or attempted arson occurred. In the 19 hypothetical cases in which no threats occurred, but the witness told officials she was afraid, counseling and reassuring

FIGURE 4.2

OFFICIALS' RESPONSES* IN HYPOTHETICAL CASES IN WHICH THE SEVERITY OF THREATS VARIED**



*Responses of all 25 criminal justice officials interviewed are combined in this figure. In most cases more than one type of response was mentioned.

**None of the differences in response between cases in which the threat was overt and cases in which arson was attempted are statistically significant.

the witness predominated as hypothetical responses (cited in all but 1 case). Not surprisingly, when no threats had occurred the strongest responses (eg., arrests) were not mentioned in any of the 19 cases and in only 1 (5 percent) of these cases was an admonishment suggested. In contrast, in cases in which threats occurred or were carried out, stronger actions were mentioned more frequently: in roughly half of these cases arrests, pretrial detention, raising bail, stiffening the sentence, or investigation of the threats was mentioned, and in slightly less than half admonishments were cited.

Officials' responses in the 25 hypothetical cases in which threats were issued but not acted upon, were examined more closely because these cases were probably most comparable to (if not slightly less serious than) the actual cases of the threatened witnesses interviewed for the study. Arrests, pre-trial detention, raising bail, stiffening the sentence, and investigating threats were mentioned as appropriate responses in 10 (40 percent) of the 25 cases. Measures to protect witnesses or to reduce their vulnerability--were cited in 14 (56 percent) of the cases. Admonishments were suggested as a response in 12 (48 percent) of the cases.

Comparison of the officials' reactions in the 25 hypothetical cases with the interviewed witnesses' accounts of the system's response suggested that the officials overestimated the level of response. The rate of admonishments by judges or police in the hypothetical cases (48 percent) was not greatly different from

that reported by Criminal Court witnesses (61 percent). Nevertheless, the incidence of arrests or investigation of threats was much higher in the hypothetical cases (40 percent) than in the interviewed witnesses' cases (4 percent). Similarly, the rate of offers of protection or attempts to reduce witnesses' vulnerability was higher in the hypothetical cases (56 percent) than in the interviewed witnesses' cases (6 percent). Moreover, certain actions mentioned by officials, such as increasing or revoking bail and speeding up the disposition of the case, were not reported by any witnesses interviewed.

C. Officials' Views on Problems with the System's Response and Recommendations for Improvements

Although officials may have been tempted to exaggerate the level of the criminal justice system's response in the hypothetical cases, the majority (76%) agreed with the statement that "greater efforts are needed to combat witness intimidation." Only one official (a Criminal Court judge) said he did not think greater efforts were needed. ("I don't see it as a problem," he said. "The sporadic cases that have come up are handled by admonitions.")

The officials interviewed cited a variety of factors which inhibit the criminal justice system from responding to witness intimidation (see Table 4.1). The most significant constraint, cited by two-thirds of those interviewed, was seen to be lack of resources, including insufficient numbers of police and detective investigators, budgetary limitations and heavy caseloads.

TABLE 4.1

FACTORS INHIBITING THE CRIMINAL JUSTICE SYSTEM'S RESPONSE TO WITNESS INTIMIDATION ACCORDING TO CRIMINAL JUSTICE OFFICIALS INTERVIEWED

	Percent of Officials Who Mentioned the Inhibiting Factor* (n=25)
Lack of Resources or Manpower	68%
Insufficient Evidence to Prove Threats	24
Too Low Penalties for Witness Intimidation; Legal Constraints on Officials' Actions	24
Officials Not Informed of Threats; Witnesses Refuse to Testify	16
Officials' Insensitivity to the Problem	8

* The percentages add up to more than 100% because some officials cited more than one inhibiting factor.

Another problem according to one-fourth of those interviewed was lack of evidence to prove the threats. According to one official the witness often does not know who made the threats. Another official pointed to the fact that evidence is often hard to get because of lack of investigative resources.

A further problem cited by officials was that the penalties for witness tampering are not severe enough. The difficulties involved in proving a charge of tampering with a witness and the low penalties which would result even if prosecution were successful were summed up by one prosecutor who said, "Arresting the defendant on a new charge of tampering with the witness means the witness has to be willing to testify in two cases now; and even if convicted of tampering, it's only a misdemeanor and will be concurrent time with his sentence from Supreme Court."

Others mentioned legal constraints as an inhibiting factor. Two officials cited the fact that officials may not monitor incarcerated defendants' telephone calls as a legal constraint on the system's ability to respond to witness intimidation. One judge brought up the problem of legal constraints at trial. Legally, during a trial judges can only hear evidence bearing on the truth of the original charge. Intimidation is not evidence of the validity of the charge. According to the judge interviewed:

> We're not supposed to get involved except to hear both sides and we're not supposed to hear material that's not admissible in evidence. Often, a defense lawyer will move to disqualify the case on grounds that we've heard inadmissible allegations. It would be a separate charge, if it's a charge at all.

Sixteen percent of officials cited witnesses' reluctance to testify or failure to report the problem as an inhibiting factor. One judge said, "We can only respond where we know about it. We have to be informed." Insensitivity of criminal justice officials to intimidated witnesses was mentioned as another problem by eight percent of those interviewed.

The officials offered many recommendations to improve the criminal justice system's response to witness intimidation. These recommendations can be categorized into four groups: legislative, procedural, new programs, and improved performance:

1. Legislative changes recommended were:

   a) making intimidation of witnesses a felony, rather than a misdemeanor, thereby increasing the penalties;
   b) mandatory sentencing;
   c) sentencing for intimidation offenses to be consecutive, rather than concurrent, with sentences for the original offense; and
   d) changing the law so that the defendant could be held responsible for acts of intimidation committed by others on his behalf.

2. Procedural changes recommended included the following:

   a) that the Department of Corrections should strengthen procedures to prevent tampering by phone or by mail on the part of defendants in jail;
   b) that in cases of intimidation, the District Attorney's Office should withold names and addresses of witnesses, unless ordered by the judge to give them to the defense attorney;
   c) that if threats are made by phone, police or the District Attorney's Office might ask a witness if they may tap the phone by consent to obtain proof; and
   d) that record keeping of threats should be improved, generally, including: that officials should record threats in as much detail as possible--giving dates, times, places, and if possible, actual words; that reports of threats to the court should be done on the record rather than during bench conferences; that judges should endorse the papers to show that they have warned a defendant because the endorsement will inform the next judge who gets that case that there was a warning issued.

3. Recommendations for new programs or new program elements included:

   a) a special police unit, or combined police and Detective Investigator unit, to provide assistance and protection to intimidated witnesses;
   b) provisions for notifying witnesses of the outcome of cases on a prompt and systematic basis;
   c) coordination with supportive social services in the community, including temporary shelters, and financial aid for temporary or permanent relocation; and
   d) providing witnesses with "someone to talk to."

4. Lastly, many officials spoke of the need to increase criminal justice personnel and enhance the general performance of the system. According to one prosecutor, "better staffing throughout the criminal justice system" is needed, especially more police and Detective Investigators. An Assistant Corporation Counsel spoke of "the need to combat crime in general." A similar sentiment was expressed by a judge who said "greater efforts are needed to protect the public in general." One Family Court judge asserted, "The problem is larger than the problem of intimidation. In Family Court nothing gets done to kids anyway."

These officials' interviews suggest that witness intimidation is not an isolated problem in the criminal justice system. The factors which many officials cited as constraints on the system's response to witness intimidation, particularly budgetary limitations, impede the system's response in general. Similarly, the interviews with intimidated witnesses revealed that a number of their problems were problems experienced by all witnesses, not

just those who are intimidated. These data suggest that the problem of witness intimidation cannot be considered in isolation. Resolution of fundamental systemic problems, such as insufficient resources and staffing, as well as efforts to make the system more responsive to victims in general may be necessary in order to substantially improve the system's response to intimidated witnesses.

FOOTNOTES: CHAPTER FOUR

1. Family Court officials only responded to two of the hypothetical cases due to the fact that one pair of cases was not applicable to juvenile delinquents.

CHAPTER FIVE

REFLECTIONS

A variety of criteria may be used to assess the extent to which witness intimidation poses a problem for the criminal justice system. One criterion may be the sheer volume of witnesses who are threatened. Another may be the number of witnesses who are actually harmed in retaliation for pursuing court cases. Still another measure is the number of witnesses who refuse to testify or cooperate in the prosecution of defendants because of threats. Intimidation, almost by definition, is least likely to be learned of when it is successful. Nevertheless, the present study, in conjunction with previous Vera and VSA research, has been useful in defining at least some parameters of the problem.

Attempts to intimidate witnesses were distressingly frequent. Calls to 747 witnesses from Brooklyn Criminal Court, 249 witnesses from Brooklyn Supreme Court, and 156 witnesses from Brooklyn Family Court disclosed that at least 15 percent, 12 percent, and 8 percent respectively had been threatened. Other Vera and VSA research suggest higher rates of intimidation in these courts. In previous studies, threats were reported by 21 percent of 194 Criminal Court witnesses, 48 percent of 27 Supreme Court witnesses, and 19 percent of 59 Family Court witnesses. These figures also may be underestimates, however, as some witnesses were probably too frightened or reluctant for other reasons to inform interviewers of threats. Moreover, these figures omit instances in which crimes are not reported to the police because of witness intimidation.

In most cases in the present study, the threats against witnesses were not carried out. Nevertheless, among those threatened, 23 percent from Criminal Court, 6 percent from Supreme Court, and 15 percent (2) from Family Court were revictimized (i.e., burglarized, vandalized, threatened with a weapon or attacked) by the defendant or the defendant's associates. In some cases witnesses were not warned before the retaliation. Thus, although most threats issued by defendants were not followed through, the chance that a witness would suffer some form of reprisal was not entirely remote. These figures reported here, in conjunction with previous Vera and VSA research, translate into rates of retaliation of 5 percent of all witnesses in Brooklyn Criminal Court and 3 percent in Brooklyn Supreme and Family Court. When one considers the thousands of victims who pass through these courts, these numbers imply that a substantial number of witnesses suffer reprisals each year.

The extent to which threats deter witnesses from cooperating with the courts and consequently impair the proper functioning of the criminal justice system is probably underestimated by the present study. Of the threatened witnesses who were interviewed, only 8 percent in Criminal and Family Court and 4 percent in Supreme Court reported that they did not attend court because of threats. These figures translate into rates of successful intimidation between one-half and one percent of the general witness populations of the courts -- not a disturbing figure. It seems probable, however, that witnesses who were successfully intimidated were more difficult to contact and more reluctant to be

interviewed than other witnesses. Even if interviewed, some may have been embarassed to admit they had been too frightened to cooperate.

The impact of witness intimidation cannot be assessed solely in terms of the number of threats carried out or the number of cases not successfully prosecuted. The fear and anxiety experienced by some intimidated witnesses, compounded by the trauma of their initial victimization, are difficult to quantify. Given the normal difficulties that moving entails, compounded by the housing shortage in New York City, the fact that ten percent of the threatened witnesses who were interviewed had either moved or were planning to move reflects a high level of distress among some threatened witnesses. When one considers that this figure almost certainly underestimates the true rate at which threatened witnesses move, the plight of these witnesses stands out even more sharply.

According to the witnesses interviewed, the primary responses of criminal justice officials to reported instances of intimidation were to speak with them about the problem or to admonish the defendants. The data suggest that these actions may have reduced some witnesses' anxiety and that admonishments were marginally successful as deterrents. In those cases in which defendants stopped harassing witnesses, these responses appear to have been adequate. Nevertheless, little seemed to have been done by criminal justice officials either to protect witnesses or to deter defendants from carrying out the threats. Even when witnesses reported intimidation a second or third time, criminal justice officials took few actions

beyond admonishing defendants. Rearrests only occurred if a new crime was committed, not if defendants limited their actions to threats. Thus, defendants had to commit serious acts against witnesses before criminal justice officials would take strong actions.

There was virtual consensus among the 25 criminal justice officials interviewed that greater efforts are needed to combat witness intimidation. Moreover, they expressed frustration as well as concern over the problem. The lack of adequate resources and staff, to handle not just intimidation, but the regular processing of cases, was a primary problem identified by more than two-thirds of the officials interviewed.

There are constraints on the amount of resources that the over-burdened Brooklyn courts can apply to the problem of witness intimidation. Although certain measures--such as relocation of threatened witnesses and 24-hour police protection--would benefit intimidated witnesses, it is not economically feasible for the criminal justice system to provide such services on a large scale. Nevertheless, the data gathered for this study suggest that other steps that are not excessively costly could be taken to address the problem.

There are four ways in which the criminal justice system could improve its response to witness intimidation: limiting defendants' opportunities to threaten witnesses; increasing official sanctions against witness intimidation; increasing protection for threatened witnesses; and providing witnesses with more assistance in coping with threats and cooperating with the courts.

A. Limiting Defendants' Opportunities to Threaten Witnesses

Among threatened witnesses, 11 percent from Criminal Court, 10 percent from Supreme Court, and 15 percent (2) from Family Court were threatened at the scene of the arrest. Although not all of these threats could have been avoided, in some cases they could have been prevented if contact between witnesses and defendants had been more restricted. Witnesses reported being threatened while riding to the precinct in the same police car as the defendant and while inside the precinct. One witness complained that he had had to identify the defendant in a line-up face-to-face. These findings suggest that some threats could be avoided by adopting the following measures:

- Defendants and witnesses should be separated immediately upon arrest.
- A separate waiting area should be provided for witnesses at police precincts so that they do not have to have contact with either defendants or defendants' relatives.
- Identifications of suspects should be conducted through one-way mirrors.

If implemented, these practices might not only reduce the number of witnesses threatened, but also reduce the anxiety of witnesses in general, regardless of whether they were threatened.

Another area in which criminal justice officials could restrict contact between witnesses and defendants is the courthouse. Among threatened witnesses, 15 percent from Criminal Court, 26 percent from Supreme Court, and 8 percent (1) from Family Court were threatened inside or nearby the courthouse.

In Brooklyn Criminal Court, VSA operates a secure reception center where witnesses may wait before their cases are heard in court. In Brooklyn Supreme and Family Court, however, no such facilities exist. Generally witnesses in these courts must wait either in the courtrooms or in the halls, often alongside the defendants and their families. A reception center does not eliminate the possibility that a witness will be threatened at court, but, it almost certainly reduces the likelihood.

- Witness reception centers should be provided in the Supreme and Family Court.
- In cases in which witnesses have been threatened or fear retaliation, they should be assisted in entering and leaving the courthouse through back or side exits.

Although contact between defendants and witnesses may be limited at the scene of the arrest or the court, one of the most disheartening findings of this study was that the majority of threats occur in areas where criminal justice officials have little control over contact between witnesses and defendants, i.e., in witnesses' homes, neighborhoods, schools and workplaces. Although witnesses who knew the defendant were more likely than others to be threatened in these areas, more than half of intimidated witnesses in stranger-to-stranger cases (60 percent in Criminal Court and 75 percent in both Supreme and Family Court) were threatened in these areas too. It is not clear how defendants in stranger-to-stranger cases knew how to locate witnesses. It is possible that some did not seek out the witnesses to make threats but simply took advantage of a chance meeting to intimidate

them. Furthermore, it seems likely that some lived in the same neighborhood as witnesses or passed them routinely each day so that although they did not know them before the crime, afterwards they knew where to find them. It is also possible, though, that some defendants learned where witnesses lived from the court.

One Supreme Court witness who was asked, as is routine in most trials, to give both his name and address when he testified, expressed concern about this procedure. One Supreme Court judge, who appeared to be particularly attuned to the problem of intimidation, said: "In my courtroom no address is ever asked of witnesses, for their protection." This would seem to be a wise policy to implement in courtrooms:

- Witnesses should not be required to divulge their addresses when they testify.

This would lessen the likelihood that defendants would obtain witnesses' addresses. Furthermore, it would probably reduce fear of retaliation among many witnesses who testify, not just those who are threatened.

Even if witnesses are allowed to withhold their addresses when they testify, however, their names, addresses, and telephone numbers are recorded on the 61 Form that is filled out by the police officer when the defendant is arrested. The defense attorney and the defendant both have access to the 61 Form. In addition, victims' names appear on court documents and witnesses must divulge their names when they testify, as defendants have a constitutional right (the Sixth Amendment) to confront their accusers. Unless witnesses have an unlisted telephone number,

defendants can learn where they live by looking up their names in the telephone book. Thus, defendants have the ability to learn where witnesses live, to seek them out, and to intimidate them. Still, the importance of limiting defendants' opportunities to make threats, including their access to information which would help them locate witnesses, should not be underestimated. The ease with which defendants can contact witnesses is probably related to the frequency with which they make threats. The measures suggested thus far would be useful in reducing defendants' opportunities to intimidate witnesses.

B. Increasing Official Sanctions Against Witness Intimidation

Given the fact that many defendants can learn where witnesses live, it seems important to develop other measures to deter them from making threats. Several changes in the witness tampering law and the bail statute have been proposed to increase official sanctions against witness intimidation. The criminal justice officials interviewed suggested a number of such changes: making witness tampering a felony rather than a misdemeanor; enacting mandatory sentences for those convicted of witness intimidation; making sentences for intimidators consecutive rather than concurrent with sentences for the original offenses; and making the defendant responsible for acts of intimidation committed by others on his behalf. The American Bar Association Committee on Victims (1979: 7-12) proposed similar legislative changes, including making witness intimidation a specific crime[1]; changing witness tampering to a felony; making an agreement not

to intimidate the witness an automatic condition for pre-trial release; and allowing bail or pre-trial release to be forfeited in instances when anyone, not just the defendant, attempted to intimidate the witness on the defendant's behalf.

Increasing the penalties for witness intimidation, though, may not have much impact in the Brooklyn courts. As the law stands now, intimidators may forfeit their pre-trial release and those convicted of witness tampering can be sentenced to as much as one year in jail. Criminal justice officials, however, rarely invoke these sanctions. Increasing the penalties for witness intimidation would not be effective unless the penalties were begun to be applied.

There are probably two major reasons why intimidators are rarely prosecuted for witness intimidation and infrequently forfeit their pre-trial release. First, legal evidence is often lacking in cases of witness intimidation. Roughly one-fourth of the officials interviewed cited insufficient legal evidence as a problem in dealing with intimidation. Second, to prosecute successfully a case of witness tampering or to rescind a defendant's pre-trial release would be a further drain on the system's already scarce resources; staff would be needed to investigate, prepare, and present evidence that threats had occurred.

However, other methods that largely circumvent problems of legal evidence and scarce resources could be used to discourage defendants from making threats. Prosecutors' offices exercise discretion in determining what charges to file against a defendant and what sentence to ask of the court. Most cases are not

prosecuted to the full extent theoretically possible.

- If the District Attorney's office established a policy of prosecuting defendants who issue threats more fully than those who do not, some defendants might be discouraged from intimidating witnesses.

In more serious cases, such as those heard in Supreme Court, in which the defendant is likely to receive a prison sentence, this policy might have little deterrent effect. In less serious cases, though, such as those disposed in Criminal Court, such a policy might succeed in reducing witness intimidation.

Existing measures also could be more extensively used. For example, admonishments were issued in many, but not all cases in which witnesses were threatened. Although admonishments were found to be only marginally successful in stopping threats, it is important that even marginally successful measures be taken, given the difficulty of combatting this problem.

- Judges should routinely admonish defendants in all cases not to threaten witnesses.
- Orders of Protection should be issued in all cases in which threats are known or suspected to have occurred. When judges issue Orders of Protection they should make certain that defendants and witnesses understand their meaning. The orders should be written in Spanish as well as English.

C. Increasing Protection for Threatened Witnesses

Providing 24-hour police protection for threatened witnesses is neither necessary nor feasible in most cases. Although it may be possible to identify the types of cases in which there is a statistically greater risk of severe retaliation, it is impossible to predict the precise cases in which it will

occur. Most witnesses interviewed did not expect police protection. Despite the fact that none of the witnesses received 24-hour police protection, only one felt that he should have received such a service.

Less expensive protection measures than 24-hour police surveillance could be tried. Two witnesses said that in response to their reporting threats, police gave special attention to their neighborhoods in regular patrols. One of these witnesses felt that the increased surveillance deterred the defendant from entering the neighborhood.

- Police should be alerted when witnesses who live in their precincts are threatened so that they may direct special attention to those witnesses' areas.

Another form of protection received by two witnesses in this study was escort service. In one instance the witness was accompanied to school for several days by the police. In the other case, VSA staff provided the witness with escort service to and from court. Neither the police nor VSA, however, can provide escort service as frequently as they are needed.

- The possibility of enlisting the auxilliary police should be explored. Auxilliary police could provide escort service to threatened witnesses as well as direct special attention to threatened witnesses' homes in their patrols.

D. Helping Witnesses Cope With Threats and Cooperate With the Courts

Despite improved efforts, no witness can be fully protected from retaliation. Even if defendants are incarcerated, their friends or relatives may seek revenge. Although only a minority of witnesses suffer retaliation, statistics are small solace when the possibility exists. Given the criminal justice system's limits on protecting witnesses, it seems reasonable that information concerning defendants' whereabouts (i.e., whether jailed or free) be available to witnesses so that they can take measures to protect themselves.

- Witnesses should be informed whenever defendants are released by the system--whether before the trial or following the case disposition.

Other measures could be taken to help witnesses cope with threats. It was found that almost one-third of the interviewed witnesses took some sort of precautions on their own to deal with the threats, including changing their phone numbers (2 percent), and either moving or planning to move (10 percent).

- The District Attorney's Office and VSA should develop liaisons with the telephone company, the Housing Authority, and school boards to facilitate relocation and changing phone numbers, jobs, or schools.

Steps should be taken to dispose of intimidation cases as quickly as possible.

- Judges should be encouraged to expedite those cases in which threats are reported.

Speedy disposition of these cases would probably reduce many witnesses' anxiety.

Both the American Bar Association Committee on Victims (1979:14) and several criminal justice officials interviewed for this study suggested that a special unit be developed to investigate cases of intimidation and provide protection and assistance to threatened witnesses. The most logical location for such a unit would be in the District Attorney's Office. The unit could coordinate many of the activities suggested here.

- The possibility of developing a special witness intimidation unit should be explored. The unit could perform a number of activities including: notifying police to direct special attention to threatened witnesses' neighborhoods; securing escorts for intimidated witnesses; informing witnesses when defendants are released pending trial; informing threatened witnesses of the outcomes of their cases; developing liaisons with the telephone company, the Housing Authority, and school boards and assisting witnesses in changing their phone numbers, moving or switching schools; and, to the extent possible, investigating threats.

Research has shown that witness intimidation is both widespread and costly. It impairs the proper functioning of the criminal justice system and exacts an emotional and financial toll from its victims. If the recommendations presented here were implemented, the incidence and impact of intimidation might be lessened, but certainly not eradicated. This research suggests that witness intimidation is more intractable than anticipated. The criminal justice system is often inhibited

in responding to threats by lack of resources and evidence. Most defendants can learn where witnesses live, and in many instances there seems to be little the criminal justice system can do to protect witnesses from retaliation. Even after retaliation occurs, it is often difficult to prove the defendant was responsible.

Witness intimidation should not be examined in isolation. Intimidation is one of a host of problems attendant upon victims of crime. It is necessary and important to ameliorate the problems following victimization and to improve the criminal justice system's responsiveness to crime victims. However, we can not erase the victimization and we are often limited in our ability to deal with its corollaries, such as witness intimidation.

FOOTNOTES: CHAPTER FIVE

1. Two bills (Senate Bill #4576, and Assembly Bill #9821) that seek to define and to criminalize witness intimidation specifically have been introduced in the New York State Legislature this year.

APPENDIX A

METHODOLOGY

The purpose of this study of witness intimidation was to ascertain what is currently being done by the criminal justice system to aid witnesses who are intimidated, to evaluate the effectiveness of actions taken by criminal justice officials, and to suggest measures to strengthen the criminal justice system's response to intimidation. In order to understand the problems intimidated witnesses experience and to assess the ways in which these problems are handled by the criminal justice system, two types of data were gathered: (a) interviews with witnesses who had been threatened because of their involvement in cases being heard in Brooklyn Criminal, Supreme, and Family Court, and (b) interviews with various members of the criminal justice system. The witness interviews were carried out by VSA staff, while interviews with criminal justice officials were conducted by staff of the New York City Criminal Justice Coordinating Council.

I. Interviews with Intimidated Witnesses

A. Interviews with Samples of Witnesses from Brooklyn Criminal Court, Supreme Court, and Family Court

Random samples of witnesses from Brooklyn Criminal, Supreme, and Family Court were obtained and screened in order to identify and interview intimidated witnesses. Originally, it was intended that a sample of 200 intimidated witnesses would be interviewed. Of this number, 100 were to be drawn from Criminal Court cases. Ultimately, interviews were completed with 109 intimidated witnesses from Criminal Court, but only 31 from Supreme Court and 13 from Family Court.

It was not possible to achieve the intended number of Supreme and Family Court interviews for two reasons. First, the samples were selected in anticipation that approximately one-fourth of the witnesses would have been threatened. (This figure was suggested by a 1976 study of Brooklyn Criminal Court (Davis et al., 1980)). The reported rates of witness intimidation in the Criminal, Supreme and Family Court samples of the present study, however, were roughly two-thirds, one-half, and one-third of the anticipated rate, respectively. (Refer to Chapter 2 for a more thorough discussion of the rates of intimidation arrived at by this study.) In the case of Criminal Court witnesses, this problem was easily remedied as additional samples of witnesses were easily generated by VSA's computerized system. The Supreme and Family court samples, however, were gathered by hand. This was a much more time-consuming process than was expected at the onset of the study. In order to obtain case information, research staff had to sort through bulky files which belonged to the District Attorney and Corporation Counsel. Ultimately it was determined that the resources that would be expended in obtaining larger samples would not be worth the expected gain. Thus, both the lower rates of reported intimidation than anticipated and the lengthy procedures necessary to gather samples of witnesses account for the deficiencies in the number of interviews with Supreme and Family Court witnesses.

The sample of victims from Brooklyn Criminal Court was obtained through the Victim Services Agency's computerized information system which is used to notify witnesses and police officers to appear in court. A sample of 2,090 civilian witnesses who were involved in cases disposed in Brooklyn Criminal Court between April 14 and June 13, 1980 was selected.[1] Witnesses were excluded, however, if they lived outside the New York City metropolitan area (2), if they were under 16 years of age (140) or if there was neither an address nor a telephone number available (540). After these exclusions, a total of 1,365 witnesses constituted the pool for the Criminal Court sample. In addition to witnesses' names, the computer generated information including witnesses' addresses, telephone numbers, the charges against the defendant, the ECAB track of the case (a coded instruction given by the prosecutor at the Early Case Assessment Bureau, where charges are first drawn up, that indicates to the less experienced courtroom prosecutors what sort of disposition to seek in the case), and the number of times the case was adjourned in court.

The Supreme Court sample of witnesses consisted of all civilian witnesses in cases disposed in the Supreme Court Bureau[2] between June 2 and July 18, 1980.[3] Similar criteria for excluding witnesses were employed as in the Criminal Court sample, although some efforts were made to interview parents of children who were under 16 years of age. After the exclusions, the pool contained 436 witnesses.[4] Case information was gathered from the

prosecutors' files. In addition to case information (which was the same as that gathered from VSA's computer information system for the Criminal Court sample) any notes regarding witness intimidation found in the prosecutors' files were recorded.

Selection of the Family Court sample proceeded in much the same way as for the other two samples. All civilian witnesses involved in juvenile delinquency cases disposed in the Brooklyn Family Court[5] between September 2 and September 24, 1980, were selected. The same criteria to exclude witnesses were used as in the other two samples. After these exclusions the pool contained 211 witnesses.[6] Case information as well as any notes regarding witness intimidation were gathered from the Corporation Counsel's files.

The process for obtaining interviews with intimidated witnesses was identical for all three court samples. First, letters were sent to the witnesses to inform them that VSA was interested in speaking with them and to request that they telephone for an interview. If recipients of those letters did not respond within three days, the research staff attempted to contact them by phone. Attempts to contact witnesses continued until the witness was contacted or:

1) the witness was found to be unreachable by telephone;
2) six telephone calls were made at various times on different days, with no success; or
3) the witness could not speak Spanish or English.

When witnesses were contacted they were asked if they had received any threats in connection with their court case. If they had not, they were not interviewed. Interviews lasted between 15 and 30 minutes, depending on the complexity of the case and the extent to which the witness wanted to talk. Interviews were conducted in Spanish and English.

In the interviews, the witnesses were asked (a) to describe the threats against them, (b) whether the threats had affected their cooperation with the court, (c) which criminal justice officials were informed about the threats and what the officials' responses were, (d) if the officials' responses were helpful or if they increased the witnesses' willingness to cooperate with the court, (e) if the threats continued after court officials were informed about intimidation, (f) if the threats continued after the case had been officially closed, (g) if they felt anything more could have been done to stop the threats, and (g) general demographic information.

The success rate for contacting individuals in the sample was higher for Family Court (74 percent) than Criminal Court (55 percent) and Supreme Court (57 percent). Table A.1 provides a breakdown of the reasons why witnesses could not be contacted. Interviews were completed with 109 (15 percent) of the Criminal Court witnesses, 31 (12 percent) of the Supreme Court witnesses contacted, and 13 (8 percent) of the Family Court witnesses. The average time between the case disposition and the interview was similar in the three courts: an average of 2.7 months in Criminal Court; an average of 3 months in Supreme Court; and an average of 2.4 months in Family Court.

TABLE A.1

COMPLETION RATES OF INTERVIEWS WITH INTIMIDATED WITNESSES

	Criminal Court Sample (n=1,365)	Supreme Court Sample (n=436)	Family Court Sample (n=211)
Witness Not Contacted	618 (45%)	187 (43%)	55 (26%)
No phone available: only address	148	61	15
Six call limit	131	20	11
Language barrier	12	4	0
Witness on Vacation	21	0	1
Witness "moved," whereabouts unknown*	46	27	2
Wrong number	38	52	15
Number disconnected*	59	16	7
Unpublished number*	30	7	4
Other	20	0	0
Case not fully pursued*	113	0	0
Witness Contacted	747 (55%)	249 (57%)	156 (74%)
Witness refused to discuss the case	29	18	7
Witness reported he or she was not intimidated and was not interviewed	609	200	136
Witness reported he or she was intimidated and was interviewed	109	31	13

*Some of these witnesses may have moved, disconnected or changed their telephone to an unpublished number because of threats.

**Attempts to contact witnesses in the Criminal Court sample ended after the intended number of interviews was reached. Some cases remained which were not fully pursued.

B. Interviews with a Sample of Intimidated Witnesses from Brooklyn Criminal Court Drawn from VSA's Files

When the interviews with intimidated witnesses in the Criminal Court sample were completed it was revealed that only 6 percent of the witnesses interviewed reported speaking with VSA staff about the threats. It is possible that this figure is an underestimate as some witnesses may have thought VSA staff were prosecutorial personnel. In any event, the number of intimidated witnesses in the Criminal Court sample who spoke with VSA staff was too small to derive any but tentative conclusions regarding VSA's response to witness intimidation. For this reason, attempts were made to interview additional witnesses who had spoken with VSA about the problem.

A sample of 89 witnesses for whom VSA staff had advocated for an admonishment from the judge, or an Order of Protection was drawn from VSA files in Brooklyn Criminal Court. These cases were disposed between June 1 and November 30, 1980. Similar criteria to exclude witnesses were used as in the other court samples. Case information was gathered from VSA's computer information system. This sample was selected because it appeared that it would be an efficient way in which to learn of VSA's response to intimidated witnesses; in a randomly selected sample, less than one witness in one hundred witnesses contacted would have reported threats to VSA.

The sample of VSA witnesses was screened and interviewed in the same way as the other three court samples. Interviews were completed an average of 3.8 months after the case disposition. The results, however, were surprising. Of the 89 witnesses, 53 (60 percent) were contacted. Approximately half of the 53 witnesses who

were contacted reported that they had not been threatened. In addition, of the 24 witnesses who were threatened only 8 (one-third) had reported the threats to VSA (See Table A.2).

The reason for these findings was a simple error in logic. The statement made by VSA staff that they advocate for an admonishment or an Order of Protection in all cases in which threats occur, was erroneously construed to mean that in all cases in which VSA advocates for an admonishment or an Order of Protection threats have occurred. In fact, as the screening and interviewing process revealed, VSA frequently advocates for such measures even when no threats have been reported.

The eight interviewed witnesses who spoke with VSA staff were only included in the analysis of VSA's particular response. They were excluded from the general Criminal Court analysis. The places where they were included in the analysis are indicated in the text and tables.

II. Interviews with Criminal Justice Officials

Interviews were conducted with members of the criminal justice system in order to determine their understanding of the problems of intimidated witnesses, the procedures they use in dealing with various forms of intimidation, and their suggestions for improvement in the handling of intimidation problems. Twenty-five interviews were completed with criminal justice officials from Brooklyn Criminal, Supreme, and Family Court. The officials interviewed were:

6 judges (2 from each court);
12 prosecutors or Assistant Corporation Counsels (4 from each court);
4 detective-investigators (2 each from Criminal and Supreme Court); and
3 VSA personnel (all from Criminal Court).

TABLE A.2

COMPLETION RATE OF INTERVIEWS WITH A SAMPLE OF WITNESSES DRAWN FROM VSA'S FILES

	VSA Criminal Court Sample (n=89)
Witness Not Contacted	36 (40%)
No phone number available: only address	5
Six call limit	10
Language barrier	1
Witness "moved" whereabouts unknown*	4
Wrong number	4
Disconnected number*	12
Witness Contacted	53 (60%)
Witness not intimidated	25
Witness refused to discuss the case	4
Witness intimidated, but did not speak with VSA staff about the threat	16
Witness intimidated and spoke with VSA staff	8

*Some of these witnesses may have moved or disconnected their telephones because of threats.

Major components of the criminal justice system not represented in these interviews were the Police Department and Legal Aid defense attorneys. Had resources permitted, it would have been desirable to include interviews with members of each of these organizations.

A structured questionnaire was designed and used as the basis of interviews with all the criminal justice officials. Interviews were conducted by staff of the Criminal Justice Coordinating Council. In the interviews, officials were asked to relate (a) their perceptions of the frequency of witness intimidation, (b) whether they thought witness intimidation significantly affects witness cooperation and case dispositions in their court, (c) their perceptions of the kinds of assistance sought by intimidated witnesses, (d) formal or informal policies of their organizations to deal with witness intimidation, and (e) their perceptions of problems in the criminal justice system's response to witness intimidation and their suggestions for improvement of the system's response.

In addition, the interview instrument contained three pairs of vignettes (six in all) describing hypothetical cases involving witness intimidation. Each criminal justice official was asked to respond to three vignettes (one of each pair) by telling what she or he would do in such a case. The paired vignettes were administered in rotation to each type of criminal justice official within each court. The hypothetical cases were varied along two dimensions: 1) the seriousness of the original offense (i.e., a burglary versus

a burglary in conjunction with an assault) and 2) the severity of the threat (i.e., fear in the absence of any threat versus a threat to commit arson versus a threat followed up by an arson attempt). (See Appendix C for the hypothetical cases.)

FOOTNOTES: APPENDIX A

1. Most cases in Brooklyn in which an arrest is made are catalogued on VSA's computer information system. Cases in which the defendant is not arrested, however, but brought to court by a summons are not on VSA's system. These cases would therefore not be represented in the Criminal Court sample.

2. The sample of Supreme Court cases in this study was drawn from the prosecutor's files in the Supreme Court Bureau, the largest bureau in Supreme Court. Cases from other Bureaus, such as Rackets, Narcotics, Homicides, Economic Crimes, Consumer Fraud and Sex Crimes, were not examined.

3. Initially, Supreme Court cases were selected by individual prosecutors and given to the VSA research staff. It soon became apparent that it would not be possible to obtain a large number of disposed cases by relying solely on the prosecutors' initiative. Consequently, the method of selecting cases described in the text was developed. Virtually all of the interviews with intimidated witnesses were conducted with witnesses drawn by the second method.

4. Data concerning the size of the sample before these exclusions erroneously were not collected.

5. Juvenile delinquency cases which were adjusted by the Brooklyn Family Court's probation department were not included in this sample. A study by the Vera Institute of Justice (1980:27) revealed that only 41 percent of juvenile delinquency cases in New York City actually reach the Family Court itself.

6. Data concerning the size of the sample before these exclusions erroneously were not collected.

APPENDIX B

DEMOGRAPHIC AND CASE CHARACTERISTICS OF THREATENED WITNESSES IN BROOKLYN CRIMINAL, SUPREME, AND FAMILY COURT

	Criminal Court	Supreme Court	(Family Court)
Sex	(n=109)	(n=31)	(n=13)
Female	49%	52%	77%
Male	51	48	23
	100%	100%	100%
Ethnicity	(n=106)	(n=30)	(n=13)
White	40%	20%	39%
Black	38	70	46
Hispanic	17	7	15
Other	6	3	0
	100%	100%	100%
Age	(n=109)	(n=30)	(n=12)
Less than 25	33%	53%	50%
25-40	40	30	25
Over 40	27	17	25
	100%	100%	100%
Education	(n=108)	(n=30)	(n=13)
Not a High School Graduate	39%	47%	62%
High School Graduate or More	61	53	38
	100%	100%	100%
Employment Status	(n=109)	(n=31)	(n=13)
Employed	54%	55%	38%
Not Employed	34	26	15
Student/Referred	12	19	46
	100%	100%	100%
Victim or Witness Previously	(n=109)	(n=31)	(n=13)
Yes	38%	19%	15%
No	62	81	85
	100%	100%	100%

APPENDIX B

(CONTINUED)

	Criminal Court	Supreme Court	(Family Court)
Prior Relationship	(n=108)	(n=31)	(n=13)
Yes	47%	23%	38%
No	53	77	62
	100%	100%	100%
Type of Charge	(n=107)	(n=31)	(n=13)
Violent	59%	77%	54%
Non-Violent	41	23	46
	100%	100%	100%
Type of Witness	(n=106)	(n=30)	(n=11)
Complainant Eyewitness	72%	77%	100%
Complainant Non-Eyewitness	21	10	0
Eyewitness Only	7	13	0
Cross Complainant	1	0	0
	101%	100%	100%

APPENDIX C

HYPOTHETICAL CASES ADMINISTERED TO CRIMINAL JUSTICE OFFICIALS

A. Karen Brown came home after a party about 2AM and noticed a suspicious stranger descending the steps of her apartment building. Upon entering her apartment, she discovered that it had been burglarized, and that her wristwatch worth about $200 had been taken. She called the police who came and filled out a complaint report. The next morning, Ms. Brown received a call from the police precinct. The desk officer told her that a man had been caught that night breaking into an apartment in a building in Ms. Brown's neighborhood, and had in his possession a watch that might be Ms. Brown's. Ms. Brown went down to the precinct where she identified the suspect as the man she had seen in her building, and identified the watch as hers. The suspect was charged with burglarizing Ms. Brown's apartment and released on recognizance at arraignment.

Ms. Brown wants the defendant prosecuted but tells you she is reluctant to pursue the case because she is very worried that the defendant might harm her--even though no definite threats have been made. How would you handle this situation?

B. Karen Brown came home after a party about 2AM. Upon entering her apartment she surprised a man in the process of burglarizing it. When she screamed, the man rushed at her and struck her repeatedly with a blunt object, knocking her unconscious.

Ms. Brown's screams alerted a neighbor, who called the police. The man was caught in the building and was arrested for burglary and assault. Later, he was released on bail.

Ms. Brown spent several weeks in the hospital recovering from her injuries. She wants the defendant prosecuted, but tells you she is reluctant to pursue the case because she is very worried the defendant might harm her--even though no definite threats have been made. How would you handle this situation?

C. John Davis, owner of a shoe store, got a call one night that his store was being broken into. He called the police and rushed to his store in the next block. Arriving at the store, he saw the door ajar and two teenagers putting shoes inside a shopping bag. He yelled at them, "What are you doing? Get out of my store!" The youths fled from the store, but were apprehended by the police several blocks away. The suspects were booked and later released on recognizance.

As the hearing date approached, Mr. Davis got several anonymous phone calls that said if he went to court his store would burn down. He tells you that this would ruin him, so he is thinking of dropping the case. How would you handle this situation?

D. John Davis, an owner of a shoe store, got an anonymous call one night that his store was being broken into. He called the police, and rushed to his store in the next block. Arriving

at the store, he saw the door ajar and two teenagers inside putting shoes into a shopping bag. He yelled at them, "What are you doing? Get out of my store!" One of the youths pulled a knife and stabbed Mr. Davis in the side. The pair fled from the store but were apprehended by the police several blocks away. Mr. Davis was taken to the hospital, and spent four hours on the operating table. The defendants were booked and released after posting bail.

As the hearing date approached, and Mr. Davis was recovering, he got several anonymous phone calls that said if he went to court his store would be burnt down. He tells you this would ruin him, so he is thinking of dropping the case. How would you handle this situation?

E. Thomas Williams was working late at the office one evening, and heard some noises down the hall--three people talking in an excited way. It didn't sound like his co-workers. He went to investigate and saw three teenagers carrying out a typewriter and several adding machines. As soon as they saw him they dropped the machines and ran. Mr. Williams phoned downstairs to the security guard to be on the lookout for these young men. The guard nabbed one of them, and the others got away. Mr. Williams went down to the Police Station and identified the suspect as one of the youths he had seen.

But as he was leaving the stationhouse the other two young men came up to him with a knife and said, "If you stick our buddy in jail, you'll get a present."

Mr. Williams, outraged at this, went to court anyway. The defendant was released on recognizance pending a hearing. But a few days later someone attempted to set fire to Mr. Williams' house. Soon after the arson attempt, he received a phone call saying, "If you go to court, you're next." How would you handle this situation?

F. Thomas Williams was working late at the office one evening, and heard some noises down the hall--three people talking in an excited way. It didn't sound like his co-workers. He went to investigate and saw three teenagers carrying out a typewriter and several adding machines. As soon as they saw him, they dropped the machines and ran. Mr. Williams pursued them but when he caught up to them they began beating him, and he was badly hurt. One of the youths was apprehended by a security guard when they tried to flee the building, and the others got away. Mr. Williams was admitted to the hospital with internal injuries. As Mr. Williams was leaving the hospital several days later, the two youths who had escaped came up to him with a knife and said, "If you stick our buddy in jail, you'll get a present."

Mr. Williams, outraged at this, went to court anyway but the case was continued to another date. The defendant by this time had been able to raise bail. A few days later, someone attempted to set fire to Mr. Williams' house. Soon after the arson attempt, he received a phone call saying, "If you go to court, you're next."

Mr. Williams tells you he now wants charges dropped, because he fears for the welfare of his family. How would you handle this situation?

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