HOW CAN THE FEDERAL GOVERNMENT SUPPORT LOCAL AND STATE INITIATIVES TO PROTECT CITIZENS AND COMMUNITIES AGAINST DRUG-RELATED VIOLENCE AND WITNESS INTIMIDATION?

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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CONTENTS

	Page
Hearing held on May 2, 2005	1
Statement of:	
Johnson, Judge Kenneth, former associate judge, Baltimore City Circuit Court; David Wright, president, Charles Village Community Benefits District; and Ricky P., resident, west Baltimore	78
Johnson, Judge Kenneth	78
P., Ricky	99
Wright, David	93
Pond, Floyd O., Assistant Director, Washington-Baltimore HIDTA; Lieutenant Craig Bowers, Baltimore County Police Department; and Patricia Jessamy, State attorney, city of Baltimore	51
Bowers, Lieutenant Craig	53
Jessamy, Patricia	58
Pond, Floyd O.	51
Steele, Michael S., Lieutenant Governor, State of Maryland; and Martin O'Malley, mayor, city of Baltimore	12
O'Malley, Martin	21
Steele, Michael S.	12
Letters, statements, etc., submitted for the record by:	
Bowers, Lieutenant Craig, Baltimore County Police Department, prepared statement of	55
Jessamy, Patricia, State attorney, city of Baltimore, prepared statement of	63
Johnson, Judge Kenneth, former associate judge, Baltimore City Circuit Court, prepared statement of	82
O'Malley, Martin, mayor, city of Baltimore, prepared statement of	25
P., Ricky, resident, west Baltimore, prepared statement of	101
Steele, Michael S., Lieutenant Governor, State of Maryland, prepared statement of	15
Souder, Hon. Mark E., a Representative in Congress from the State of Indiana:	
Prepared statement of	4
Prepared statement of Mr. Carr and Ms. Cartwright	38
Wright, David, president, Charles Village Community Benefits District, prepared statement of	96

HOW CAN THE FEDERAL GOVERNMENT SUPPORT LOCAL AND STATE INITIATIVES TO PROTECT CITIZENS AND COMMUNITIES AGAINST DRUG-RELATED VIOLENCE AND WITNESS INTIMIDATION?

MONDAY, MAY 2, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Baltimore, MD.

The subcommittee met, pursuant to notice, at 10:47 a.m., in the Ceremonial Moot Courtroom of the University of Maryland School of Law, Hon. Mark Souder (chairman of the subcommittee) presiding.

Members present: Representatives Souder, Cummings, and Ruppersberger.

Staff present: J. Marc Wheat, staff director and chief counsel; Malia Holst, clerk; and Tony Haywood, minority counsel.

Mr. SOUDER. Good morning. It is a real pleasure to be in Baltimore again, here in the district of our distinguished ranking member, Mr. Cummings, and in Baltimore, also the home of one of our most active members, Mr. Ruppersberger. And we appreciate him coming here very much. Today, however, we are revisiting a very tragic and serious problem, namely the problem of protecting law-abiding citizens from the domestic terrorism of criminal intimidation.

During the last Congress, Mr. Cummings and I held a hearing right here in Baltimore in response to the horrifying murder in 2002 of the Dawson family. We are here again to consider how the Federal Government can best work with cities and State and local governments to support and protect brave individuals like the murdered Angela Dawson who are willing to stand up in their communities against drug dealing and drug violence.

In Baltimore, the pain of drug abuse is especially felt. There were nearly 500 drug-induced or drug-related deaths in 2001—approximately 10 percent of all deaths in the area. Drug dealers have taken over many parts of the city, making law-abiding citizens virtual prisoners in their own homes. In the face of this threat, many citizens and families have stepped forward to try to take back their neighborhoods from the dealers and gangs, often at great personal risk.

The Dawson family is the most poignant reminder. Angela Dawson lived in Baltimore with her husband, Carnell, and their five young children. In an effort to rid her street of drug dealers, she repeatedly called 911, reporting suspicious activity to the police. Her efforts came at a terrible price. In the early morning hours of October 16, 2002, the Dawson family's home was firebombed by a local drug dealer in retaliation. The bombing claimed the lives of Angela, Carnell, and all five of the Dawson children.

More recently, in January of this year, the Harwood Community Association president Edna McAbier was the target of another firebombing for her involvement in reporting drug dealing. Ms. McAbier has since moved out of her home and five of the men suspected of the crime have been indicted by a Federal grand jury for witness tampering, conspiracy to commit witness tampering and the use of a firearm in the commission of the crime.

Crimes of this nature are not confined to cities like Baltimore; they affect suburban and rural areas too. In January of this year, 10-year-old Katlyn Collman of Crothersville, IN, my home State, was abducted and killed. Her drowned body was found 5 days later in a nearby creek, her little hands tied tightly behind her back. This was a front-page story in the New York Times. And I ask unanimous consent to insert this into the record: "Too late for Katie, Town Tackles Drug Scourge." Authorities believe Katie was murdered to prevent her from telling others about meth labs she saw in her neighborhood.

These horrible crimes illustrate the dangers faced by honest citizens when they seek to improve their neighborhoods and the lives of their families. These crimes, however, have also led local communities and Federal authorities to find ways to protect people like the Dawsons from retaliation by drug criminals and other criminals as well. The Federal Drug Czar, John Walters, and other officials and Members of Congress have also stepped forward to find ways to assist State and local authorities in this effort.

In response to the Dawson murders, Mr. Cummings introduced H.R. 812, the Dawson Family Community Protection Act. I strongly support this bill as a cosponsor. It directs at least $1 million in funds to the High Intensity Drug Trafficking Areas [HIDTA] program to be spent on neighborhood safety measures, including the protection of potential witnesses and the operation of a toll-free telephone hotline for use by the public to provide information about illegal drug-related activities. During the last Congress, the House passed this bill as part of the legislative reauthorization of the Office of National Drug Control Policy. Regrettably, that bill did not pass the Senate, but we are hopeful that it can be passed this year.

We are holding this hearing to continue our broad-ranging and open discussion of these pressing issues and potential solutions. We are pleased to be joined today by the Lieutenant Governor of Maryland, Mr. Michael Steele, and the mayor of Baltimore, Mr. Martin O'Malley, who have taken time out of their very busy schedules to discuss this problem. We also welcome Mr. Floyd O. Pond, Assistant Director of the Washington-Baltimore High Intensity Drug Trafficking Area, administered by ONDCP.

It is equally important for us to talk to State and local law enforcement agencies that do so much to combat drug trafficking on

the streets. We are therefore pleased to be joined by Lieutenant Craig Bowers from the Baltimore County Police Department, as well as Ms. Patricia Jessamy, State attorney for the city of Baltimore.

Finally, we always need to hear from private and faith-based organizations that dedicate themselves to educating young people about the dangers of drug abuse and providing treatment to those burdened by drug addiction. We welcome Judge Kenneth Johnson, former associate judge, Baltimore City Circuit Court; Mr. David Wright, president of the Charles Village Community Benefits District, and Mr. Ricky P., a resident of West Baltimore. We thank everyone for taking the time to join us today, and we are looking forward to your testimony. I would like to yield to the distinguished ranking member, Mr. Cummings.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement
Chairman Mark Souder

"How Can the Federal Government Support Local and State Initiatives to Protect Citizens and Communities Against Drug-Related Violence and Witness Intimidation?"

Subcommittee on Criminal Justice, Drug Policy, and Human Resources
Committee on Government Reform

May 2, 2005

Good morning. It is a real pleasure to be in Baltimore again, here in the district of our distinguished Ranking Member, Mr. Cummings. Today, however, we are revisiting a very tragic and serious problem, namely the problem of protecting law-abiding citizens from the domestic terrorism of criminal intimidation.

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Mr. CUMMINGS. Thank you very much, Mr. Chairman, and I again welcome you to Baltimore. I wanted to thank you and your staff for your cooperation in convening today's important hearing.

Narco-terrorism is a plague upon our society. With increasing frequency, the drug traffickers are now targeting anyone who might interfere with their deadly trade. And, Mr. Chairman, I am so glad that you raised the issue of little Katie Collman. I noticed it is the February 10 issue of the New York Times that you are referring to.

But this just goes to show this is not—a lot of people look at these problems and they think that they are just urban problems, but they are not. And I have read the Lieutenant Governor's testimony where he outlines this is a problem that is taking place in almost every single county in our State. That is why today's examination of how the Federal Government can better support State and local efforts to protect the public against witness intimidation and retaliation is so very, very important.

Mr. Chairman, this is your third trip to Baltimore as chairman of the House, Government Reform Subcommittee on Criminal Justice, Drug Policy, and Human Resources. As the subcommittee's ranking minority member, I sincerely appreciate the interest you have shown in working to address issues of mutual and critical concern on a bipartisan basis.

Let me also express my thanks to the University of Baltimore School of Law for providing the venue for this very, very important hearing. We appreciate your cooperation and we appreciate your support.

Last, but certainly not least, I want to extend my gratitude and a very warm welcome to all of our witnesses. I sincerely appreciate their willingness to participate in today's hearing. Several of today's witnesses have endured two postponements, and I deeply appreciate their bearing with us.

Appearing before us today will be our Lieutenant Governor, the Honorable Michael Steele; the Honorable Martin O'Malley, our mayor of the city of Baltimore; the Assistant Director of the Washington Baltimore HIDTA program, Mr. Floyd Pond; the Honorable Patricia Jessamy, State's attorney for Baltimore City, who has put this at the very top of her priority list; Lieutenant Craig Bowers of the Baltimore County Police Department; the Honorable Kenneth Johnson, the former associate judge of the Baltimore City Circuit Court—and I might add, Mr. Chairman, the person who gave me my first job out of law school—and Mr. David Wright, president of the Charles Village Benefits District; and a community leader from west Baltimore, whom we will call, for security reasons, Ricky P.

All of our witnesses have important perspectives to offer. They deserve great credit for their efforts to address and to overcome the interrelated problems that we will be examining today: drug abuse and addiction, drug-related crimes and violence, and the increasing obstruction of justice through threats, intimidation, and violent retaliation against witnesses.

I should note for the record that because of the postponements I mentioned, we are missing three valuable witnesses who would have testified and had planned to on March 1 and April 12. Rev-

erend Iris Tucker is unable to appear today, as are Baltimore City Police Commissioner Leonard Hamm and Assistant U.S. attorney for the District of Columbia, Heather Cartwright. She is with a Victim-Witness Services Unit that serves the D.C. Superior Court, the U.S. District Court for the District of Columbia. I regret that Reverend Tucker, Mr. Hamm, and Ms. Cartwright were unable to appear today, but I appreciate their previous commitments and their willingness to provide testimony. And with unanimous consent, Mr. Chairman, I request that their previously prepared statements be included as a part of the record.

Mr. SOUDER. No objection.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. Mr. Chairman, the subject that we have come here today to discuss is a grim one, a challenge that we have both concluded justifies a more expansive Federal role. The problem of witness intimidation in Baltimore and many other cities around the country has become acute. We all have a moral duty to search for and achieve a more effective response. A system of law and order is essential to the maintenance of a free democratic society.

Any action that undermines the integrity and the reliability of a criminal justice system necessarily undermines the freedoms, life, and liberty that our Constitutional system of government is designed to protect. The effective operation of a criminal justice system in turn requires the voluntary cooperation of witnesses who can offer the evidence that can remove dangerous criminals from our streets. Without this cooperation, the most fundamental laws of the people cannot be enforced. And the force of a law as a deterrent to crime simply erodes.

Over the past few years we have seen an escalation in threats and violence directed against people who cooperate with the authorities. You mentioned the tragic Austin murder of the Dawson family in October 2002 and the firebombing this January of a home of Harwood Community Association president, Edna McAbier, two dramatic examples of the many instances of retaliation against witnesses who reported drug-dealing activity to the police.

The surfacing of a now-infamous "stop snitching" DVD in which NBA player and Baltimore native Carmelo Anthony appears is a further indication of how brazen local drug gangs have become in their attempt to instill fear in the hearts of our entire community. Mr. Chairman, just this weekend, news reports all over our television stations talked about how young people are now buying teeshirts and jerseys that has the "stop snitching" on it, and it has become a fad. Little do they know that by walking around with those jerseys, they merely help to send the message, be it innocently or not, of those who want to stop people from testifying.

These are just the most flagrant examples of widespread and ongoing efforts to obstruct justice through fear, intimidation, and yes, murder, both here and Baltimore City and throughout this entire country. Every day in neighborhoods and even courtrooms around the country, criminals and their accomplices send menacing signals to would-be witnesses and their families.

Mr. Chairman, you will hear testimony perhaps from Ms. Jessamy today about how people will sit in courtrooms with all kinds of devices, and as witnesses testify, send messages to their

friends letting them know that certain people had just testified and therefore putting those people's lives in danger. Sometimes the messages are contained subtly through body language or cryptic words. Sometimes it is delivered bluntly to express verbal threats or physical assault. And I think the Lieutenant Governor will talk about that a bit.

The content of these messages is the same, do not cooperate with legal or authorities or else. Unfortunately, all too often, this intimidation is having an effect. In January of this year, Baltimore City's State's attorney, Patricia Jessamy testified before a Maryland State Senate Committee about a culture of intimidation that has subpoenaed her office's efforts to secure convictions in criminal cases, and at times even to bring these cases to trial in the first place. And I quote her, "At least 25 percent of non-fatal shooting cases are dismissed due to witness intimidation. And most murder cases are affected by witness intimidation at the same level."

Yes, Mr. Chairman, we both know that this serious challenge to our system of justice is not confined here just in Baltimore. And as I mentioned a little bit earlier, in Indiana, Ms. Collman, who suffered a very tragic death simply because she observed what appeared to be drug activity. With Ms. Collman and the tragic murders of the Dawson family and the recent Baltimore firebombing that I mentioned a few moments ago, what they are, Mr. Chairman, they are acts of terror.

Yet at a time when we are investing millions of dollars in U.S. foreign aid to train law enforcement officers and judges in countries like Afghanistan, Colombia, and Iraq, the Federal Government provides virtually no support for programs to provide assistance and protection to witnesses in State cases here at home. We must become just as serious about fighting narco-terrorism here at home as we are in foreign lands.

We already have a solution that would work. In the Federal system, the witness security program, operated by U.S. Marshal Service, has proved to be an effective tool for U.S. attorneys claiming a 100-percent safety record for witnesses enrolled in the program and an 89-percent conviction rate in cases involving the cooperation of these witnesses.

In contrast, however, State and local law enforcement authorities have relatively small witness protection budgets. Many, if not most, jurisdictions must choose between spending limited funds to protect witnesses or to investigate crimes. This is a choice that they should not have to make. That is why, in my role as Representative in the National Legislature, I am obliged to ask this very pointed question: what role must a Federal Government play in helping States and localities to overcome or eliminate the obstacle that witness intimidation presents to prosecutors, as well as the chilling impact of that intimidation upon the everyday lives of our citizens?

As you know, Mr. Chairman, I have introduced two bills that would be important first steps in better addressing these intertwined problems of drug-related violence and witness intimidation. Mr. Chairman, I am very pleased that you have agreed to cosponsor these bills.

The Dawson Family Community Protection Act will require that at least $5 million in Federal funding from the Federal High Intensity Drug Trafficking Areas Program must be devoted to initiatives aimed at improving public safety and encouraging cooperation with law enforcement in areas severely affected by drug-related violence. This would include efforts like Baltimore Targeting Initiative, a carefully tailored anti-drug campaign that was undertaken by the Baltimore City Police Department with additional funding from the HIDTA program in response to the Dawson tragedy.

Second, the Witness Security and Protection Act will establish a short-term State witness protection program within a U.S. Marshal Service to provide protection for witnesses in State and local trials that involve homicide, a serious, violent felony offense, or a serious drug offense. The bill would provide grants that district attorneys' offices could use to pay the cost of providing witness protection themselves, or to pay the cost of enrolling witnesses in a State short-term witness protection program that would be operated by the Marshal Service.

The war on drugs has become a real war. It is a war that we can win, but we must do far more at the Federal level to support the brave Americans who are on the front lines. As we consider the expanded Federal response that is necessary to successfully address the intersecting problems of drug-related violence and witness intimidation, it is essential that we gain the insights and advice of the citizens of the community, at State levels, whose efforts we intend to amplify and to reinforce.

And I thank Mr. Ruppersberger today who has worked so hard, not only as a part of our subcommittee, but also in our community here in Baltimore and the greater Baltimore area to address this problem for many, many years.

Today's hearing offers an important opportunity to do all that we can do to make a difference. Thank you, again, Mr. Chairman, for providing this forum. I look forward to the testimony and the discussion and yield back the balance of my time.

Mr. SOUDER. That was really disturbing to hear about people campaigning against people who give us information. After the Columbine school massacre, in the Education Committee we held several hearings where we had students in, teachers in, and found that the only way you are really going to stop student violence is if the students themselves turn people in and work with each other to try to do that. Otherwise, we have to have police officers all over the schools. I mean, the alternative to people coming forth themselves is not pleasant.

And second, it is the same thing as Mr. Ruppersberger knows on intelligence that we deal with all the time and how we are going to break the intelligence groups. What about if every community of Arab or Asian or any group where it is close-knit, if people inside that community don't tell us who the terrorists are, we are helpless, because I don't know who is new to the community. It is groups inside the community. We don't know what is going on in a school and what is going on in a neighborhood many times from outside. It requires people inside who care about safety to do that.

I mean, this is a really disturbing trend that you talked about on the street, because without people willing to come forward, we are helpless. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Well, first, Mr. Chairman, I agree with you; that is why it is so important that we have students from Edmondson High School here today. You know, you are our future. You will have children, and it is important that we have a good, safe community for you and your children.

First, Mr. Chairman, Chairman Souder, thank you for your leadership on the Subcommittee on Criminal Justice and Drug Policy. You run a tremendous committee, a bipartisan committee, and I know you are focused on this issue.

And, Ranking Member Elijah Cummings, when I was former county executive, you were one of my Members of Congress in Baltimore County and the city, and you do a tremendous job in focusing on the issues in your community. And this is probably one of the most serious issues that we can deal with, and that is the issue of drugs. Over 80 percent of all of our violent crime is drug-related, and we must deal with this issue.

I want to acknowledge the fact, Lieutenant Governor Steele, you are here today; State's attorney Patricia Jessamy; Mayor Martin O'Malley; and the other witnesses that we are looking forward to hearing what we can do from a Federal Government perspective to support local and State initiatives to protect your citizens against drug-related violence and witness intimidation.

Now, witness intimidation cannot and should not be tolerated. It is a sad state of affairs when citizens have to choose between protecting their lives and their families' lives and performing their civic duty to report crimes. Many high profile incidents have taken place in the past few years, one of the most tragic being the murders of seven members of the Dawson family here in Baltimore City. And my prayers are with them, and I pray that a situation like that will never happen again.

And that is why we are here today, to see how we, as Members of Congress, can help local jurisdictions prevent witness intimidation and protect those citizens whose lives may be in danger.

As a former prosecutor, I have seen firsthand how violent and dangerous some of these criminals can be. And I know how hard it is as a prosecutor to get witnesses to come forward and testify. We had to use every available resource we could at the local, State, and Federal level to get witnesses into the courtroom. If we don't get witnesses into the courtroom, we cannot prosecute and convict those felons and put them in jail.

Now, we must take these drug gangs head-on. We must not allow them to continue to use their intimidation tactics on witnesses. We must protect our citizens from these gangs. And this can be accomplished through coordination at the Federal, State, and local level, and also in the neighborhood level, citizens coming forward.

Now, last month I signed on as cosponsor to Congressman Cummings' bill, H.R. 908, the Witness Security and Protection Act of 2005, and I thank you for that and for your leadership. Thank you, Mr. Chairman, for cosponsoring that bill. And that is a great start.

This legislation seeks to help local jurisdictions protect witnesses and is a good step in the right direction along the path to the prevention of witness intimidation. Now, we all acknowledge that witness intimidation is a deadly problem that must be addressed, but we cannot solve the problem in a vacuum. Gangs to drug trafficking, violence, and witness intimidation must all be addressed as one, together. To that end, there are many current programs that seek to address the various parts of this problem—the Office of National Drug Control Policies High Intensity Drug Trafficking Area Program called HIDTA; the Byrne Justice Assistance Grant Program, Byrne Grants; the Office of Community-Oriented Policing Services, that is called the COPS program—are all programs that are funded with Federal dollars.

Now, I am deeply concerned with the administration's current budget proposal to significantly reduce the funding of all of these programs. This is a problem. We must deal with this program, and we must give those individuals working on this problem the resources to do the job.

I am also concerned that we are moving the HIDTA program from the Office of National Drug Control Policy to the Justice Department. This makes no sense. The Justice Department is a large organization, and they have enough problems dealing with the issues they are dealing with. We must refocus on that issue.

As I have said many times before, I am always concerned about the issue of accountability and effectiveness. Whenever we give Federal money, we must hold those individuals receiving the money accountable for effectiveness and accountability. And we must make sure that we look at that.

I think it is unwise to cut funding for programs that our State and local partners find to be useful tools in the fight against drugs, crime, and violence. We can only assume that with the drastic cuts proposed by the administration, the progress we are seeing will be unable to continue.

Adequate funding for the affected programs is not the only solution, though. Changes to State law, such as the recently passed witness intimidation bill in the Maryland Legislature, and changes to criminal justice procedures are but two other ways to address the problem.

But still there are more. We need to be creative. We need to think out of the box. We need to think and be one step ahead of these drug gangs. It is a very serious issue. We are here today to discuss and listen, and I hope that we will have productive dialog. I look forward to hearing from all of our witnesses today.

Mr. SOUDER. I thank the gentleman. I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record and any answers to written questions provided by the witnesses also be included in the record. Without objection, it is so ordered. I also ask unanimous consent that all exhibits, documents, and other materials referred to by Members may be included in the hearing record; that all Members be permitted to advise and extend their remarks. Without objection, it is so ordered.

The first panel is composed of the distinguished Lieutenant Governor of Maryland, Mr. Steele. It is our standard practice to ask

witnesses to testify under oath. You probably saw this on the baseball hearing if nothing else.

[Witness sworn.]

Mr. SOUDER. Let the record show that the witness responded in the affirmative. Thank you very much for being patient this morning and coming today to testify. We look forward to your testimony.

STATEMENTS OF MICHAEL S. STEELE, LIEUTENANT GOVERNOR, STATE OF MARYLAND; AND MARTIN O'MALLEY, MAYOR, CITY OF BALTIMORE

STATEMENT OF MICHAEL S. STEELE

Mr. STEELE. Thank you very much, Mr. Chairman. Good morning, Mr. Chairman, and certainly to Members of the subcommittee. I very much appreciate your being here. I appreciate the opportunity also to appear before the subcommittee today on behalf of our Governor, Robert L. Ehrlich, Jr., on the subject of witness intimidation. Governor Ehrlich extends certainly his personal and sincere thanks to the members of this subcommittee, many of whom are his former colleagues, for your willingness to engage in a meaningful discussion about the appropriate Federal, State, and local responses to the insidious problem of witness intimidation. Congressman Cummings, we particularly want to thank you for bringing this subcommittee here, your colleagues. You have made this an important battle cry, if you will, for this community. And we are very, very appreciative of that.

Our administration also wishes to thank Baltimore City State's attorney, Patricia C. Jessamy, and Reverend Iris Tucker for partnering with us to champion the cause of witness intimidation legislative reform.

In truth, the Governor and I would much prefer that today's field hearing take place someplace else, not here in Baltimore City, not in our State. But unfortunately, here we are because here we have witnessed 253 homicides which occurred in 2002, 278 in 2004, and 73 so far this year. Indeed, the HBO cable drama "The Wire" is tantamount to a reality television program in certain parts of our cities.

Too many individuals in this city live in a state of persistent fear, while brazen, violent criminals patrol the streets unafraid and intent on enforcing their own brand of justice. But as the members of this subcommittee are aware, the problem of witness intimidation is not simply a Baltimore City problem. It affects other parts of Maryland, like Prince George's County, my home county, as well as Washington, DC, and other communities across this Nation, as the chairman has already pointed out this morning.

Thus, in a growing number of cases throughout Maryland, police and prosecutors are frustrated by their inability to investigate and prosecute cases because witnesses refuse to provide critical evidence or are unwilling to testify due to fear of violent reprisals.

Deficiencies in Maryland's laws and evidentiary rules also contributed to this escalation in witness intimidation. Currently, the crime of witness intimidation in Maryland is a misdemeanor offense punishable by a maximum penalty of 5 years in prison. Of course, that is not commensurate with the severity of the crime. In-

deed, if a criminal is able to silence a witness' testimony in the case of a violent felony crime, the same witness certainly would not testify in a prosecution where the maximum exposure of the defendant is a 5-year misdemeanor.

Additionally, solicitation and conspiracy to commit witness intimidation are not even statutory crimes in Maryland. Further, there is also a huge payoff for the crime of witness intimidation—kill or otherwise silence a witness to your crime and his or her incriminating statement to police and to the grand jury is inadmissible at trial. This means that a criminal defendant who kills a witness silences that witness entirely.

In response to repeated instances of witness intimidation and ineffective laws that threaten the underpinning of law enforcement and criminal justice in Maryland, the Ehrlich-Steele Administration, joined by Baltimore City State's attorney, Pat C. Jessamy, launched an effort that began in 2003 to toughen Maryland's witness intimidation laws. Reverend Tucker also rallied the faith community and advanced the cause of witness intimidation legislation, we think, a significant degree.

I am thankful to report that Governor Ehrlich is prepared to sign his witness legislation into law this month. The legislation, as passed by the General Assembly of Maryland would permit one, prosecutors to seek a maximum penalty of 20 years for individuals who solicit others, conspire with others, or commit witness intimidation if the underlying crime is a felonious drug violation or an enumerated crime of violence. And two, it would permit the admission of a hearsay statement, written or recorded, of a threatened or murdered witness against the defendant that attempted or did produce the absence of the witness in a felony drug or violent crime case.

These legislative reforms are not a panacea to the problem of witness intimidation. We remain committed to continuing our examination of the criminal laws in Maryland to ensure that our State prosecutors and law enforcement officers and their colleagues have the necessary legal tools to make our communities safer.

Some have criticized our administration for focusing too much on amending the law. Well, first, if you are able to dismantle criminal gangs, you move closer to eliminating the witness intimidation threat permanently. That is what a well-crafted law would provide.

Second, Governor Ehrlich and I also understand the need for witness relocation. The State's Victim and Witness Protection and Relocation Fund—more fully described in my written testimony—was created for that purpose—to protect the victims and witnesses of crime and their families by relocating them for their own protection.

However, the problem the State has found with the State witness relocation funds and such problems generally is that few people want to participate. Who wants to leave their home, their community? They shouldn't have to. The criminals should be the ones forced out and locked up.

The Ehrlich-Steele administration is helping in that regard not just with legislation, but also with funding to help prosecutors convict violent criminals. For example, the State of Maryland funds nine prosecutors in the homicide division of the Baltimore City

State's Attorney's Office. It provides all of the funding for the city's Firearms Investigative Violence Enforcement Division, which prosecutes all gun prosecutions in Baltimore City.

Our administration remains committed to working with our Federal partners, this subcommittee, other Members of Congress, along with local law enforcement to examine ways to strengthen the Federal, State, and local response to witness intimidation and to enact and provide meaningful tools to counteract and defeat these local, domestic terrorists.

Mr. Chairman, I thank you for the opportunity to participate in these proceedings this morning. I look forward to any questions you may have.

[The prepared statement of Mr. Steele follows:]

Statement of

Michael S. Steele, Lieutenant Governor
State of Maryland

before the

United States House of Representatives
Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Baltimore, Maryland 21201

May 2, 2005

Chairman Souder, members of the Subcommittee: I appreciate the opportunity to appear before the Subcommittee today, on behalf of Governor Robert L. Ehrlich, Jr., on the subject of witness intimidation. Governor Ehrlich extends his personal and sincere thanks to the members of this Subcommittee, many of his old Congressional colleagues, for your willingness to engage in a meaningful discussion about the appropriate federal, state, and local responses to the insidious problem of witness intimidation. Congressman Cummings: thank you for gathering your colleagues here today. The Ehrlich-Steele Administration also wishes to thank Baltimore City State's Attorney Patricia C. Jessamy and Reverend Iris Tucker for partnering with us to champion the cause of witness intimidation legislative reform. We also acknowledge Mayor Martin O'Malley and Baltimore City Police Commissioner Leonard Hamm for sending representatives to testify in support of Governor Ehrlich's witness intimidation legislation, and also appreciate Mr. David Wright's testimony before the Maryland Senate Judiciary Proceedings Committee.

In truth, the Governor and I would much prefer that today's field hearing take place elsewhere, not in Baltimore City and not in Maryland. Unfortunately, however, the HBO cable drama, "The Wire," is tantamount to reality television in certain parts of Baltimore City. Indeed, Baltimore City continues its high level of homicides with 253 in 2002, 278 last year, and 73 so far this year. And, that is why you are here near the epicenter of witness intimidation and violence in Maryland.

Too many individuals in this City live in a state of persistent fear, while brazen, violent criminals patrol the streets unafraid and intent on enforcing vigilante justice. As the members of this subcommittee are aware, the problem of witness intimidation is not simply a Baltimore City problem. It effects other areas in Maryland, particularly my home county of Prince George's County near the Washington D.C. border, and other communities where drugs and gangs proliferate.

Thus, in a growing number of cases throughout Maryland, police and prosecutors are frustrated by their inability to investigate and prosecute cases because witnesses refuse to provide critical

evidence or are unwilling to testify due to fear of violent reprisals. Recent incidents demonstrate that this fear is not unfounded:

- In 1997, Amy Lynn Fischer, 26, a clerk in an Annapolis area photo store, was scheduled to appear as a witness in a shoplifting case involving two packs of film worth $35.98. The night before the trial, the defendant shot Ms. Fischer and her sister as they pulled into their driveway.

- In 2002, a drug dealer admitted to setting fire to the Dawson's family's home in retaliation for the family's reported calls to police about drug dealing in their neighborhood. The resulting fire claimed the lives of Carnell Dawson, Angela Dawson and their five your children.

- In November 2002, Baltimore City Police Detective Thomas Newman was assassinated in retaliation for testifying against the half brother of one of his killers, who was put on trial for wounding Newman in a 2001 shooting.

- Rickey Prince, a 17-year-old Baltimore County homicide witness, was kidnapped and shot in the head by two friends of the murderer in 2003.

- Tjane C. Marshall, the murderer of a pregnant Howard County woman, told witness Rashall Wall that he would be killed if he testified. The victim was found shot four times in the face, lying in bed at her suburban apartment in Columbia's Oakland Mills Village in May 2003.

- In January 2004, four men barged into Anthony Black's home, pointed their guns at his fiancé and 10-year-old son, and threatened to kill them if Black testified about their East Baltimore drug ring.

- On July 14, 2004, Tashiera Peterson, an 11-year-old girl, spent her birthday in court recounting the murder of her father. The 19-year-old man who allegedly perpetrated the shooting death of her father is accused of ordering a hit on Tashiera and her mother to keep them from testifying.

- In December, a DVD called "Stop Snitching" surfaced on the streets of Baltimore City with a chilling admonition by drug dealers and other criminals that if you witness a crime, keep your mouth shut – or else!!! The DVD shows young men smoking marijuana, waving guns and proclaiming "He's a rat...He's a snitch ... He's dead."

- Four months ago, five men and one juvenile firebombed a home of a community activist in Baltimore as retaliation for the woman informing authorities about drug trafficking in her neighborhood.

Deficiencies in Maryland's laws and evidentiary rules also contributed to this escalation in witness intimidation. Currently, the crime of witness intimidation in Maryland is a misdemeanor offense punishable by a maximum penalty of five years in prison. Of course, that is not

commensurate with the severity of the crime. Indeed, if a criminal is able to silence a witness' testimony in the case of a violent felony crime, the same witness certainly would not testify in a prosecution where the maximum exposure of the defendant is a five-year misdemeanor. By comparison, in the District of Columbia, a person convicted of obstruction of justice shall be sentenced to a maximum period of incarceration of not less than three years and not more than thirty, or shall be fined no more than $10,000, or both (D.C. Code, Section 22-722). Last year, Virginia Governor Mark R. Warner signed legislation that subjects a person who obstructs or impedes the administration of justice in any court relating to a felony violation or conspiracy to violate such an offense, to an enhanced penalty of ten years (Virginia Code, Section 18.2-460). Under Virginia law, a felon must serve at least 85% of his or her sentence. The Federal Government may impose a maximum penalty of ten years for witness tampering.

Additionally, solicitation and conspiracy to commit witness intimidation are not even statutory crimes in Maryland. Further, there is also a huge payoff for the crime of witness intimidation: kill or otherwise silence a witness to your crime and his or her incriminating statement to police and to the grand jury is inadmissible at trial. This means that a criminal defendant who kills a witness silences that witness entirely.

In response to repeated instances of witness intimidation and ineffective laws that threaten the underpinning of law enforcement and criminal justice in Maryland, the Ehrlich-Steele Administration, joined by Baltimore City State's Attorney Patricia C. Jessamy, launched an effort that began in 2003 to toughen Maryland's witness intimidation laws. Reverend Tucker also rallied the faith community and advanced the cause of witness intimidation legislation a significant degree.

I am glad to report that the Maryland General Assembly passed Governor Ehrlich's witness legislation at the end of the recently completed 2005 session. Although a powerful committee Chairman led an effort to scale-down the Governor's bill and obstructed the full enactment of a hearsay exception modeled after Federal Rule 804(b)(6), the approved legislation still permits:

(1) prosecutors to seek a maximum penalty of twenty years for individuals who solicit others, conspire with others, or commit witness intimidation if the underlying crime is a felonious drug violation or an enumerated crime of violence under Criminal Law Article, Section 14-101 of the Annotated Code of Maryland; and

(2) the admission of a hearsay statement, written or recorded, of a threatened or murdered witness against the defendant that attempted or did produce the absence of the witness in a felony drug or violent crime case as defined in Criminal Law Article, Section 14-101 of the Annotated Code of Maryland.

These legislative reforms are not a panacea to the problem of witness intimidation but significantly improve Maryland law to help prosecutors and police combat criminal gangs and other violent criminals that have destroyed too many lives and too many communities in Maryland. As Governor Ehrlich has stated, we remain committed to continuing our examination of the criminal laws in Maryland to ensure that State's Attorney Jessamy, Commissioner Hamm, and their colleagues have the necessary legal tools to make our communities safer.

Some have criticized the Ehrlich-Steele Administration for focusing too much energy on amending Maryland law instead of addressing a perceived weakness in the State's Witness Protection and Relocation Fund, one of a handful of such programs that exist nationwide. Such criticism is misplaced. If you are able to dismantle criminal gangs and put those individuals in prison for significant terms of confinement, as the Governor's legislation empowers prosecutors to do in certain cases, you eliminate the threat against the witness permanently, assuming some gang members are not permitted to walk free. That is the best witness protection program. By bringing the full force of law against criminal gangs, we can permanently change the culture of intimidation in many communities.

That said, Maryland's Victim and Witness Protection and Relocation Fund (the Fund) is an important part of criminal prosecution in Maryland. As emphasized by Congressman Bill McCollum in 1996, "It has long been recognized that in order to prosecute [drug dealers and criminal gangs] more effectively, prosecutors must be able to encourage witnesses to testify and one of the important ways of doing so is by offering protection before, during, after the judicial proceedings when witnesses fear retaliatory action by defendants or associates [of the defendant]." *See* Opening Statement of Chairman McCollum, *Field hearing on Witness Protection Programs in America*, Subcommittee on Crime, U.S. House of Representatives Committee on the Judiciary at http://commdocs.house.gov/committees/judiciary/hju57652.000/hju57652_0.HTM (November 7, 1996). The fund was created to protect crime victims and witnesses and their families, and to relocate them for their own protection or to facilitate their participation in court proceedings. It is administered by the Maryland State's Attorneys' Association and is funded from a portion of defendants' court costs. The state's attorneys in Maryland's twenty-three counties and Baltimore City can request $10,000 at a time from the fund as needed to support individualized witness assistance programs. There is no limit to the number of withdraws a state's attorney can make. State's attorneys in Maryland used less than $400,000 from the fund last fiscal year.

Maryland's Victim and Witness Protection and Relocation Fund and other similar programs in other states suffer from the same issues: (1) witnesses rarely want to leave their homes and communities; (2) many witnesses are also criminal defendants; (3) the services that local law enforcement agencies are able to provide are limited in duration (until trial) and geography, unlike the Federal Witness Protection Program; and (4) lack of coordination between local law enforcement and interstate witness relocation activities. That is why Governor Ehrlich, as a member of Congress, strongly supported the Witness Protection and Interstate Relocation Act of 1997 (WPIRA) (H.R. 2181), introduced by Congressman McCollum. WPIRA would have directed the Attorney General to: (1) survey all State and selected local witness protection and relocation programs to determine and report to the Congress on the extent, nature, and training needs of such programs and (2) make available training to assist State and local law enforcement agencies in developing and managing witness protection and relocation programs. Additionally, WPIRA would have required the Attorney General to: (1) engage in activities which promote coordination among State and local witness interstate relocation programs and (2) to establish a model Memorandum of Understanding for States and localities that engage in interstate witness relocation. It would also have authorized the Attorney General to expend up to ten percent of the total amount appropriated for drug control and system improvement grants under the Omnibus

Crime Control and Safe Streets Act of 1968 to jurisdictions that have interstate witness relocation programs and that have substantially followed the model Memorandum of Understanding. On February 25, 1998, WPIRA passed the House of Representatives 366 to 49. Unfortunately, it failed to win the approval of the Senate Committee on Judiciary.

In addition to witness assistance and protection initiatives/programs, the State of Maryland, under Governor Ehrlich's leadership, has devoted substantial resources to assist local prosecutors in Maryland to convict violent criminals. For example, the State of Maryland funds nine prosecutors in the Homicide Division of the Baltimore City State's Attorney's Office, and provides all of the funding for the City's Firearms Investigative Violence Enforcement Division (eleven prosecutors and four support staff members), which prosecutes all gun prosecutions in Baltimore City.

The Dawson Family tragedy and the recent firebombing of a community activist's home in Harwood are tragic examples of witness intimidation in Maryland. Professor Michael Milleman of the University of Maryland School of Law, testifying in support of Governor's Ehrlich witness intimidation legislation, stated, "this is civil rights legislation." Members of this subcommittee, we indeed have here a civil rights matter: people have a right to not live in fear. Governor Ehrlich and I remain committed to working with our federal partners, this subcommittee and other members of Congress, along with local law enforcement to examine ways to strengthen the federal, state and local responses to witness intimidation and enacting thoughtful and meaningful laws to counteract and defeat these domestic, local terrorists.

Mr. Chairman, thank you for the opportunity to participate in these proceedings. I look forward to any questions you may have.

# # #

Mr. SOUDER. Do you expect some kind of a challenge on the hearsay evidence and do you know other States or locations that have tried this? Because obviously, if you are going to be protecting witnesses, it is going to be hearsay if it is not proven in court yet——

Mr. STEELE. Right.

Mr. SOUDER [continuing]. I mean, it is kind of a different legal——

Mr. STEELE. I don't think—I will ask our deputy counsel, Chris Kefalas, to join me because he can fill in any blanks that I may have. But I do not believe we anticipate any legal challenges. We have tried to—if I recall correctly—tried to hone this law very closely to the Federal standard and wanted to make sure that we address the due process concerns, the right-to-confront concerns that are raised by the Constitution. And so I think with that in mind, we, I think, crafted a fairly tight bill. I don't anticipate—unless——

Mr. KEFALAS. Sure.

Mr. STEELE [continuing]. Counsel, you——

Mr. SOUDER. You will need to——

Mr. STEELE. Be sworn.

Mr. SOUDER [continuing]. Be sworn in. And when you stand, spell your name for the record.

Mr. KEFALAS. Sure. It is Chrysobalantis Periyotes Kefalas, C-h-r-y-s-o-b-a-l-a-n-t-i-s P. K-e-f-a-l-a-s.

Mr. SOUDER. Mayor O'Malley, could you maybe come up as well? I might as well swear you in at the same time, and then we will—after we finish we will take your testimony.

Mr. O'MALLEY. Yes, sir.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that both witnesses responded in the affirmative. We will take the answer to this question and then we will hear your opening statement. Thank you for joining us this morning.

Mr. KEFALAS. Mr. Chairman, with respect to the hearsay provision, it is our understanding that the hearsay exception, as Governor Ehrlich first proposed, is used in 18 other States now, including Pennsylvania, the District of Columbia, and in other areas that battle significant witness intimidation issues.

Also, as an aside, in the Commonwealth of Massachusetts, there is a case currently proceeding to the Supreme Court of that State which will examine the Constitutionality of the hearsay exception under Massachusetts law.

In addition, the Supreme Court last year rendered opinions in the *Crawford* v. *Washington* case, which found that the Federal Hearsay Exception was Constitutional. In the opinion, Justice Scalia went out of his way to say that "The rule of forfeiture by wrongdoing, which we accept, extinguishes confrontation claims on essentially equitable grounds." That statement says if a forfeiture principle, which is the basic principle, which Rule 804(b)(6), the Federal Hearsay Exception was Constitutional, and the Court made that statement, and its opinion was it was not dealing with the confrontation clause, right of forfeiture by wrongdoing, specifically.

Mr. SOUDER. Thank you. I thank the mayor again for coming to one of our committee hearings. I guess we bring good luck to the Orioles over here.

Mr. O'MALLEY. We hope so.

Mr. SOUDER. Thank you for joining us.

STATEMENT OF MARTIN O'MALLEY

Mr. O'MALLEY. Mr. Chairman, members of the committee, thank you very much. Chairman Souder, Ranking Member Cummings, Congressman Ruppersberger, thank you coming to Baltimore today and giving me the opportunity to speak with you on this very, very important issue.

Five years ago the city of Baltimore was actually dubbed by our FBI the most violent city in America. We have now, over these last 4 or 5 years, actually been leading America's cities in the rate of reduction of violent crime, achieving a 40-percent reduction in overall violent crime thanks to courageous efforts not only of police officers, eight of whom have given their lives in the line of duty on our streets in these last few years, but also because of a lot of really courageous citizens, we have been able to reduce violent crime to its lowest level since the 1960's. But obviously, we still have a long way to go.

And in order to continue on our path to making Baltimore the safest big city in America—which, Mr. Chairman, is our humble goal, to become the safest big city in the world—we are committed to a thorough, comprehensive action in the area of victim and witness intimidation. It is my firm belief of having been a prosecutor for a couple of years and a criminal defense attorney as well as being mayor of the city for these last 5 years, that the most effective way to protect witnesses is with more effective prosecution, more effective law enforcement. Effective prosecution, effective law enforcement is really the only way to truly combat victim and witness intimidation.

Now, many have identified increased sanctions as a deterrent to witness intimidation, and increased sanctions certainly do serve a vital component of eliminating intimidation in Baltimore. However, these additional measures have to be part of a comprehensive plan that solidifies safety and security for every victim and witness in every corner of our city and in every corner of our State.

In addition to increased sanctions, we also have to examine our criminal justice systems, existing practices, our policies and procedures. We have to be prepared to reengineer the way that we work so that we can better coordinate and thereby better protect the courageous individuals who chose to partner with our police, prosecutors, and judges to permanently dismantle those individuals who would rob the rest of us of our freedoms and of our lives.

We must work with urgency, we must share information, and we also need our Federal partners with us every step of the way, maintaining the important investments that have been made to make our country safer.

Virtually all of the citizens that have been murdered in our city, and there were some 6,000 in the 1990's if you combine homicides and drug-related overdoses. It is 6,000 Americans. That is twice the number that were killed on that awful day on September 11th;

6,000 in our city. And virtually all of them were American citizens, citizens of the United States of America.

Our State law permits the release of violent felons on bail when they are rearrested, which gives them even greater opportunity and incentive to terrorize their communities while they are awaiting trial. Actively or by their mere presence back on the streets, in our communities, in our neighborhoods, those involved in the business of violence work to intimidate witnesses and commit further acts of violence while awaiting trial.

Maryland must look to adopt a bail system that is more closely modeled after the very system that is currently used by our Federal Government where no bail status is given to defendants that meet one of the following conditions: a defendant charged with a crime of violence, a defendant charged with a drug offense carrying a maximum penalty of 10 years or more, a defendant charged with any felony that has two other convictions within the categories listed above, a defendant who may flee, a defendant who may obstruct justice or threaten, injure, or intimidate a prospective witness or juror. These are the rules that guide bail in the Federal system. We need to revamp those rules with regard to our State system.

In Maryland, our city police department doesn't even have a direct data feed from the State's judicial information system, which could help prevent witness intimidation by enabling police to systematically establish links between witnesses, victims, and suspects in cases, to proactively move to make more arrests, and to place victims and witnesses in protective programs before and after the intimidation is allowed to occur.

Currently, Mr. Chairman, citizens can go to our local government Web site to find out if a crime has been committed in their neighborhood. Shouldn't they also be able to find out if the criminal who committed that crime is in jail, made bail, or is still on the street? And when will that person face justice? There is no reason that it can't happen. It is simply a matter of will.

Two years ago our State's attorney, Ms. Jessamy, who is here today, led the effort to establish a war room, which creates an information clearing house right up front in our system to target our city's worst offenders immediately at the point of booking. One problem, however, is that the information-sharing needed to make it work does not exist with some of our partner agencies. The parole and probation information, which is run by our State government, that is needed to target repeated offenders, is actually kept in notebooks still or in non-network computers. This high-tech war room relies on a system of paging parole and probation agents in hoping that they are available and that they are in possession of the right information about the right offender.

Police officers and assistant State's attorneys can't find out, in many cases, whether the offender they are to lock up and charge is in compliance with their parole and probation conditions. Probation agents don't necessarily know Monday morning that an offender who was supposedly under their supervision was even arrested Saturday night because they are not networked. And because only the judge who puts an offender on probation can hear a violation case in our State, it can take weeks to address a viola-

tion, which should be an easy way to get criminals off our streets pending their trials.

We understand that these are local issues, and we are committed to resolving them. However, there is, Mr. Chairman, an opportunity for this honorable committee to really help us on the Federal level. We ask that you please help us to insist upon a U.S. Department of Justice commitment to Federal gun prosecutions. It is not coincidental that in Baltimore our homicide rate has slightly increased over these last couple of years as the Federal Government commitment to gun prosecution in Maryland has dramatically declined.

In 2000 there were 196 Federal gun indictments. In 2004, that number dropped to 97; 196 in 2000 has dropped to just 97 in 2004. What message does that send to witnesses and to victims? The benefits of Federal gun prosecution include no bail to prevent defendants from re-offending and intimidating witnesses and victims, clear and substantial sentences served in full without parole, and incarceration in a Federal facility far away from criminal enterprises and networks in Baltimore.

And No. 2, we ask that this committee please help us by demanding adequate Federal support for our police and for our prosecutors. Since 1997, the city's local law enforcement block grant from the U.S. Department of Justice, now the Justice Assistance Grant, has been reduced by 74 percent. In the President's proposed budget for this year, there will be no Justice Assistance Grant.

And it gets worse. In the President's proposed budget, the Office of Community-Oriented Policing Services [COPS] program, will receive just $118 million. That is down from $606 million, or an 80-percent decrease. And of that $118 million, $96 million of that are carry-over dollars from the 2004 budget. As a result, this means that the President has only proposed $22 million for the whole Nation in new funding for the COPS office, a program which had invested over $208 million in support to Maryland's law enforcement professionals since 1995.

The President also proposes to reduce funding to the Baltimore-Washington HIDTA by over 50 percent. I have attached an addendum to the testimony that outlines the destruction that this would cause if the President is successful with his attempt to dismantle HIDTA. When combined the proposed fiscal year 2006 funding level for the Department of Justice and Department of Homeland Security Assistance Programs is $2.1 billion. That is a reduction of $1.4 billion, or 40 percent from the combined fiscal year 2005 level of $3.6. It represents a decrease of $2.5 billion or 54 percent from 2004.

Congressman Cummings, you have supported this city and its heroic citizens for many, many years. You live in a neighborhood of this city where neighbors are battling back, where good things are starting to happen again because of your leadership and the leadership of your neighbors.

Improved information sharing, bail reform, and harsher sanctions for victim-witness intimidation are things we need to work on on the local level. But on a Federal level we must request, must insist, that a commitment to increase Federal firearms prosecutions is a prerequisite for consideration of appointment to the criti-

cal law enforcement post of the U.S. attorney for the District of Maryland. We need adequate funding for our local police and prosecutors.

Without the Federal Government as a partner in our fight, our attempts to ensure the safety of victims and witnesses will be severely undermined. We welcome any thoughts, any questions or ideas that you or your colleagues may have to assist us in addressing this problem, which is not only a city problem, not only a State problem, but it is also a problem for the United States. Thank you.

[The prepared statement of Mr. O'Malley follows:]

May 2, 2005
Testimony of Mayor Martin O'Malley
United States Congress' Subcommittee on Criminal Justice, Drug Policy and Human Resources on the topic of Victim-Witness Intimidation

- Chairman Souder, Ranking Member Cummings and Congressman Ruppersberger, thank you for coming to Baltimore today and providing me with the opportunity to speak with you on this important issue.

- Five years ago, we were the most violent city in America. Now, we have led America's big cities in reducing violence. Overall violent crime is down 40% - to its lowest level since the 1960s. To continue on our path of making Baltimore the safest big city in America, we are committed to a thorough, comprehensive action in the area of victim-witness intimidation.

- Many have identified increased sanctions as a deterrent to victim-witness intimidation. Increased sanctions do serve as a vital component of eliminating victim-witness intimidation in Baltimore, however they must be part of a comprehensive plan that solidifies safety and security for every victim and witness in every corner of our City.

- In addition to increased sanctions, we must examine our criminal justice system's existing practices, policies and procedures. We must be prepared to re-engineer the way we work to better protect the courageous individuals who choose to partner with our police, prosecutors and judges to permanently dismantle the malicious individuals who rob us of our freedom. We must work with urgency. We must share information. And we need our Federal partners with us every step of the way.

- Our State law permits the release of violent felons on bail when they are rearrested, giving them even greater opportunity and incentive to terrorize their communities while they are awaiting trial. Actively or by their mere presence in the community, those involved in the business of violence work to intimidate witnesses and commit further acts of violence while awaiting trial.

- Maryland must adopt a bail system that is modeled after the very system used by our Federal government, where no bail status is given to defendants that meet one of the following conditions:

    - Defendant charged with a crime of violence,
    - Defendant charged with a drug offense carrying a maximum penalty of 10 years or more,
    - Defendant charged with any felony and has two other convictions within the categories listed above,
    - Defendant may flee,

- Defendant may obstruct justice or threaten, injure or intimidate a prospective witness or juror.

- In Maryland, our Police Department doesn't have a direct datafeed from the State's Judicial Information System - which could help prevent witness intimidation by enabling police to systematically establish links between witnesses, victims and suspects in cases, proactively move to make arrests, and to place victims and witnesses in protection programs before an act of intimidation is allowed to occur.

- Right now, citizens can go to our government website to find out if a crime has been committed in their communities. Shouldn't they also be able to find out if the criminal who committed that crime is in jail, made bail or is still on the street - and when he'll face justice? There's no reason it can't happen. It's simply a matter of will.

- Two years ago, our State's Attorney lead the effort to establish a "War Room" which creates an information clearinghouse, upfront, to target our City's worst offenders.

- One problem: The information sharing needed to make it work does not exist with some of our partner agencies. The Parole and Probation information needed to target repeat offenders is kept in notebooks and non-networked computers.

- This high-tech War Room relies on a system of paging parole and probation agents and hoping that A) they are available; and B) they are in possession of the right information about right offender. Police officers and assistant state's attorneys can't find out, in many cases, whether the offender they're trying to lock up and charge is in compliance with their parole and probation conditions. Probation agents don't necessarily know, Monday morning, that an offender was arrested Saturday night - because they're not networked. And because only the Judge who puts an offender on probation can hear a violation case, it can take weeks to address a violation - which should be an easy way to get violent criminals off our streets.

- We understand these are local issues and we are committed to resolving them. However, there is an opportunity for this honorable committee to help us on a federal level:

1) **Insist Upon a US Department of Justice Commitment to Federal Gun Prosecutions**

- It is not coincidental that in Baltimore, our homicide rate has increased as the federal commitment to gun prosecutions in Maryland has declined. In 2000, there were 196 federal gun indictments, in 2004, this number dropped to 97.

- The benefits of Federal prosecution include: no bail to prevent defendants from re-offending and intimidating witnesses and victims; clear and substantial sentences, served in full without patrol; and incarceration in a Federal facility far away from Baltimore.

2) Demand Adequate Federal Support for our Police and Prosecutors

- Since 1997, the City's Local Law Enforcement Block Grant from the United States Department of Justice, now the Justice Assistance Grant, has been reduced by 74%. In the President's proposed budget for this year, there will be ***no*** Justice Assistance Grant. And, it gets worse.

- In the President's proposed budget, the Office of Community Oriented Policing Services will receive $118 million, down from $606 million last year, an 80% decrease. However, $96 million of this amount is actually funding that will be carried over from the FY 2004 budget. As a result, this means that the President has only proposed $22 million in new funding for the COPS Office - a program which has brought over $208,780,057 in support to Maryland's law enforcement professionals since 1995.

- The President also plans to reduce funding to the Baltimore-Washington HIDTA by over 50%. I've attached an addendum to this testimony that outlines the destruction that will be caused if the President is successful with his intent to dismantle HIDTA. It will assist you greatly in this fight to restore funding to this critical program.

- When combined, the proposed FY 2006 funding level for DOJ /DHS assistance programs is $2.158 billion. This is a reduction of $1.467 billion or 40% from the combined FY 2005 level of $3.625 billion. It represents a decrease in $2.55 billion or 54% from FY 2004.

- Congressman Cummings, you have supported this City and its heroic citizens for many, many years. Improved information sharing, bail reform, and harsher sanctions for victim-witness intimidation are things we need to work on at the local level. On a Federal level, we must insist that a commitment to increased Federal firearms prosecutions is a pre-requisite for consideration of appointment to the critical law enforcement post of United States Attorney for the District of Maryland.

- We need adequate funding for our local police and prosecutors. Without the Federal government as a partner in our fight, our attempts to ensure the safety of victims and witnesses will be severely undermined. We welcome any thoughts, questions or ideas that you and your colleagues from may have to assist us in addressing the pervasive problem of victim-witness intimidation in Baltimore.

- Thank you.

Mr. SOUDER. I would like to yield to Mr. Cummings.

Mr. CUMMINGS. Thank you very much. I want to thank all of our witnesses for being here this morning. Lieutenant Governor, I just want to go back to the whole issue of—when we look at—you know, we have been trying very hard to get resources, and I know you have to—to our State. And one of the things we are hoping for at some point is that we will get more money for the program that you mentioned in your testimony, and you didn't talk about it because—I am sure it was because of time——

Mr. STEELE. Yes.

Mr. CUMMINGS [continuing]. But the Maryland Victim and Witness Protection and Relocation Fund——

Mr. STEELE. Yes.

Mr. CUMMINGS [continuing]. And in the testimony is said that to date $400,000 has been used of that fund by State's attorneys.

Mr. STEELE. Correct.

Mr. CUMMINGS. How much is in the fund?

Mr. STEELE. About $600,000.

Mr. CUMMINGS. About $600,000?

Mr. STEELE. $600,000 and about $400,000 of that has been used to date.

Mr. CUMMINGS. OK, so it is quite possible that they will use the rest of it then? I mean——

Mr. STEELE. It has been the experience, as I understand it, that fund has never been depleted. It has never gone to zero. It has never been used up. So whether we will spend the remaining $200,000 in the next 6 months of this year, 7 months of this year, I am not sure. I think Ms. Jessamy can address that more directly.

Mr. CUMMINGS. Yes, I hope so because that certainly would——

Mr. STEELE. But as of currently, the dollars that have been appropriated have not been spent to zero in any given fiscal year.

Mr. CUMMINGS. Yes, I just want to—I hope Ms. Jessamy does address that because that is very important, because what we are trying to do is bring more Federal dollars into the system. And if there is an issue of dollars already being there and not being spent—although I do realize that we are only one-third of the way along in the year and two-thirds of the funds are gone, but, you know, I appreciate the——

Mr. STEELE. But——

Mr. CUMMINGS [continuing]. Historical perspective.

Mr. STEELE [continuing]. If I may, and I think I touched on this in my testimony—part of that goes to the fact that people don't want to enter the program because they don't want to leave their homes and their communities on the one hand, and they don't want to be exposed on the other. So there is very little incentive for them to take advantage. And again, I think Ms. Jessamy can speak to her experience dealing with witnesses in a case by case. There is a great hesitancy to enter the program on the one hand simply because it means uprooting and moving. And, of course, the question is how protected am I, etc.

So the other side of that, I think, and one of the challenges you have with these programs—it was just—there was a Washington Post article this weekend that spoke about a witness who was killed because the witness entered the program but then didn't

want to follow the rules of the program and, you know, continued to, you know, cavort with the members of her former gang, etc. So there are a lot of features that are involved here in terms of how the programs function, how they are supported, and how those dollars are maximized to make sure that the witness is protected or relocated sufficiently and effectively.

Mr. CUMMINGS. The thing that, I guess, that I do applaud you on, Ms. Jessamy, for the State legislation—and I told Ms. Jessamy this at least on two occasions—that the legislation is important from the standpoint of increasing the sentences——

Mr. STEELE. Yes.

Mr. CUMMINGS [continuing]. And it is important from the standpoint of allowing certain testimony to come in, but a lot of people that I talk to—we need that third leg. Not that the first two aren't important——

Mr. STEELE. Right.

Mr. CUMMINGS [continuing]. I mean, very important, but there are people who are actually afraid to testify. And, you know, they are afraid for their lives. And I hope Ms. Jessamy will shed some light on this because if there is on the one hand—I know that there is a new type of witness, and maybe the witness intimidation program—the Federal program—was aimed at one point when they first began it, more or less the crime families and things of that nature, and the mafia and——

Mr. STEELE. Right.

Mr. CUMMINGS [continuing]. And now you have this different kind of situation. But still I think that if there are people who are not willing to go into the program, I would guess that it may be because it is not long enough or it is not necessarily works the way they want to work. But one thing I do know, after reading the Washington Post article, that when we are arresting people and holding them in contempt and putting them in jail to become witnesses later on, that doesn't seem like that is too much fun——

Mr. STEELE. Not much of an incentive.

Mr. CUMMINGS. Yes. No. So maybe we just need to look at that program and see exactly whether the changes need to be made within the program itself.

But, Mayor O'Malley, let me just ask you, you just testified about this HIDTA, the proposed—basically elimination of the HIDTA program, and I must tell you that Republicans and Democrats on the Hill are very concerned about this. We have had testimony about this already. And another thing you talked about was cooperation, and how important cooperation is. How significant are the proposed cuts to HIDTA? How do you see that affecting witness protection types of efforts and the whole area of trying to address crime in our area?

Mr. O'MALLEY. Well, Congressman, as you know from the hard work that you have been doing for the people of our city, and Congressman Ruppersberger knows from his days as a prosecutor, HIDTA is a very, very effective tool for creating that sort of teamwork that must exist between local police and Federal authorities, in order to combat the narcotics that are being shipped into our county, shipping through our ports, our airports, over I–95, that comes in is killing our people in such devastating numbers.

HIDTA has been a very effective way for us to combat that drug trade. You take the resources and the knowledge of the local police with the Federal team, and you are actually able to bring about that sort of robust Federal prosecution to actually not only clip the dandelion, but to actually pull up that dandelion by root and all and take out drug organizations. It has been one of the most effective programs that we have had in terms of bringing about that sort of sharing. And it would be absolutely devastating, on top of all of the other cuts that are being made, not to mention the new, local, unfunded mandate to provide for the common defense in this changing world of conflict, and the nature of conflict in this changing world.

So it would be devastating for us to lose HIDTA, and we ask you to do everything you can to preserve that. And then I am very, very heartened to see so many Republican Members of Congress recognizing the importance of HIDTA.

Mr. CUMMINGS. With regard to the whole idea of this whole effort of cooperation, and he was talking about the Federal gun prosecutions, why do you think that there has been a drop in that?

Mr. O'MALLEY. Congressman, I really do not know. I really do not know. You know, the fact of the matter is there are already dollars budgeted for our U.S. Attorney's Office. We already pay to keep the electricity on in the courtrooms. We had a very positive year in 2003 thanks to your help and the congressional delegation. And we actually saw an increase in the number of gun prosecutions that year. Unfortunately, that dropped in 2004. And I really don't know why. That is a decision made by the U.S. attorney. Our former U.S. attorney decided there were other cases more important than Federal gun prosecutions.

There is also a sense—not shared by his colleagues I might add—in the other neighboring Federal jurisdictions. There was a sense in our U.S. Attorney's Office that was a problem that local and State-level prosecutors had to deal with, and they shouldn't be asked to put Federal prosecutorial resources or courtrooms onto this task.

But if you compare, Congressman, Maryland to the eastern district of Pennsylvania, we did 158 gun prosecutions in 2004; they did 197. Compare Maryland to D.C., they did 219. Maryland to eastern Virginia, they did 291. Now, a lot of times at election time, politicians say we are for Project X, we are for more robust Federal prosecution of gun crimes. But those hopes have not been realized to date in Maryland.

And I really don't know the reason for it because I know President Bush himself and his—in his public pronouncement has said that he wants the Federal Government to be more involved in taking guns off the streets and out of the hands of those that use them to commit crimes of violence over and over again.

Mr. STEELE. If I could followup on the mayor's point, a couple of things come to mind. One is just from my own cursory conversation with some prosecutors around the State, typically, you know, gun violations are the first things that are pleaded out in most cases. And there is not an aggressive prosecution necessarily because you are trying to go for, you know, a greater crime if you will. That is part of, but not, I don't think, a significant part. I think, as we see

it, you know, the Responsible Gun Safety Act of 2000 and its automatic five provisions pretty much handcuffed State's attorneys.

And I know that Governor Ehrlich has met with the Maryland State U.S. attorney and talked about how we could work toward bringing more gun prosecutions to the table, certainly through our Project Exile efforts. There was an agreement at that time, a year and a half ago, by the U.S. attorney to do more, at least here in Maryland. And so we will continue to push forward to make that happen. But there are handcuffs that have been placed within the system that I think we should look at as well to make sure that we have sufficiently freed up our State's attorneys to prosecute these gun offenses to get the guns off the streets and to be serious about it. And working with the mayor, working with the Governor of the State to make sure that up and down that chain, there is a level of cooperation and communication with an eye toward getting guns off the street.

Mr. CUMMINGS. Just one last comment. One of the things that Chairman Souder and I have always been concerned about, particularly after September 11th, is that we saw a lot of effort being put into homeland security and making sure that another September 11th not happen again, and I think that we all agree that we don't want to see that happen. We have to address terrorism.

And one of the things we also became concerned about is the Federal Government not putting the emphasis on crime and particularly drug crimes that maybe was there before because we got a little bit out of balance. And, you know, we are convinced that you have to do both. You can't just deal with terrorism and have narco-terrorism happening in our communities. And so I guess I am hoping that you all will, you know, continue to try to work with us, because as we speak—Mr. Governor, it is not just in Baltimore or just not in Maryland——

Mr. STEELE. Absolutely.

Mr. CUMMINGS [continuing]. That is why I emphasize what is happening in here is happening all over the country. As a matter of fact, I set my computer to Google for narcotics, and usually I can get about 20 articles a day, and a lot of them are about witness intimidation all over the country.

Mr. STEELE. Yes.

Mr. CUMMINGS. And I guess I always think about, Mr. Chairman, what my mother used to say. She says all that motion, commotion, emotion and no results.

Mr. STEELE. Yes.

Mr. CUMMINGS. Some kind of way we have to get a hold of this problem because people are dying. People are literally dying. You know, there is somebody somewhere right now who is having their door busted in somewhere in this country and somebody may be pointing a gun at their head or sending a note or somebody sitting in the back of a courtroom emailing somebody, messaging somebody saying Jane has just testified, you know, let us take care of him this afternoon sometime.

So I just really hope that we can all work together to try to address these problems. And I don't think that enough emphasis has been put on—as a matter of fact, this Wednesday a family got—one of your friends, I guess, Mr. Souder, Mr. O'Riley to work with

us and Fox to do a special on this, this whole witness intimidation program. Because as far as I am concerned, if we don't address this—I mean, our whole system can fall. And I am sure you all agree with that. Is that right, Mr.——

Mr. O'MALLEY. Congressman——

Mr. CUMMINGS [continuing]. O'Malley?

Mr. O'MALLEY [continuing]. When these incidents happen, you know, you just start asking yourself what is going to happen to the fabric of the United States if we do not come up with the will to stop it. We could easily go the way of Mexico City or other places where the whole criminal justice system breaks down. And the sad thing for us as a hyperpower, attacked as we were in that unprecedented way on September 11th, there was really an opportunity to put additional resources to the protection of our shores against the threat of terrorism that could have also inured to our benefit in fighting the domestic terrorists of drug trafficking and drug intimidators.

Instead, sadly, what we have seen is a very cynical shell game where we take the resources that were in the glass called local law enforcement and we have poured that half-full glass into an empty glass called homeland security. So, I mean, we can say that there is more in this glass now for homeland security, but if there is less for local prosecutors, less for local police, and the COPS program has been eliminated, HIDTA is on the chopping block, we are really not advancing the cause and making our cities and our shores safer.

And that is the sad predicament that we are in. For a little bit of additional money, the same security that could keep the nukes out of our port could also keep the cocaine and the heroin out of our port in greater numbers. For the amount of dollars that are going into putting cameras up to protect some critical infrastructure, we could be putting more cameras up to protect the most critical infrastructure we have, which is our people in our poorest neighborhoods who have been on the frontlines of this fight.

It doesn't have to be this way. It is about choices. And I am really grateful that the committee has chosen to come to Baltimore to highlight the opportunities—not only the problems, but the opportunities that are out there for us as a Nation if we should so choose.

Mr. STEELE. I think this is an unprecedented time for mayors and Governors and Presidents, Congressmen, Senators, to get on the same page and to recognize that at the end of the day, there is a limited pool of money. No matter how you cut it, there is going to be a limited pool of money. And the smart people will figure out the best way to allocate those resources. I think you have just opened up a very important door, Congressman, with your comments in that we are beginning to see now, as we watch the minutemen along the Texas border take up the charge, and people begin to say, hey, maybe Al Qaeda is, you know, sort of slipping in through, you know, the immigrants who are coming in over the border, and now they are part of that fabric.

We can't afford to sit by idly. And we have to be on the same page. We have to cooperate. And I think we are now getting at that point. And I know the Governor, myself, when we get the briefings,

we are asking are we putting the resources that we have to the best practical use to protect the citizens of Maryland, to take advantage of the dollars that do come in, and coordinate as much as we can with local law enforcement?

At the end of the day it is the mayor and the city police of large towns like Baltimore and small towns like District Heights in Prince George's County that are going to be on the frontline when something happens. They are the true first responders, and how we back them up, both county-wide, Statewide, and federally, I think will speak to our level of commitment.

And I think the commitment is there. At least the words are there. Now we are hoping that we can coordinate the dollars and get the dollars to take advantage of this unprecedented opportunity, as the mayor pointed out, for us to really turn the corner, to protecting the courts, to protecting neighborhoods, to protecting the heart and soul of the economic system, but more importantly, the heart and soul of every community in our State.

It is a challenge and is one that we have never faced before. It is one that we haven't quite drilled down on exactly how to do it and how to cover every base that needs to be covered and how to focus on every issue that needs to be focused. We are going into year 5 of post-September 11th, and there being many more years ahead of us, we have been blessed that nothing else has happened. But that doesn't mean it won't. So we must stay vigilant, we must stay focused, and we must be comprehensive.

Whether we are talking about witness intimidation or whether we are talking about preventing the type of attacks that occurred more broadly on September 11th, we are hoping, and certainly you can count on this administration's cooperation with this committee, with you, with the Members, with our mayor, and all that have concern about the people of this State.

Mr. O'MALLEY. Mr. Chairman, may I just say, Congressmen, may I just say a word of thanks to our Federal prosecutors for the way that they did jump in with both feet not only in the Dawson case, but also in the more recent case on Harwood. That was a terrific message to send to all of our citizens to see our Federal Government come in that way. If they could only do the same things with regard to increasing rather than decreasing Federal gun prosecutions.

We are at, Mr. Chairman, a 7-year low. Last year was our lowest number in 7 years of Federal gun prosecutions. Currently, the end of April, we are headed for another 8-year low, because that was the lowest first 4 months of the year we have ever seen in terms of Federal gun prosecutions.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. SOUDER. Mr. Mayor, I am baffled by something in your testimony. You started by saying 5 years ago we were the most violent city in America. Overall, our violent crime is now down 40 percent. We are on the way to make it the safest biggest city. Yet later in your testimony you talked about the gun prosecutions. In fact, 5 years ago was the maximum—that was the date you gave for the maximum, and your violent crime is down 40 percent now. How do you reconcile this?

Mr. O'MALLEY. Actually 2003, Mr. Chairman, was the most robust year in terms of Federal gun prosecutions, almost as many in 2000 as well. The measure that the Federal Government uses with regard to violent crime are the Part I index crimes: murder, rape, robbery, aggravated assault. If you measure those four together, that is where the 40 percent number comes from.

The number with regard to homicides, I believe, went up last year in our city by about 2 percent, and that was on top of an increase of 3 percent from the year before. We averaged in the 1990's about 325 homicides. We have been averaging about 265 in the year 2000.

So the other crimes have actually gone down at a much bigger percentage than we have yet been able to get our homicides down——

Mr. SOUDER. Because we had quite a bit of discussion—will you have the city provide to us a track of the gun prosecutions in the city of Baltimore and also the homicide and violent crime rates so we can see whether they are actually correlated?

Mr. O'MALLEY. Yes, sir.

Mr. SOUDER. Thank you. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Sure. Well, sitting here listening to the issues and the testimony, first, it is great to see both the Lieutenant Governor and the mayor sitting at the same table. This is a bipartisan issue and is something we have to work together with respect as a team, the State, local, and Federal together.

Now, just a couple of comments first. September 11th did change a lot in this country. We are putting a lot of resources into intelligence and into our war. But still in my opinion the biggest problem that we have in the world are drugs. Drugs have more impact on our communities than anything else. Violent crime—over 80 percent, if not more, violent crime is all related to drugs. And we have not put the resources, yet we are hearing today that there are cuts.

My concern—and I sit on the House Select Intelligence Committee—we deal with terrorism all over the world. My concern now is that the terrorists and the drug gangs will come together and even make our situation worse. We have a very serious situation in Mexico now where a tremendous amount of drugs—probably over 80 percent, I am not sure of the exact percentage—come in through Mexico. And yet, we don't have the resources, where our CIA, our NSA, our DEA all coming together working to deal with the issues that we have to deal with, including immigration.

Because, as you said, Lieutenant Governor Steele, the money is limited. So we have to reprioritize where we are going to go. And that is why I really thank Chairman Souder and Elijah Cummings for focusing in Baltimore right now. This hearing, hopefully, we will come away with some results.

Now, you know, with that in mind we have heard the issue of communication, you know, focusing on where we need to put our money. I want to ask a question, because we want to walk away from this hearing with some recommendations so that we can try to implement these recommendations and not have another hearing and then it gets lost. And I know Chairman Souder and Ranking Member Cummings won't allow that to happen.

So my question to you, Mr. Mayor, and also Governor Steele, if in fact we could be chosen to put together a pilot program in Baltimore with Federal, State, and local coming together, and we are going to have certain resources of money, where would you like to see the money go? Where would you think that we could get the best bang for our buck so that we can justify to the President, to the administration, that we in Baltimore have a team approach—Federal, State, and local—we are having a bipartisan approach to deal with the issue of not only drugs and witness intimidation, but it all comes together. And what I would like you to do is not only testify to that where you would like to go, but follow it up with recommendations, both the Governor's office and also you, Mr. Mayor, to our committee so that we can come with recommendations to try to implement where we need to go.

And, you know, Lieutenant Governor Steele, you talked about Governor Ehrlich meeting with the U.S. attorney. And I think that is great because we have to do that. But I think we need to go a step forward. We have to not only meet with them, but come away with a plan. And I would hope that at those future meetings—because the U.S. attorney is going to be in Baltimore——

Mr. STEELE. Right.

Mr. RUPPERSBERGER [continuing]. But you would also have the mayor and Pat Jessamy and maybe the Commissioner all come together so it is a team approach to where we need to go. So my question, basically—and either one wants to start—if in fact Baltimore was picked for a pilot program, where would you like to see the resources go? Mr. Mayor, you talked about that we don't have a proper system of communication. We don't have the ability to track recidivism, to see who is on the street and who is not. And that is basically resources and management. And management starts at the top. So where would you like to see the resources go if we could do something and have a pilot program that would make a difference and that we could justify this program to the administration in Washington?

Mr. O'MALLEY. The three that come to mind, one requires no additional resources at all, and that is to make sure that the next U.S. attorney for Maryland makes a commitment to increase gun prosecutions rather than continuing the back-sliding in the decrease in Federal gun prosecutions.

The second aspect would be to continue the Federal level of funding for local law enforcement efforts on such things as HIDTA being a No. 1 request, but the COPS program was also a huge help to us.

While this one was not in my notes, I am going to put it out there anyway. I think for a very minimal amount of money that the sort of security that wealthy people who live in gated communities have from cameras is something that we should be investing in with regard to our poorest neighborhoods where drug dealers sometimes operate with great impunity. And that would be a huge force multiplier for——

Mr. RUPPERSBERGER. Mr. Mayor, from a specific point of view you mentioned resources in HIDTA. That is a macro issue. What I am really looking for is a micro issue such as cameras, such as giving money to put together a communications system that is

going to work. I mean, these are the specifics that we can then justify to ask for money. So when you followup with a recommendation to the committee, we need to think out of the box on what is going to work, and to put money into specifics such as cameras if you think it works; I think your communication issue is extremely important also.

Mr. O'MALLEY. The communications issue should be something that—I was almost embarrassed to ask for that, because it is really something we should be able to fund. I mean, if we can fund it through a local government, the State should be able to fund it as well. I mean, it is a matter of just making computers network and automating parole and probation. It needs to become a priority. Then again, Congressman, if—you know, I hear your request and I will try to, you know, list out some specifics——

Mr. RUPPERSBERGER. Even our FBI is having problems there, so——

Mr. O'MALLEY. Right. Maybe we could become a national model.

Mr. RUPPERSBERGER. Well, that is what we want. That is what I am asking for.

Mr. O'MALLEY. OK.

Mr. STEELE. Congressman, thank you. Again, I think the communication issue is a huge piece, and we would certainly love to work with the mayor and his office to see where the State is out of sync and try to get us in sync. I know that our secretaries in those departments are looking to revamp and revitalize and see where they are and get that directly on that point.

I think one recommendation I noted that Governor Ehrlich was very, very supportive of and would like to see pass was the Witness Protection and Interstate Relocation Act. And that bill had to pass—would have surveyed all State and selected local witness protection relocation programs to determine and report to Congress the extent and nature of the problem.

I don't know if Congress fully appreciates except outside of anecdotal information that may be reported in a local newspaper exactly what a State attorney like Pat Jessamy has to go through and what she has to deal with on a day-in and day-out basis. And I think that would help, again, to go to my point of working with those limited dollars, making sure that they are going to be appropriated and used in a way that will help her respond, but more appropriately, come back to you and demonstrate through various reductions of witness intimidation cases.

Certainly making available training to assist State and local law enforcement agencies and developing and managing witness protection and relocation programs. Our law enforcement officers on the ground play a vital role there, and so it is important that they be appropriately trained and that their efforts be enhanced.

Certainly establishing again a tighter partnership and stronger partnership between municipalities like Baltimore and State government who, in turn, will come together to the Federal table and lay out a model as the mayor noted.

But I think probably the best way to answer this question is to get the need and desires from the person on the ground, and that is the State's attorney. And we have her here, and I would welcome her comments directly on what she needs and how we can, in com-

bining State resources, city resources, Federal resources, assist her more directly. So we would be in a position of providing you, certainly from the Governor's perspective, what additional direct efforts should be made or could be made with those dollars. And we would like to do that in combination with what the city would need or certainly the State's attorney would need so that we are——

Mr. RUPPERSBERGER. Well, specific recommendations——

Mr. STEELE [continuing]. More comprehensive——

Mr. RUPPERSBERGER [continuing]. And there is one last point and then I have to stop——

Mr. STEELE. Sure.

Mr. RUPPERSBERGER [continuing]. Because time is up. And you talked about the State's attorney, but also I think the police on the frontline too.

Mr. STEELE. Absolutely.

Mr. RUPPERSBERGER. One of the things, in my communication with local law enforcement, is that the State and local laws, even though we have done something in Annapolis, and I thank you for that, but that still the only way we are going to be able to deal with this issue is the deterrent. And the only deterrent right now is that the local gang members are deterred by the Federal Government being involved.

Mr. STEELE. Right.

Mr. RUPPERSBERGER. So we have to make sure—and I hope part of your specific recommendations to this committee will be in dealing with those laws that need to be strict. And we need to make sure the Federal laws and the State laws and local laws come together so that somebody is going to pay when they do something such as——

Mr. STEELE. Absolutely.

Mr. SOUDER. I thank you for your testimony this morning and for being with us. We appreciate the time and we look forward to trying to work with all of our recommendations today.

Mr. RUPPERSBERGER. Thank you, Mr. Chairman.

Mr. O'MALLEY. Thank you, Mr. Chairman.

Mr. SOUDER. If the second panel could come forward, Mr. Floyd O. Pond, Assistant Director of the Washington-Baltimore HIDTA; Lieutenant Craig Bowers, Baltimore County Police Department; and Ms. Patricia Jessamy, State attorney for the city of Baltimore.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that each of the witnesses responded in the affirmative. Let me also ask unanimous consent to insert into the record the statement by Mr. Thomas Carr and also from Heather Cartwright. And also we will receive Reverend Tucker's testimony. Without objection, it is so ordered.

[The prepared statements of Mr. Carr and Ms. Cartwright follow:]

UNIVERSITY OF MARYLAND
PUBLIC SAFETY TRAINING AND TECHNICAL ASSISTANCE PROGRAM
W/B HIGH INTENSITY DRUG TRAFFICKING AREA (W/B HIDTA)

Statement by Thomas H. Carr
Director

Before the House Committee of Government Reform
Criminal Justice, Drug Policy and Human Resources Subcommittee

(Submitted for the postponed April 12, 2005 hearing)

"How Can the Federal Government Support Local and State Initiatives to Protect Citizens and Communities Against Drug-Related Violence and Witness Intimidation?"

Chairman Souder, Ranking Member Cummings, Congressman Ruppersberger, and distinguished Members of the Committee: I am honored to appear before you today to discuss the ongoing problem of witness intimidation. My testimony today includes summaries of the scope of witness intimidation and its effects on the functioning of the criminal justice system. My final remarks will include a list of recommendations I feel are vital to the improvement of witness protection.

I. Introduction

The successful investigation and prosecution of a criminal case relies heavily on witness testimony. When, for fear of retaliation, witnesses refuse to tender critical evidence or provide testimonial support, the pursuit of prosecutors and investigators to bring about justice becomes impaired. This quandary is most apparent in gang and drug-related cases in which witnesses are intimidated into abandoning their previous cooperation with the prosecution.

The lack of cooperation received by fearful witnesses is harmful to the functioning of the justice system and the confidence of citizens. "Witness intimidation has become so pervasive that it is ruining the public's faith in the criminal justice system to protect them," said Judge John M. Glynn of Baltimore City Circuit Court. "We are not much better off than the legal system in Mexico or Colombia or some other sad places." The failure of witnesses to testify leads to the dismissal of serious criminal cases. For example, in Baltimore City in 2003, nearly 75 shooting cases were dismissed, the majority of which included some form of intimidation, according to the Department of Legislative Services.

Witness intimidation involves the intention to influence a witness to testify falsely or ignore a court summons, and retaliation against a witness for testifying or reporting a crime. Jurisdictions that have implemented witness protection programs are battling the ongoing struggle to protect witnesses. The current situation in Baltimore City illustrates the challenges faced by such programs. With a population of less than 700,000 and close to 300 violent crime deaths per year, Baltimore is a city in crisis. In a February 9, 2004 Baltimore Sun Article, Wes Adams, a

homicide prosecutor in the Baltimore City State's Attorney's Office, says "that in 90 percent of his cases, witnesses are afraid to testify or they lie on the stand.

II. The Scope of Witness Intimidation

A. Overt versus Implicit Intimidation

Witness intimidation is generally thought to be divided into two categories: overt intimidation and implicit intimidation. Overt intimidation is defined by intentional, explicit acts meant to intimidate a witness and ultimately cause him to change, withhold, or falsify testimony; examples of overt intimidation would be verbal threats or "putting a hit" out on a witness. Implicit intimidation occurs when a witness becomes frightened because of a history of violent gang retaliation in their community. This may be triggered by the mere stare of a defendant's fellow gang member in the courtroom, a parked car outside one's home, or continuous phone calls by a "breather." In whatever form, witness intimidation disturbs the core fundamentals of our criminal justice system.

B. Community-Wide Intimidation: The Climate of Gang Infiltration

Intimidation can occur despite the presence of actual or perceptible danger. The generalized anxiety and fear of retaliation is enough to create a colossal difficulty in maintaining witness cooperation. It is the community-wide effect violent and well-known gang members have that creates the trepidation that ultimately dissuades witnesses from participating in investigations or prosecutions. Witness intimidation can exist without case-specific, identifiable attempts at deterring witnesses from assisting in prosecutions and investigations; the mere reputation of a defendant can guarantee the apprehension of a potential witness to either come forward or ultimately testify. J. Ramsey Johnson, a judge on the District of Columbia Superior Court said, while working as an Assistant United States Attorney, "[o]ccasionally, there is actual witness intimidation…but while actual witness intimidation is obviously a serious problem, it is the general fear of retaliation on the part of virtually all of our witnesses that presents an even bigger problem. In almost every case we prosecute involving violence, there is at least some level of apprehension on the part of the witness."

C. Prior Contact with the Criminal Justice System May Be Intimidating Factor

Although overt and implicit intimidation act as barriers to successful prosecutions, the prosecutions are also hindered by the character of the potential witness himself; he may have a criminal background and thus be apprehensive to cooperate with the police in any capacity. Often times, these potential witnesses are victimized while engaging in a criminal activity and thus do not report the occurrence for fear of being arrested themselves.

D. The Grim Expansion of Witness Intimidation

An accurate assessment of the growth of witness intimidation has not been established as "only limited scientific research has been conducted on the problem."[1] Nevertheless, judges, victims, and prosecutors alike appear to share the view that witness intimidation is "widespread, that it is increasing, and that it seriously affects the prosecution of violent crimes."[2] Reportedly, there has been a marked increase in witness intimidation since the onset of crack-cocaine use in the inner-city in the 1980s.

E. The Principal Participants in Witness Intimidation

Although profiling is never the ideal way to detect a criminal or victim, there are specific classes of people that are more likely to be involved with witness intimidation, whether as a perpetrator or target. For example, in jurisdictions renowned for prosecuting intimidators, the intimidator is not likely to be the actual defendant, but rather an associate or family member. Likewise, four factors have been identified that bolster the likelihood that a witness will be the victim of intimidation: 1) the initial crime was violent; 2) there is a personal connection between the defendant and the witness; 3) the witness and defendant are geographically close; and 4) the witness has a special vulnerability, such as age or other impairment.[3] The collaborative evaluation of these factors feeds the theory that occupants of localities dominated by gangs possess a far greater likelihood of experiencing witness intimidation; they fall within multiple factors.

Juveniles comprise perhaps the most vulnerable class of potential witnesses. They are unable or disinclined to take advantage of available safeguards. Moreover, pressure from both friends and family can contribute to an unwillingness to involve oneself in the investigative or prosecutorial process of another. It is also important to note that because of the increasing amount of single-parent homes, a minor may not be able to relocate because of custodial arrangements.

III. Modules of a Witness Protection Program

Traditionally, witness protection has been dealt with observing four main practices: 1) the request for high bail; 2) aggressive prosecution; 3) witness management endeavors; and 4) the improvement of witness program services. While these approaches remain essential in the fight against witness intimidation, other approaches should be utilized as well; for example, 1) the relocation of victims of witness intimidation; 2) the prevention of intimidation in courtrooms; and 3) the reduction community-wide intimidation.

A. The Relocation of Victims of Witness Intimidation

Despite the popularity of this remedy, it is often encumbered by a lack of monetary resources and personnel. A program of this enormity requires not only physical relocation, but the transfer of services and records as well; school reassignments may be required; counseling may be necessary; the existence of medical ailments will require a change in treating physicians; employment could be an issue for the relocated witness. All categories of witness relocation are

affected by these constraints: emergency relocation, temporary relocation, and permanent relocation.

Emergency and short-term relocation is handled in a variety of ways, from temporary, out-of-town accommodations to the in-town use of lodging for the duration of the threat. The question prosecutors considering temporary witness relocation must always ask themselves is "what distance is sufficient?" Some argue that because gang members tend to geographically contain themselves, the mere relocation of a witness to another part of town provides satisfactory protection. Others argue that the relocation of a witness outside the jurisdiction provides additional security for both the witness *and* the case. Walter Arsenault, a New York prosecutor, said "[intimidated witnesses] always go back, so the farther away the better."

Permanent relocation of witnesses does not solve its purpose of indefinitely concealing a witness's true identity if witnesses are not compliant with the rules of the program; there is to be no communication with family or friends from their former neighborhoods. The occurrence of such breaches makes this program unfavorable among prosecutors and investigators; it is not the use of funds, but rather an unwillingness to cooperate with procedural guidelines. There is not a substantial disparity between temporary and permanent relocation as the objective of permanent relocation is a quick adjustment leading to financial independence.

Prosecutors and investigators are in dispute as to what the appropriate duration of relocation should be. Supporters of short-term relocation argue that one year following the completion of a trial is a sufficient period to allow any dangers to subside. The opposition argues that witnesses who have testified against an established gang member require permanent relocation as gangs are thought to consider the "disrespect" of one member to extend to the rest.

B. The Prevention of Intimidation in Courtrooms

Witness intimidation often times occurs by the presence of the defendant's family members or peers during a witness's testimony. Their presence creates the subtle, implicit intimidation previously discussed. This type of intimidation is incredibly problematic to deal with because of judges' reluctance to respond to this intimidation. "[O]bservers agree it is because they must balance the constitutional requirement of a public trial against the need to prevent interference with the judicial process, and judges may give priority to avoiding any actions that may result in a successful appeal."[4] Some recommendations to combat this type of intimidations are discussed below.

C. The Prevention of Community-Wide Intimidation

Much of my discussion has rested on the pervasiveness of community-wide intimidation brought about by the notoriety of gangs in a given community. In order to improve this situation, it has been suggested that policing and prosecution strategies be introduced, community education and empowerment be provided, and public relations expanded.[5] Policing and prosecution strategies should include matching the cultural knowledge and linguistic skills of investigators to witnesses, assigning prosecutors to communities rather than cases, and community policing.

Community education and empowerment should include the organization of neighborhood support groups for victims and witnesses and legal assistance for community groups seeking to bring civil suits under local drug nuisance statutes. Public relations should be expanded to include speaking engagements with community groups and outreach to ensure that immigrant communities are aware of their rights and protection provided.

IV. Recommendations for Improving Witness Protection

As previously discussed, it is nearly impossible to generate reliable statistics to illustrate the growing problem of witness intimidation as there is no central reporting agency or task force to which a targeted witness may turn. While the following recommendations for a comprehensive witness protection program are not supported by identifiable, hard data, I am confident that prosecutors and the law enforcement community appreciate the dangers associated with gangs and the prevalence of witnesses becoming victims. With this understanding, here are some recommendations for the Committee's consideration:

a. Every State should implement a statewide witness protection plan with a coordinating Board and a paid Executive Director. It shall be the responsibility of the Executive Director to oversee all program operations, implement policies and strategy adopted by the Board, acquire sufficient resources for the program's operations, and manage resources effectively.

   As one observer has said, " [o]ne can only imagine the degree and pressure, not to mention the conflicting interest under which detectives are forced to operate – simultaneously investigating cases and facilitating protection for their witnesses." The creation of the aforementioned Board would end any such conflicting interests.

b. Each State's witness protection plan shall be established through the use of federal funding; support, however, shall be provided by court fees and other available state sources.

c. All witness protection plans shall include emergency, short-term, and permanent relocation procedures, and shall incorporate a management plan.

d. All Boards should consider coordination with neighboring states in an effort to encourage the sharing of resources.

e. Legislation shall be enacted to certify a sound legal definition of witness protection by outlining the elements of the crime.

f. Overt witness intimidation should be deemed felonious and punishable by the State's established mandatory minimum sentence for the felony. Implicit witness intimidation should not be deemed felonious, as to do so would transform otherwise legal conduct into

conduct punishable by a prison sentence. Implicit witness intimidation is addressed in the recommendation to follow.

g. In each case involving a witness to a gang-related violent crime, an automatic protection order should be issued specifying the distance to which the defendant must remain from the witness. A violation of such order should constitute a felony and shall be punishable by the State's mandatory minimum sentence for the felony.

h. Each State should provide guidance and training to judges, bailiffs, prosecutors, and law enforcement on witness intimidation issues and their roles in responding to such incidents.

i. Court security procedures should be regularly reviewed and updated when necessary. I suggest a prohibition of gang dress and color in all courtrooms in which the defendant, or the witness, are linked to gang activity.

j. When dealing with "higher-profile," gang-related cases, the courtroom should be closed to the public.

k. A central reporting agency should be established to track all complaints of witness intimidation. It is nearly impossible to generate reliable statistics to illustrate the growing problem of witness intimidation as there is no central authority to which a targeted witness may turn.

l. A 24-hour hotline should be established to record all witness complaints of intimidation and to provide swift assistance by law enforcement.

As a final recommendation, I suggest the Committee contact Ara Crowe, Maryland State's Attorney Association Coordinator, about the operation of the Maryland witness protection program he manages. That program may serve as a model program.

V. Conclusion

I am sure the Committee can appreciate the challenges the justice system faces when witnesses fail to come forward or refuse to cooperate with an investigation or prosecution. I ask that the Committee thoughtfully consider my recommendations; I believe that the implementation of some or all of these suggestions could fortify and stabilize the witness protection program and consequently strengthen the justice system.

I thank the Committee for this opportunity.

ENDNOTES

[1] National Institute of Justice: Issues and Practices, "Preventing Gang- and Drug-Related Witness Intimidation (1996) (internal citations omitted).

[2] Id.

[3] Id.

[4] Id

[5] Id.

STATEMENT OF HEATHER CARTWRIGHT
CHIEF, VICTIM WITNESS ASSISTANCE UNIT
United States Attorney's Office
District of Columbia

Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives

(Submitted for the postponed April 12, 2005 hearing)

"How Can the Federal Government Support Local and State Initiatives to Protect Citizens and Communities Against Drug-Related Violence and Witness Intimidation?"

Chairman Souder, Ranking Member Cummings, and Members of the Subcommittee: I am Heather Cartwright, Chief of the VictimWitness Assistance Unit in the United States Attorney's Office for the District of Columbia. It is an honor to appear before you today to discuss the problem of witness intimidation and the various Department of Justice programs designed to address witness security and availability.

My interest in witness assistance and security issues grew out of my personal experience as a federal prosecutor. I served as an Assistant United States Attorney for the District of Columbia from 1990 to 1998, where I prosecuted criminal cases in both D.C. Superior Court and the United States District Court for the District of Columbia.

I am currently the Chief of the Victim Witness Assistance Unit at the United States Attorney's Office for the District of Columbia. I manage several programs in support of victims and witnesses in cases before the D.C. Superior Court and the United States District Court. These programs include victim assistance for a wide variety of victims; witness security; witness logistical support; and victim notification. The Unit is staffed with 26 professionals.

Prior to my appointment as Chief of the Victim Witness Assistance Unit, I spent five years at the United States Department of Justice's Office for Victims of Crime (OVC). As an Attorney Advisor to the Director of OVC from 1998 to 2000, I oversaw the redrafting of the Attorney General Guidelines for Victim and Witness Assistance. The guidelines are the Justice Department's basic policy manual on the treatment of crime victims and witnesses. In 2000, I was appointed the Director of the Federal Crime Victims Division at OVC where I administered Crime Victims Fund monies to support programs to assist victims of Federal crimes. I have also coordinated two National

Symposiums on Victims of Federal Crime, the premier training conference for victim assistance personnel in the Federal, Military, and Indian Country criminal justice systems.

Nature of the Problem

Witness intimidation is a serious problem for the criminal justice system. Witness intimidation takes many forms, ranging from outright explicit death threats from an organized crime "hit man" to more subtle pressure on citizens not to cooperate in providing information about criminal activity to law enforcement. In the Federal system, we have a range of options available to enhance witness security. These include the Federal Witness Security Program, the Short Term Relocation Program, which is unique to the District of Columbia, and the Emergency Witness Assistance Program. Let me describe each of these programs briefly.

The Department of Justice Federal Witness Security Program

The most restrictive and secure Federal program is the Department of Justice Federal Witness Security Program (WSP). This program has been the subject of numerous movies and television depictions, and it is what comes to mind for most lay persons when they think of witness security. The program includes a complete change of identity for the witness and his or her household. It is available only to persons who are crucial witnesses in significant prosecutions. The program is available to Federal law enforcement and prosecution agencies, as well as state and local agencies. The state and local agencies must first secure the approval of the local U.S. Attorney as part of their applications. In addition, state and local agencies are asked to reimburse the Justice Department for the expenses incurred in connection with securing the witness.

The procedure for requesting the placement of a witness into the WSP begins with an application, which the Federal prosecuting agency, or, in a state case, the state prosecuting office (with endorsement from the local United States Attorney), forwards to the Office of Enforcement Operations (OEO) in the Criminal Division of the Department of Justice. The Federal investigative agency involved in the case, or the state investigative agency through the state prosecuting office, forwards to OEO an assessment of the danger to the witness, as well as an assessment of the risk the witness would pose to the general public in a relocation community. In order to qualify for the WSP: the case must be extremely significant; the witness's testimony must be crucial to the success of the prosecution; and there must be no alternative to placement of the witness in the Program. These factors, particularly the first, must outweigh the risk of harm that the witness would pose to a new community.

Witnesses who have been authorized to receive Program services are terminated from the Program if they fail to abide by Program guidelines. Since the Program is voluntary, witnesses can leave it if they so desire, and they are expected to sign a statement indicating their intention to terminate their participation.

Protection is also provided to prisoner-witnesses through the Program. The Federal Bureau of Prisons (BOP) has the responsibility of administering the day-to-day operation of the Program as it relates to prisoners. Prisoner-witness Program participants are separated from those against whom they are testifying, or who will present a threat to them. If family members of a prisoner-witness are endangered as a result of the prisoner's cooperation, they can receive protection through the Program while the prisoner is incarcerated, if it is determined that there is no other means of keeping them safe. When a prisoner-witness is released from custody, the case is evaluated to determine if full services of the Program are warranted.

From the Program's inception in 1970 through December 31, 2004, a total of 7,862 witnesses have been authorized into the Program. The total number of participants including family members is 17,132. In recent years, the number of witnesses authorized per year has been approximately 140; on average, over 80 percent of these witnesses are prisoner-witnesses who are incarcerated when initially admitted into the Program. The cost of initial relocation and providing services to a witness without family members is approximately $75,000 per year, and the cost for a family of four is about $110,000. Over 95 percent of the witnesses authorized have some type of criminal record, most being former members of a targeted criminal organization. The program has been extremely successful in enabling the criminal justice system in the United States to win cases against major organized crime groups. However, a very large percentage of Program participants, both in the U.S. program and similar programs in other countries, have
demonstrated that they do not wish, or are unable, to remain completely exiled from their former lives, leading to their expulsion from their respective programs when they break program rules.

The District of Columbia Short Term Relocation Program (DC-STRP)

The Short Term Protection Program, now called the D.C. Short Term Relocation Program (DC-STRP), was established as a pilot program in 1991 and was designed to meet specific and unique needs in the District of Columbia. Deriving its authority from the Federal Witness Security Program, the relocation portion of DC-STRP is operated on a day-to-day basis by the United States Marshals

Service (USMS), and the Program is overseen by the Criminal Division's Office of Enforcement Operations. The DC-STRP was designed to help combat the problem of gang-related violence and intimidation against witnesses in cases prosecuted by the United States Attorney's Office in the District of Columbia. The District of Columbia is unique in that all violent adult crimes are prosecuted by the United States Attorney, as opposed to a state or local prosecutor.

The purpose of DC-STRP is to provide temporary relocation and removal of the witness from the danger area. Subsistence for these witnesses – and for their immediate families or persons closely associated with them – is also provided. Although the DC-STRP operates under the same legal authority as the full services Program, which makes the requirements for admission extremely rigorous, there is no name change or other documentation provided. The objectives of DC-STRP are (1) to help reduce the witness's immediate, rather than long term,
personal security concerns, and (2) to help ensure the availability of the witness's testimony for the prosecution of acts of violence, obstruction of justice, or other similar offenses. As with the WSP, if a witness later chooses to return to the danger area, there is no assurance that he or she will not be harmed. Because of security concerns related to the lack of an identity change, current DC-STRP guidelines prohibit DC-STRP participants from working or admitting children into school while in the program. This is a significant limitation for many participants.

Emergency Witness Assistance Program (EWAP)

In 1995, recognizing the limited mission of the WSP, the Department of Justice Criminal Division conducted a study to evaluate witness security options available to Federal prosecutors. The study revealed that the United States Attorney's Offices (USAOs) were concerned about threatened and intimidated witnesses. As a result, a working group developed the Emergency Witness Assistance Program (EWAP). The purpose of the EWAP is to provide the USAOs with the flexibility to address a critical need: assistance to witnesses on an emergency basis to ensure their well-being and to ensure that they will be available for court proceedings or other activities related to an ongoing case. The program also addresses the physical, mental, or emotional reservations that witnesses or prospective witnesses may have about participating in a specific matter before or after they have agreed to cooperate with, or to testify or be available for, the government.

EWAP assistance may be provided to witnesses and victims who are witnesses where the more formal protection and security programs, administered under the provisions of the Witness Security Reform Act, are not available or are inappropriate. Its purpose is not to provide physical

protection for witnesses. It addresses a witness's fears about assisting the government. It seeks to promote the peace of mind of witnesses when they have relevant information to contribute, thereby enhancing their ability to testify. EWAP assistance does **not** include any protective services, custody arrangements, or a law enforcement presence and does **not** relieve a recipient of any responsibility with regard to debt, custody, child support, court, or other obligations. The program only provides emergency financial and other assistance to witnesses for the purposes stated above. Such assistance will not exceed one month, unless there are extenuating circumstances.

Each individual USAO has its own protocol outlining the procedure for accessing EWAP funds in conformance with national program guidelines issued by the Executive Office for United States Attorneys, and each USAO has its own allocation of EWAP funding. The decision as to how, when, and whether or not EWAP funds are used is entirely within the discretion of the United States Attorney. Generally, however, the national guidelines allow EWAP funds to be used to provide the following services: (1) transportation to enable a witness to leave his or her neighborhood, town, city, or state temporarily; (2) temporary housing or moving expenses; (3) temporary subsistence (a reasonable portion of Federal per diem standard); (4) emergency telephone service to assist the witness to keep in contact with the USAO; (5) child or elder care; (6) other transportation costs, as reasonably necessary for school or immediate medical or counseling needs.

EWAP is considered a last resort as a source of funding for witness assistance, and does not replace available case funds or other governmental and community resources. Assistance is only available for witnesses with fears, reservations, or concerns about being a government witness. The assistance funds are limited to frightened or endangered witnesses only and cannot be used simply because the witness is indigent or requires services. EWAP assistance cannot exceed one month and $3,999 per witness, unless there are extenuating circumstances. The USAO discloses EWAP information to the defense as part of the discovery process. Witnesses cannot be "reimbursed" for their out of pocket expenses.

Conclusion

Witness intimidation is a serious challenge to law enforcement at all levels: local, state and Federal. In the Federal system we have some excellent programs to help us enhance the security of victims and witnesses to crime. Each program has its own limitations, and a good deal of time is spent trying to identify which program is appropriate and available for each witness. A great deal of a witness's security is dependent on the witness's own conduct. We can arrange for a

witness to be relocated out of a danger area. It is then up to the witness to refrain from revealing the new location to anyone who might be a danger or might communicate the new location to those who would harm the witness. In addition, the witness must stay away from the danger zone and from anyone who may be associated with the persons trying to harm the witness.

It is important to have a range of options for relocation. Many witnesses do not qualify for the established WSP programs, or they may need longer term solutions than the EWAP program offers. In addition, many witnesses are not willing to comply with the strict rules of the formal WSP or DC-STRP or to make the significant sacrifices that entry into those programs entails. Some witnesses are not equipped with the living skills to relocate out of an area where they have lived their entire lives. In some situations, local state, Federal, and non-government social services programs may be a better option than a formal witness security program, and have a higher chance of success in keeping a witness away from a dangerous location.

We in the criminal justice system are very appreciative of the courage and strength of character witnesses exhibit when they agree to cooperate with law enforcement in the face of very real fears for their safety. The good news is that by working with witnesses to find the solution that best meets their needs and addresses the level of danger to which they are exposed, witnesses are able to safely testify against dangerous criminals. We could not prosecute cases against drug dealers and gangs without these witnesses, and we use our very best efforts to arrange for our witnesses' safety.

Thank you for this opportunity to speak about this important topic. I will attempt to answer any questions you may have at this time.

Mr. SOUDER. Thank each of you for joining us this morning. Mr. Pond, thank you for coming, and we will start with you.

Mr. POND. Thank you, Mr. Chairman, Congressman Cummings, Congressman——

Mr. SOUDER. Can you move the mic——

Mr. POND. Sure.

Mr. SOUDER [continuing]. Toward you.

STATEMENTS OF FLOYD O. POND, ASSISTANT DIRECTOR, WASHINGTON-BALTIMORE HIDTA; LIEUTENANT CRAIG BOWERS, BALTIMORE COUNTY POLICE DEPARTMENT; AND PATRICIA JESSAMY, STATE ATTORNEY, CITY OF BALTIMORE

STATEMENT OF FLOYD O. POND

Mr. POND. I am representing Tom Carr of the Washington-Baltimore HIDTA. Mr. Carr is out of the country at the moment, but he wishes that I express to you our appreciation for your support of the HIDTA program. This committee, the leadership of this committee, and the support of its ranking member have been significant in terms of what we have seen now in our efforts on the Hill in terms of gathering support for the program and moving it back into the Office of National Drug Control Policy and restoring its funding. So we appreciate not only the hearings, but your followup and what we are hearing from Chairman Davis and others in terms of how they value your recommendations. So that is very encouraging to us as we make our rounds on the Hill.

I am, as you just indicated, submitting Mr. Carr's prepared testimony for the record, and I would like to provide some brief background and highlight our recommendations. But first, I would like to acknowledge your outreach efforts, and I am aware that this committee has gone from the Eastern Shore to the Northwest. It gets out of Washington. I think those of us, if it hasn't been expressed previously, really appreciate seeing Washington in our backyards, especially when you are looking at local issues of national importance.

And finally, on that regard, and it was mentioned briefly, but I think it is important for everyone to recognize that through the persistence of Mr. Cummings and his persuasiveness, Director Walters was able to steer $1.5 million back into Baltimore City for the Baltimore Target Initiative, which was a direct response to the Dawson family tragedy. And HIDTA was a venue for corrugating that effort with the Baltimore City Police Department and the Believe Campaign, and we really appreciate those efforts of Congressman Cummings. And I think the public at large should be aware of those efforts and the support from the chairman. We really appreciate this bipartisan support.

As to the issue of witness intimidation, it is an issue of national importance. It has been discussed here previously, and is a proper subject of your review and action. It is driven by violent drug and gang cultures. Of over the 200 drug-trafficking organizations our HIDTA currently targets, nearly 50 percent use deadly force to discourage competition and enforce obligations or protect themselves from the law enforcement or predator groups.

When you eliminate the money laundering organizations and the interdiction organizations we target, more of the mid and upper-level organizations beyond that, I would say nearly 80 up to 90 percent of them use violence as a way of doing business. So this is a significant culture that reaches all of our population.

Another emerging issue in this region is gangs, many of whom operate as drug-trafficking organizations. Others are more broadly criminally involved, but one factor that remains constant is their predisposition toward violence and witness intimidation. With this background, I would like to focus your attention on some specific recommendations for improving witness protection.

It is nearly impossible to generate reliable statistics to illustrate the growing problem of witness intimidation, as there is no central reporting agency or task force to which a targeted witness may turn. While the following recommendations for a comprehensive witness protection program are not supported by identifiable hard data, I am confident that prosecutors and the law enforcement community appreciate the dangers associated with violent drug and gang organizations and the prevalence of witnesses becoming victims. With this understanding, here are some recommendations for the committee's consideration.

Every State should implement a Statewide witness protection plan with a coordinating board and a paid executive director. It shall be the responsibility of the executive director to oversee all program operations, implement policies and the strategy adopted by the board, acquire sufficient resources for the program's operations, and manage resources effectively.

Second, each State witness protection plan could be established through the use of Federal funding. Support, however, should be provided by court fees and other available State sources similar to State and local matches currently in place in the Byrne Program. We have that here in Maryland. The Maryland Witness Protection Program, as State's attorney Jessamy can tell you, the relocation program has funds that are supported through local assessments and fees. So this would be a perfect match for a Federal-targeted—either a State program or a targeted city program.

Third, all witness protection plans should include emergency, short-term, and impermanent relocations procedures and incorporate a management plan.

Fourth, all boards should consider coordination with neighboring States in an effort to encourage the sharing of resources.

Fifth, overt witness intimidation should be deemed felonious and punishable as a felony.

Sixth, in each case involving a witness to a gang-related violent crime, an automatic protection order should be issued specifying the distance to which the defendant must remain from the witness. A violation of such an order should constitute a felony and shall be punishable as a felony.

Seventh, each State should provide guidance in training the judges, bailiffs, prosecutors, and law enforcement on witness intimidation issues and their roles in responding to such incidents.

Eighth, court security procedure should be regularly reviewed and updated when necessary. I suggest a prohibition on gang dress

and color in all courtrooms in which the defendant or the witness are linked to gang activity.

When dealing with high-profile gang-related cases, the courtroom should be closed to the public. A central reporting agency should be established to track all complaints of witness intimidation. It is nearly impossible to generate reliable statistics to illustrate the growing problem of witness intimidation, as there is no central authority to which a targeted witness may turn.

And finally, a 24-hour hotline should be established to record all witness complaints of intimidation or provide swift assistance by law enforcement.

As a final recommendation, I suggest the committee contact Ara Crowe, Maryland State's Attorney's Association coordinator, about the operation of a Maryland Witness Protection Program he manages. That program may serve as a model program. Obviously State's attorney Jessamy is very familiar with that program, and she could also testify to that.

I am sure the committee can appreciate the challenges the justice system faces when witnesses fail to come forward or refuse to cooperate with an investigator or prosecutor. I ask the committee to consider our recommendations. I believe the implementation of some or all of these suggestions could fortify and stabilize the witness protection program and consequently strengthen the justice system. I thank the committee for this opportunity.

Mr. SOUDER. Thank you. Our next witness is Lieutenant Greg Bowers of the Baltimore County Police Department.

STATEMENT OF CRAIG BOWERS

Mr. BOWERS. I thank the gentleman. As mentioned, I am a lieutenant with the Baltimore County Police Department with 31 years of experience in law enforcement. The last 10 years have been in the homicide division. I have been asked to give a local perspective from a smaller agency of just how witness intimidation affects us and to give several examples of what we have.

As I said, I am from one of the outlining counties, Baltimore County, and we are continually experiencing an increase in the reluctance of those witnessing or having knowledge of criminal activity to share that information with law enforcement. The fear for their safety and the safety of their family and loved ones is genuine. We only need to look at the cases that have been discussed here around the State and the publicity surrounding those instances to concur that witness intimidation is a factor affecting the judicial system.

From our perspective of—I am going to give two examples. One was a murder that occurred at a local nightclub. It was witnessed by three individuals, all from out of the county. When initially questioned by the police, they were very willing to help and were able to supply descriptions of suspects and vehicles used. One witness became very critical to the case, and we were able to determine that this murder was drug/gang-related. And using in part her information, made an arrest. She followed through on that by viewing photographs and also by viewing the lineup in which the person was identified in both cases.

After the motions hearing was postponed several times, it finally came on board as scheduled. As I stated, she was living outside the county and outside the city. As she was leaving her home, she was approached by two individuals who she said were rough looking. As she was walking to her car, they approach her and say are you going to court? She ignored them, began to walk around. They blocked the way to her car, opened up their jackets; both were displaying handguns in their waistbands.

Of course, as expected, she came to court that day. However, due to a defense request to postpone and was over the objections of the State, the case was postponed. Several months later when the trial began, she came to court and testified that she couldn't identify the suspects. She didn't recall viewing the photographs or making any earlier identifications. The jury verdict in that case was not guilty. They polled the jury afterwards; it showed a concern among the jury members on how it was possible that the witness could not remember what she had said to law enforcement and questioned the accuracy of the officer's testimony.

The second case just happened this summer. We had a 16-year-old who was lured out of her home. She was beaten and burned and found in a park in Pikesville. Her only crime—not really a crime. Her only impact was that one of the defendants that were arrested—and we made four arrests—had thought that she was going to be a witness in an upcoming case that he had on a sexual assault. She wasn't.

Also, in closing, within the past 24 months we have investigated five solicitations to commit murder involving defendants who had expressed an interest in having their witnesses, which could have testified against them, killed. Witness intimidation continues to increase the threat to public safety and to the effective and fair prosecution of criminal cases. Those responsible for carrying out or orchestrating this intimidation are not fearful of imprisonment, and currently, law enforcement can offer very little short of relocation, where currently the funds are limited. These otherwise community-involved, law-abiding citizens find themselves ultimately faced with a choice: potential harm to their self, separation from their family, or not to cooperate with law enforcement. Thank you very much.

[The prepared statement of Mr. Bowers follows:]

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My name is Craig Bowers and I am a Lieutenant with the Baltimore County Police Department with 31 years of law enforcement experience. The last 10 years have been spent as the unit commander of the Homicide Division.

Within this period of time this agency has continually experienced an increase in the reluctance of those witnessing or having knowledge of criminal activity to share that information with law enforcement. This fear for their safety and the safety of their family and loved ones is genuine. We only need to look at cases around the state and the publicity surrounding those incidents to concur, witness intimidation is a factor affecting the judicial system.

The following are examples that have occurred within Baltimore County:

A murder occurred at a local nightclub, which was witnessed by three individuals who were visiting the county. When initially questioned by the police they were very willing to help and were able to supply descriptions of suspects responsible as well as vehicles used. Investigators were able to determine the murder was drug/gang related and using information supplied in part by the witnesses, made an arrest. The witness was shown a group of photographs and viewed a line-up where the individual arrested was identified. The motions hearing after being postponed on numerous occasions was scheduled. On this date, as the witness was leaving her, home two individuals she described as "rough looking" approached her inquiring if she was going to court. As she attempted to walk around them to her vehicle, both opened their coats revealing handguns in their waistband.

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As expected, the witness became fearful but still appeared in court. At this point, the defense requested a postponement, which over the objections by the State was granted, creating an additional delay in the trial. Several months later when the trial began, the witness testified she could not identify the suspect and does not recall viewing the photographs or making the earlier identification. The jury verdict was Not Guilty.

A poll of the jury after the verdict showed a concern among the jury members of how it was possible that the witness could not remember what she had said to law enforcement and questioned the accuracy of the officer's testimony. The jurors were then informed of the witness intimidation and they were shocked.

A 16-year-old was found beaten to death and set on fire in a park in the Pikesville area. Arrested were four individuals who revealed, the motive for this attack was the victim was a witness in a sexual assault in which one of those arrested had been accused of the assault.

In closing, within the past 24 months, members of the Homicide Unit have investigated 5 solicitations to commit murder involving defendants who expressed interest in having the witnesses which would have testified against them killed.

Witness Intimidation continues to increase the threat to public safety and to the effective and fair prosecution of criminal cases. Those responsible for carrying out or orchestrating witness intimidation are faced with a maximum imprisonment not to exceed 5 years.

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Currently, law enforcement agencies can offer very little to ensure the safety of witnesses, short of relocation. These otherwise community involved, law abiding citizens, find themselves ultimately faced with the choice: separation from family and friends or not to cooperate during the prosecution of the offense with law enforcement officials.

Mr. SOUDER. Thank you. Our next witness is Ms. Patricia Jessamy, State attorney, city of Baltimore, whose name has almost become a legend just in this hearing here with all people talking about you.

Ms. JESSAMY. Yes, I guess I have.

Mr. SOUDER. Thank you——

STATEMENT OF PATRICIA JESSAMY

Ms. JESSAMY. Chairman Souder, Congressman Cummings, and Congressman Ruppersberger, both of whom I consider my Congressmen because even though Congressman Cummings represents me where I live and work, Congressman Ruppersberger represents the district just a couple streets above where I live. So we have had a wonderful relationship over the years. But I want to thank you all for coming to Baltimore.

This is an issue that I am very passionate about. I go around the community all the time talking to the community about issues that affect the criminal justice system, and usually when I am introduced, they introduce me and they say this is Mrs. Jessamy. She is responsible for crime. Now, after I have recovered and laughed a little bit at that description, I respond back and I tell them no, I am not responsible for crime; I am a prosecutor. And my job is to see that justice is served. Because that is the way I view it, serving justice.

What I have seen, however, over the course of the last few years, and it is becoming more of what I term a crisis; I have seen that when witnesses are silenced, justice is not served. And it is becoming a bigger and bigger problem, not just in Baltimore City, but throughout the country.

So I have been the State's attorney for Baltimore City for 10 years. Before that I was an assistant prosecutor, and I practiced law in four States. And I can tell you this is the most challenging thing I have ever had to deal with in my life.

I want to begin first by thanking Congressman Cummings because he comes in and he doesn't just go to Washington and come back home on occasion. He is always here. And he listens to what we have to say, and he attempts to aid and assist us in addressing our concerns. Congressman Cummings knows and has indicated today that witness intimidation is a very important public safety issue, and I want to commend him for introducing the Witness Security and Protection Act of 2005, which is House Resolution, I guess, 908. And this bill provides dedicated Federal funds for local witness protection programs.

I think that this is urgently needed to streamline what we currently have toward a more independently operated victim and witness assistance programs, which are directed by local prosecutors. A uniform, Statewide program that offers protection by law enforcement officers to crime victims I believe is very much needed. So when I met with Congressman Cummings last week, I told him that I would do everything within my power, and I am a very passionate, speak-what-I-say, what-I-think person to support this House Resolution, because it is very important for us.

But I do want to talk to you a little bit more about this conspiracy of silence. What are we seeing as prosecutors in court every

day? We are seeing that when witnesses are silenced, our whole system is in jeopardy. Now, people have set out some examples for you here, and Congressman Ruppersberger was talking about—and Congressman Cummings were talking about the text messaging. But witness intimidation comes in many forms. Some of it is very subtle.

But I can tell you, since September 2004, we have had seven witnesses shot or killed. That is the reality. Everybody—we can talk about the Dawsons, and that was a horrendous thing, but things like the Dawsons continue in our city every single day. Thank God, no other families have been murdered as a result of arson, but individuals are being killed; they are being shot; they are being threatened; they are being intimidated in many ways.

There are two examples just the last week I want to share with you. I learned from a district court prosecutor that the victim of an assault was so terrified of being identified and recognized in court that he came to court in disguise. The victim had witnessed drug activity in his neighborhood and had reported this to the police. The defendant told the victim in front of the police, the police won't be here forever. When they leave, you are dead. The defendant was charged with second-degree assault and he eventually pled guilty. But he was just sentenced to 6 months in jail.

On Wednesday of last week a witness who was threatened multiple times by the victim and defendants in a shooting, was so reluctant to testify that our witness locator unit was called to serve a body attachment to detain him in jail because of his previous failure to appear when summoned by the courts.

Now this is—and I know Congressman Cummings alluded to the Washington Post article—this is a last resort. As prosecutors, we are struggling. We want our witnesses in court. We want them testifying to what they have seen or heard. And when we talk about the right to confrontation, I think everybody involved in the criminal justice system would rather have that witness there.

Well, this witness had no criminal history. He was just scared. But he was arrested because he had failed to come to court. It just so happened that the witness and the defendant were held in close proximity to each other, and during the time they were in the bullpen, a note was passed to him. The note was in writing and the note contained threats on his life. Not only that, but friends and colleagues also verbally threatened this witness.

But this witness had what I term courage because the witness did eventually testify. The witness testified that the defendants and his friend were the people he saw shot the victim. Unfortunately, the victim, however, got on the witness stand and recanted and said oh, I was mistaken. It wasn't this defendant. It was someone else.

As a result, these murderers are back on our streets. That is the effect that witness intimidation has. Those are the things that we are seeing. And you all know about this DVD. And I can tell you, if you haven't seen it, I am going to hand to you today and I hope it is introduced as a part of this record. Because when you see individuals laughing, smoking marijuana, showing their guns, telling people how to silence witnesses and what to do for rats and snitches. It is a very frightening thing.

Now, what have we done in reference to this what I call plague on our city? And it didn't just start really. In 1995, as a result of a high increase in violence on the streets of Baltimore City as a result of crack-cocaine being introduced to our city, we had a witness killed. And I was asked—I think it was 1994. I was asked by then Stu Simms, who was a State's attorney to draw up a witness security plan. I drew it up, and we became one of the first jurisdictions in the country to begin to spend money to protect witnesses based on what we had seen. I have budgeted by the city of Baltimore every year $300,000 for that. I also utilized the fund that Floyd Pond and others talked about today, which is a State fund. And any time I go over my $300,000 budget, I use that money to cover those additional funds, and I get automatically from that fund anywhere between $50,000 and $100,000 additional a year.

But this amount we don't have—in my testimony I can tell you exactly how many witnesses we have used thus far. We have spent of that $300,000 this year $219,000 for temporary housing. We have spent $53,000 for security deposits and rent to arrange permanent relocation after temporary relocation has been provided. We have spent $13,000 for detoxification, because that is all a part of it. There are a lot of different things you have to do to get witnesses ready, able to come to court to testify. And we have spent more than $36,000 in storage and moving expenses.

Now these are just out-of-pocket expenses. They don't account for the law enforcement officer who—oftentimes when we move people and take them to relocation—have to go, as they are armed, to protect them, to take them back and forth to their normal, day-to-day activities. The sheriff's deputies and the police officers. It does not entail the moneys spent by law enforcement officers sitting in front of someone's house to protect them until we can relocate them to another place. But those are the kinds of expenses that we are seeing.

What else have we done? We work to provide a change in the law because, as the Lieutenant Governor said, our current statute provides for a misdemeanor. If you are convicted, it is a misdemeanor offense punishable by no more than 5 years if you are convicted of witness intimidation and threats. We felt that was too little.

It also did not provide a provision in there for conspiracy. Oftentimes, we have individuals that even if they are locked up, they call their friends and their colleagues to do their dirty work for them. So we felt that conspiracy was an integral part to adding strength to the current statute.

We also thought that even though it is our desire to have all witnesses in court, that is not the case. Too often because of threats and intimidation, witnesses go underground and they refuse to be found. They go into hiding. But sometimes they have given prior statements as to who the guilty parties are or other statements that, as law enforcement, we need to be able to use. But because of restrictions on hearsay, we would not. Well, our Federal partners had a hearsay exception, which is a forfeiture by wrongdoing exception, which would allow—if we can, as prosecutors, prove unavailability, would allow us to introduce those prior statements.

So we, in conjunction with the Governor of the State of Maryland, worked with him, and he introduced legislation to that effect,

increasing the penalty to 20 years, adding conspiracy, and providing for the same kind of forfeiture by wrongdoing exception that our Federal counterparts enjoy.

Well, unfortunately, we didn't get everything we need. We did get passage of the legislation. It has now been strengthened to 20 years. We have conspiracy. The hearsay provision was somewhat watered down. It only applies to felony drug offenses and crimes of violence. Unfortunately, in the State of Maryland, child abuse and domestic violence are not considered crimes of violence. Even though most of those cases involve people we know and intimate partners, we should not isolate and exclude them from being protected by the same statute that we are protecting people from intimidation by strangers.

So we are hopeful that we will be able to strengthen the hearsay portion of this statute at next term's legislative session.

What we did this year as opposed to last year when we initially worked with the Governor to introduce it is we passed this DVD out to our legislators. We thought that witness intimidation had to be a real bipartisan effort. And fortunately, this year we had 118 Members of the House of Delegates signed on to the administration bill. That is quite a feat in the State of Maryland.

We had 38 senators who signed on as cosponsors of the bill to change things in the State of Maryland. That is quite a feat. And it happened, I believe, because this was something that everybody, whether you are a Democrat or a Republican, whether you are from a rural or an urban area, that you could agree with. So we are pleased that we have the statute. I call it a toothless tiger, and we will be working to add more teeth to it.

What do I think that we need our Federal partners to do? My prosecutors had told me that in addition to providing witness protection, in addition to strengthening our witness intimidation statute, that we needed detectives to help us find witnesses. The police department, thankfully, has given us a team of people to go out and locate witnesses in homicide cases, and since September has given us two detectives to find witnesses in shooting cases. But right now, we do need the statute that Congressman Cummings has introduced. I will be working to strengthen the hearsay statute. But having U.S. Marshals who have experience in this area working with Maryland State Police, with local police officers, and with prosecutors would be a wonderful thing to have.

I have been trying to provide witness assistance since 1994, but I don't carry a gun. And most of the people in my office don't either. I was told—I used to say we didn't carry guns and badges, but we do have badges. But we are not police officers. And we need people who know and understand what witness protection is all about doing it. And we need it to be consistent throughout the State.

One of the areas where we also need some assistance has to do with Federal housing. A lot of our witnesses are eligible for Federal housing. We have an agreement now across the State of Maryland where we can transfer witnesses when we relocate them, if they are eligible for Federal housing, to any Federal housing facility in the State of Maryland. But we are running into problems when it comes to Section 8. There are no issuance of Section 8 certificates,

I think, since last year, and there are other problems and provisions within the housing regulations that prohibit us from doing some of the things that we need to be doing in terms of housing witnesses who are eligible for Federal housing.

I agree with many of the recommendations made by Floyd Pond and would be happy to answer any questions that you have at this time. I also want to thank the Governor and the Lieutenant Governor for their leadership in this whole area of witness intimidation.

[The prepared statement of Ms. Jessamy follows:]

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May 2, 2005

The Honorable Mark E. Souder, Chairman
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Congress of the United States
2157 Rayburn House Office Building
Washington, D.C. 21515 – 6143

CONGRESSIONAL FIELD HEARING – WITNESS INTIMIDATION
May 2, 2005

Good morning Chairmen: Congressman Souder, Congressman Cummings, distinguished members of this Committee, fellow elected officials, invited guests and citizens:

I am Patricia Coats Jessamy, State's Attorney for Baltimore City. I have served the citizens of Baltimore as chief prosecutor for the last 10 years, following 10 years as a prosecutor and deputy prosecutor in the Baltimore City State's Attorney's Office.

I would like to begin by thanking my Congressman, Elijah Cummings, Congressman Souder, and the distinguished members of this Committee for calling this important hearing and for raising awareness of this vital public safety issue. I commend Congressman Cummings for introducing the Witness Security and Protection Act of 2005 (H.R. 908) to provide dedicated federal funds for local witness protection programs. This funding is urgently needed to streamline 24-independently operated victim assistance programs directed by local prosecutors. A uniform statewide program that offers protection by law enforcement officers to crime victims is needed.

Last week I met with Congressman Cummings to discuss how the federal government could help states by delivering needed funding for improved and expanded local programs. I wholeheartedly support House Resolution 908 and will work with Congressman Cummings to secure passage of this important legislation.

Testimony of Baltimore City State's Attorney Patricia C. Jessamy

Baltimore is in the midst of the worst public safety crisis that I have seen in my years as State's Attorney. Our criminal justice system is threatened by a "Conspiracy of Silence", a documented escalation of witness threats, intimidation and conspiracy carried out by individuals who seek to harm and silence witnesses who are summonsed or interviewed by police and prosecutors to testify in violence cases in Baltimore.

These chilling and increasingly brazen incidents are growing in number. Two new stories of witness intimidation emerged just last week. I learned from a District Court prosecutor that the victim of an assault was so terrified of being identified and recognized in court that he came to court in a disguise after threats and intimidation. This victim witnessed drug activity in his neighborhood and reported this to the police. The defendant told the victim, in front of the police, "The police won't be here forever, when they leave, you're dead." This defendant was charged with second-degree assault and eventually pled guilty and was sentenced to six-months in jail.

On Wednesday last week, a witness who was threatened multiple times by the victim and defendants in a shooting, was so reluctant to testify that our witness locator unit was called to serve a body attachment to detain him in jail because of his previous failure to appear when summonsed by the court. This witness, who has no criminal history, was in court on the witness stand when he identified two men on a court bench who had come to the jail to warn him not to testify. Detectives immediately arrested the pair, who were in the open courtroom during court proceedings. The investigation revealed that the witness, victim, and the defendants were in very close proximity to each other following their prison bus ride to court. The witness received a death threat from the victim in the "bullpen" and received separate verbal threats from the defendants while getting off the bus. The witness was courageous and testified that he observed the defendants shoot the victim, however the shooting victim changed his testimony saying that the defendants were not the men who shot him. Last Wednesday the defendants were acquitted of all charges and are free men on the streets of Baltimore today. The witness has been relocated.

Over the past several years, prosecutors have witnessed more and more deliberate attempts to thwart our ability to successfully prosecute defendants involved in violence cases. These violent, repeat offenders escape successful prosecution by silencing witnesses in criminal cases. When the court dismisses cases, violent repeat offenders return to our communities. Statistics compiled by the State's Attorney's Office reveal that about one-third of all non-fatal shooting cases in Baltimore are dismissed because of witness issues, and homicide prosecutors report that in almost every homicide prosecution some form of intimidation occurs.

For example:

Just two years ago, our community witnessed the execution of Baltimore Police Detective Thomas Newman, killed because he had testified as a witness to a non-fatal shooting months earlier. Yes, witnesses are murdered. We know of at least seven cases where a witness was shot or murdered since September of last year.

And there is the Dawson family tragedy. Their home was firebombed because drug dealing was reported to police.

These are extreme examples of the ultimate intimidation, and led to the tragic loss of life, but intimidation comes in many forms –

- A Molotov cocktail thrown at the home or into the window.
- Masked gunmen in a child's bedroom at 5 in the morning with a warning, delivered at gunpoint to the child's head, "make sure HE DOES NOT TESTIFY"...

Sometimes, the intimidation is subtler:

- A threatening glance, stare or gesture towards a witness outside or even inside the courtroom
- The use of text messaging by individuals seated in the back of the courtroom during a witness' testimony
- Strange visitors to your home who threaten with ominous warnings if you, your child, or other loved ones testify.

Whatever form it takes, witness intimidation is having its desired effect, silencing witnesses.

- A prosecutor with a case pending in March just had a witness threatened and stabbed.

This terrorism must end. Our witnesses must be protected from this growing street vigilantism. Today, the escalating use of threats and intimidation to silence witnesses in city criminal cases, in courtrooms across Maryland, and in urban cities in our nation, threatens to bring justice to a standstill.

In the late 80's, the proliferation of a new drug of choice, crack cocaine, coaxed by a steady heroin market on Baltimore street corners, combined with an arsenal of illegal guns and created a surge in loosely knit violent drug trafficking organizations that used gun violence to administer street justice. Today, this violence continues to have a deadly grip on Baltimore, with a corresponding increase in street justice and witness intimidation.

By 1995, law enforcement was scrambling to keep up with a steady rise in homicides and non-fatal shootings. Prosecutors in Baltimore were jolted by the street execution of a witness in a federal drug conspiracy trial. State's Attorney Stuart Simms directed me, as his deputy, to create a witness security program that would reach out to witnesses who felt threatened or intimidated. Since then, the city of Baltimore has allocated $300,000 annually to the witness security program to relocate witnesses and provide support services. Despite these resources, prosecutors continue to note case after case lost to intimidation, as frightened citizens and communities believe that law enforcement is powerless to protect them against vigilante justice.

The increased levels of intimidation I have described are not unique to Baltimore. Recently, Philadelphia, Boston and other urban cities across the county are reporting increased incidents of witness intimidation. Last week, I met with my colleagues in the National District Attorney's Association (NDAA), including Daniel F. Conley, District Attorney in Boston, and there was strong consensus that witness intimidation is a national issue that must be addressed by local, state and federal law enforcement officials and that a new level of partnership must be forged to address this public safety crisis.

Over the past several years, in my meetings with violence prosecutors, I outlined two important steps needed to address this increased level of threats and intimidation that affected the successful prosecution of homicides and shootings in our criminal justice system in Baltimore.

Prosecutors agreed there were two urgent needs:

1. Changing the state law and maximum penalty for witness intimidation and urging state lawmakers to provide the same legal tools available to federal prosecutors.

2. The need to locate and pursue missing witnesses to bring them to court to allow cases to be successfully prosecuted.

I would like to thank Governor Robert L. Ehrlich Jr. and Lt. Governor Michael S. Steele, here with us today, for their support and work with me on House Bill 248 to change state law. More legislative work on this issue is needed next year. While the final bill with the amendment did not provide the equivalent of the federal hearsay rule that we need as prosecutors, it does provide increased penalties for certain crimes of violence and felony drug cases and adds conspiracy as a crime.

I would also like to thank our law enforcement partners, the Baltimore City Police Department, for providing five detectives to form a witness locator unit that works full-time to locate missing witnesses and bring them to court for homicide cases. They have also provided, since September, two detectives to locate witnesses in shooting cases.

Notwithstanding these important steps, and in addition to city funding for additional staff assigned to the State's Attorney's program following the Dawson tragedy, there is a critical need to bolster local witness protection programs so that current programs extend assistance and law enforcement protection to frightened victims and witnesses. I believe that Maryland and other states must look to the federal government as a resource and training ground to build more sophisticated program options — such as offering 24-hour police protection or opportunities such as safe houses and inter-state relocation. State's Attorneys in Maryland agree that current statewide victim protection programs can do little more than offer relocation assistance without an infusion of funding and shared resources, such as a training program offered by the federal marshals, that could help train local law enforcement to provide protection by sworn officers.

I am frequently asked, "Would this help?" I endorse the need for more resources to fund victim protection programs similar to what is offered at the federal level, and I believe that training and partnerships between law enforcement agencies must be cultivated. However, I am cautiously optimistic, knowing that half of the victims or witnesses in Baltimore offered relocation assistance decline to follow-up with our caseworkers for assistance.

Since July 2004, prosecutors have referred 206 victims and witnesses to our witness assistance program – 111 were formally interviewed. 95 individuals were contacted for formal interviews and did not show up for their appointment, and did not return phone calls and made no follow-up contact after our initial call. Of these referrals, 46 individuals entered into temporary safe housing.

As the state legislative session ended several weeks ago, I spoke with several state lawmakers in Annapolis who agreed that following our work on an improved statute this year, more work must also be done to address the level of protection programs offered by the State.

I urge the development and implementation of a state program for victim protection. This program should be developed and administered by a consortium of local, state and federal law enforcement authorities. The federal marshals have a wealth of expertise and experience that could be shared with our city and state law enforcement agencies to develop more comparable programming.

These programs are known to be expensive and the development of new programs would require an obvious expenditure when federal resources are scarce. I urge the Justice Department and Congress to carefully review the testimony from today's hearing and review the immediate need for grant programs to re-direct grant dollars towards this urgent need.

Of the $300,000 the city of Baltimore allocates annually to the State's Attorney's Witness Assistance program, as of April 27, over $281,000 has been spent. In addition, the Maryland State's Attorney's Association provides funding from a reimbursable state victim witness protection and relocation fund and thus far this year the fund has provided $35,000 to assist with victim/witness relocation.

This includes:

More than $219,000 for temporary housing
More than $53,000 for security deposits and rent to arrange permanent relocation
More than $13,000 for detoxification and rehabilitation for states witnesses
More than $36,000 in storage and moving expenses

Several challenges face victims and witnesses eligible for federal housing assistance who wish to permanently relocate. I would encourage the federal government to review the current federal housing program guidelines, including Section 8 eligibility, to determine if special exemptions for threatened and intimidated witnesses could be carefully folded into the guidelines. For example, Congress could authorize an exemption for witnesses and victims when there is an urgent and immediate need for housing assistance as a result of intimidation. More could be done to relocate families within federal housing programs across the country through a reciprocal housing arrangement between the state housing offices. While we have begun to move families within counties in Maryland, we are still unable to move families who are receiving federal housing subsidies to other states. Federal housing is a tremendous resource and we need a mechanism to tap this valuable resource at the local level.

In closing, we must seize the many opportunities, insights, and recommendations learned and presented at today's hearing to look more closely at how this issue affects public safety in our community, and how we can work together as local, state and federal law enforcement partners to make a difference.

On behalf of citizens, I would like to again extend my appreciation to both Congressmen Mark Souder and Elijah Cummings for their interest in this vital issue of public safety.

Sincerely,

Patricia C. Jessamy
State's Attorney

Mr. SOUDER. You all presented a pretty grim picture for much more even in the edges of urban areas. It is—I think it is fiction, but what you are describing is real life, and it is kind of scary. I wanted to also ask Mr. Cummings and Mr. Ruppersberger if we could—I gave a note to Mark. Did you say Carmelo Anthony is on this video that you are talking about? That my understanding is as a followup on the steroids and drug issue, we are going to do NBA probably after the season, but we ought to request to the chairman that he be called and forced to explain participation. It is a way to highlight that type of thing because that is—I have seen it, but it sounds disgusting and we need to——

Mr. CUMMINGS. Mr. Chairman, I think that is a great idea. My office has had direct contact with Mr. Carmelo Anthony's agents and also the head of the Denver Nuggets, and he sort of flip-flops. He——

Mr. SOUDER. Well, we——

Mr. CUMMINGS [continuing]. Says he wants to cooperate; then he says he doesn't. And I think it would be very helpful. I would love to have him come and explain things like this——

Mr. SOUDER. Public retraction.

Mr. CUMMINGS. Yes, because he has made some statements on his Web site and probably some public statements, but he has been very reluctant. He was very bold, I mean, sitting around in this tape, and you will see this. He is clearly there. But what is done, Mr. Chairman, is by him being in it, it just—in the worlds of young people, it just blew it up. In other words, it has made it a much more popular piece that has floated, I mean, just all over the place.

And now, to the point, as I said a little bit earlier, where we now have tee-shirts saying "stop snitching." I mean, and by the way, the stores are selling out of these tee-shirts, which is incredible to me.

Mr. SOUDER. It becomes an——

Mr. CUMMINGS. I agree with you.

Mr. SOUDER. It becomes an intimidation factor in and of itself. We were already having this discussion about in the schools around the country of the kids' cooperation, and this just fuels something like that.

When you have—we were talking earlier about your meeting that you have had with the attorneys across the country. Do you see these kinds of problems widespread, more intense in some areas? Lieutenant Bowers described in a smaller county outside the city of Baltimore. How widespread is this? How challenging is it?

Ms. JESSAMY. It permeates almost everything we do. Our homicide prosecutors tell me that in about 90 percent of all the homicides, there is some form of intimidation. In our shooting cases, we have been able to document—because we keep very detailed statistics in reference to those that—between 25 and 33 percent of those cases are lost as a result of witness problems, the vast majority of those witness problems having to do with threats and intimidation.

It is a very serious problem. We have even had—and it is not only in violence cases. That is what we are seeing. Like the other case was just an assault in the district court, and the witness was so intimidated had to put on a disguise. But we have had cases where people were paid $10 to beat someone up, a witness up, with a bat in a very minor district court case. It is all over the place,

and what has happened is people are so emboldened. And I refuse as a prosecutor to ascribe to the theory that criminals are in charge of the streets of this city. We have to fight back in every way we can, and that is why this has become such a mission for me.

I know there is a lot that must be done. We are trying to do it on every level. And we are working with everybody. I know there has been a lot of discussion relative to the Federal authorities. We have a meeting scheduled with the acting U.S. attorney Wednesday afternoon, the police commissioner. And what he has done, he has pulled together every Federal agency so that we can look, we can sit down and meet, and we can talk about how we can work together to deal with developing a strategy for fighting crime in Baltimore City that includes everybody. So we are very interested in working with Federal, State, and local. And we need all the assistance we can get.

Mr. SOUDER. Mr. Cummings.

Mr. CUMMINGS. Ms. Jessamy, one of the things that—you heard the Lieutenant Governor's testimony, did you not?

Ms. JESSAMY. Yes.

Mr. CUMMINGS. And it was very interesting—well, it is in his written statement, but he talks about this Maryland Victim and Witness Protection Relocation Fund, and during his testimony he kept referring to you, that you could provide us with more information. But one of the things that is written in his testimony and I think he said it, is that they had $600,000 and they spent $400,000 and distributed it to various State's attorneys for witness protection. And I don't want us to leave this hearing under the impression that, unless it is accurate, that $600,000 is enough money to address these problems. And my question is probably about 3-fold.

Ms. JESSAMY. Yes.

Mr. CUMMINGS. One, how does that program work for you and your situation? I just heard you say when you run out of the $300,000 that you have locally, you then go and get anywhere from $50,000 to $100,000. Of course, if that is—let us use the top figure of $100,000, that is one-sixth of the total $600,000, which means the other 23 counties have to share the other $500,000. But he also said something else. He said that we are dealing with witnesses who don't even want to take part in the program. Now, if that be the case, then—and I then said maybe there are things that we need to do to change that program. So I also want to know why it is, if it is accurate, that people are not taking advantage of the program. I want to know that too. And what it is that we might need to do to change it. I know I said a lot there——

Ms. JESSAMY. Yes.

Mr. CUMMINGS [continuing]. But it is all connected because it goes to the very essence of what we are trying to do here. I mean, it is like sort of a counter-argument that says well, maybe they don't need the money.

Ms. JESSAMY. Yes, I think that there are two issues. And first I will talk about our program. Since July 2004 prosecutors have referred for witness assistance 206 victims and witnesses to the program; 111 of these, after prosecutors had talked to them about coming into the program because they had indicated—we do a little threat assessment with the police department—that they felt

threatened and intimidated. We formally interviewed 111. Out of that 111, 95 individuals did not show up for their interviews out of the 206. We interviewed 111; out of those, only 46 wanted to be relocated.

So we started off with 206 people. We interviewed 111; 95 didn't even want to—even after repeatedly trying to get a hold of them didn't want to have anything to do—only 46 of them eventually agreed to go into witness assistance. So we are talking about 46 out of 206. Now, that is not to say that all 206 of those individuals were actually threatened or intimidated, but they did indicate some level of trepidation, and they said they felt threatened or intimidated. And they had to have exhibited that either to a prosecutor or a police officer in order to get referred. So that is the beginning. What we ended up with was 46.

Now, that money that I indicated we have expended was expended on those 46 people. Now, I believe that if we had a program operated by the U.S. Marshal Service or where we had people who had experience in this issue, we would begin to send a message to those people in the community that there is real witness protection.

We don't operate a witness protection program. We operate a witness relocation program. And as the Lieutenant Governor said, not everybody wants to leave their homes. When you own a home, you decide that you are not going to give it up. Some of these people are deciding the same way I am, that they are not going to let these people run them away. They are not going to let the criminals take over and be in charge. So they stand there and they defy them, unfortunately, like the Dawsons did, because they weren't going to be intimidated out of their homes. And there are people like that, courageous individuals who decide they are not going to be threatened and intimidated, and they aren't going to let the criminals control them.

But we, as a community, must be mindful of all this. And then there is a large percentage of people who are defendants 1 day and victims the next. So you have a lot of spill-over there, which is another reason, when it comes to using safe houses for certain people, that doesn't work because if the criminal element knows where the safe houses are, then you are not protecting them to the extent that you should.

Mr. CUMMINGS. Your testimony was that some 25 percent of the cases not involving fatality——

Ms. JESSAMY. That is right. The shooting cases.

Mr. CUMMINGS. Don't even get to trial?

Ms. JESSAMY. They get to court, a lot of them. They get indicted, then they get to court. We can't find the witnesses or the witnesses end up coming to court and recanting. So those cases are lost. It is like the one where we had the witness—the witness ended up testifying, but the victim recanted. So the jury acquitted. Just like the case in Baltimore County. You have the jury there having to weigh the credibility of these people, and they are saying different things.

Mr. CUMMINGS. The thing that I think concerns me tremendously, why do you think we haven't, as a society, made this kind of issue the significant issue that it is? In other words, maybe—just to me this isn't rocket scientist stuff. You know, if you don't have

the cooperation of the public, if people are not cooperating with the police, you can't solve crimes. And if you can't solve crimes, then you end up in a lawless society. And it would be one thing if we did not have evidence of what I just said. We see it every day. But what do you think is the problem? Are you following me?

Ms. JESSAMY. Well, I think a lot of it has to do with glorifying a gangster lifestyle. I kind of believe that. There is a certain lure and sexy depiction of a certain kind of lifestyle that seems to now permeate across all areas of our society. I just came back from Asheville, NC where the National District Attorneys Association was meeting. And these are prosecutors from all over the country. They are telling me that they have a lot of similar problems.

Daniel Connelly, who is the prosecutor up in Boston, he and I were, you know, we consider ourselves the twin witness intimidator crusaders because we are the two most vocal in terms of this issue. But everybody—they have now, the National District Attorneys Association indicated that this is a priority for them because they are seeing it all over the country.

Joe Katzly, who is the prosecutor in Harford County, was just telling me on Saturday how big a problem witness intimidation threats are in Harford County, MD. And we know the drug problem Carroll County is having in terms of heroin addiction and all these other things. So Baltimore City is not an isolated, standing-alone island when it comes to witness intimidation. This is a problem throughout our country. And I think the fact that you have a subcommittee such as yours here listening to what we have to say sends a message across the country that this issue is of national import.

Mr. CUMMINGS. Last question. Going back to the Federal program, the program that the U.S. Marshals run, it is amazing they have not lost a single witness in all the years they have been around. And I think it has been about 30 years. And how does that program differ? You said we have a relocation program, and apparently you must feel that folks have faith—and it seems reasonable that they would have faith—in the Federal program. Is it in part that they don't have a lot of faith in our program, that it is going to truly protect them? I know you talked about people that wouldn't relocate, but, when you are talking about somebody's life, somebody possibly dying, what is the big difference? Do you follow me?

Ms. JESSAMY. Yes, well, we haven't lost anybody who signed up for our relocation one either, but, you know, that is neither here nor there. I think what happens is that they can change identities. They can, you know, give people new Social Security cards. Plus they have the U.S. Marshal Service, they take you in their custody, they have the pump guns going, they guard you 24 hours a day, 7 days a week. Just the idea and the cost of that alone for local law enforcement is prohibited. There is no way we could provide 24-hour protection for anybody beyond probably 72 hours. It becomes so prohibitive you can't do it. So we have a relocation program. We only relocate people.

Now, we do relocate them sometimes across the country. We have relocated them across the State, sometimes across town in Baltimore. But it depends. But for the most that is what we do.

And we provide them all kinds of other assistance. Sometimes witnesses don't want to be relocated. They do want some other kind of assistance, just having somebody to walk with them down the hallway from the witness room to the courtroom because there are family and friends of defendants sitting in the hallway. Just having a law enforcement officer hold that person's hand and walk them past them in the hallway into that courtroom provides a heightened sense of security for that witness. We can do something just that slight and that simple, or we can have 24-hour protection, but it is for a very limited period of time until we can effectuate the move.

Mr. CUMMINGS. Just one last thing. Do you see any relationship—Chairman Souder and I had a conversation not long ago where we were kind of discussing the possible relationship between what happened to the judge's husband and mother up there in Chicago, and then we look and we see what happened down there in Atlanta when the fellow broke away from the guards and I think killed 4 people. This whole attack on law enforcement and judges and witnesses, I mean, if this virus continues to spread, it seems like you—as Mr. Ruppersberger I think said, we will get to a point where we are like some countries that don't have the sophistication that we have with regard to the integrity of our system. I mean, do you see that?

Ms. JESSAMY. Well, I see those as more isolated incidences. Hopefully they stay that way. But what I do see within the system a lot of times is more retaliation against people who are a part of the system in those areas of familiar relationships, personal relationship issues, domestic issues. That is why when we were looking at the statute that has passed but has not yet been signed by the Governor, that we were concerned that domestic violence and child abuse are not included in those areas for which we can introduce prior statements.

And now our statute also limits the statement to have been written or recorded in close proximity. And if you know anything about what happens, it is usually the night of the event when people make statements to police, and then it is when the defendant, weeks or even months later, is ready to go to trial or has been arrested and is ready to go to trial that he becomes aware of who the witnesses are maybe that the threats and the intimidation begins. So it is not usually immediate. So people will tell you things immediately. That is why the hearsay exception, forfeiture by wrongdoing, is so important because those statements, given in close proximity to when the crime occurred, if you can use those statements later, then the, I guess, the threat and intimidation becomes a non-issue then because you don't need—why threaten somebody if you know that their statements will be able to be used against you.

Profession Lynn McLain used an example of the forfeiture by wrongdoing exception, and I can say I know Chairman Souder had asked about the hearsay and the Constitutionality of it. She uses the example of killing your parents and then throwing yourself on the mercy of the court because you are now an orphan. Well, when you threaten and intimidate a witness and it is your own actions that have caused that witness not to be there, and then you come

into court and you claim your Constitutional rights are being violated because you can't confront them. When you explain it like that to the community, everybody can understand what it is you are talking about.

And I have been talking about this to community groups, and when I use those examples, they say yes. It is like a light bulb goes off. But that is the same thing—even Justice Scalia, he and I don't agree in many ways, but when he isolated this forfeiture by wrongdoing exception to say that yes, it is Constitutional. It has been around since the 17th century. This is a wonderful, equitable principle that we as prosecutors need to be able to use.

So when I call the bill a toothless tiger, that is what it meant. But I have been told it has claws, and we are glad of the claws.

Mr. CUMMINGS. Thank you.

Mr. SOUDER. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Ms. Jessamy, I really like your testimony and I want to follow through with a couple things. Trying to listen and, again, have a hearing, you find a way to make a difference, I think, is important that we can walk away from this hearing. And I want to ask you a question about a couple things I was thinking about.

Witness intimidation has become a major issue. Just as we specialize in burglary, robbery in our police departments, homicide, you know, fraud, those type of things, I am wondering whether or not whenever we have a high-profile felony case or any felony case whether we could reprioritize and have our police departments train with the U.S. Marshals so that every single case that you have where you know that there is a possibility of witness intimidation, that we have an expert a part of that team, that homicide team, that robbery team, that is specially trained to focus in this arena. And that is No. 1.

The second thing, you know, we still don't have the funding that we need; we hear the cuts today from the Federal Government, but it seems to me the possibility of grants to local government about witness intimidation, and you have talked about how most witnesses don't want to leave their homes, and we should not allow them to. And if a witness who did not partake in the crime is going to know that their family is in jeopardy or whatever, they are going to protect their family and probably themselves too.

Wondering, we have police departments—I know it is a policy in Baltimore City, Baltimore County when I was county executive—that we have police officers who want second employment. And the possibility we have our light rail 24-hour protection now with police officers who are getting paid not from the department, but in another arena. The possibility of having this 24-hour protection with off-duty police officers and trying to develop a program where we can get a Federal grant to focus in these arenas, what do you think about those kind of ideas?

Ms. JESSAMY. I think those are good ideas. I agree with Floyd when he talked about this board and people making decisions. They can also, you know, we need to sit down and plan some strategies around this whole area. And some things are not amenable through criminal justice solutions. They are probably all kinds of things that we can do as a community to address some of these

issues, maybe sitting down with planning in certain communities and dealing with certain planning issues.

We have been looking at a project, what we call property-based crime solutions, which means looking at using whatever tool we have in our toolbox—and it may not be a criminal justice tool—to address a specific issue. But it would mean everybody sitting down at the table talking and coming up with how to solve problems. And this could be the centerpiece of problem solving around this——

Mr. RUPPERSBERGER. And I would ask you——

Ms. JESSAMY [continuing]. Particular issue——

Mr. RUPPERSBERGER [continuing]. If you do get to the table, that a lot of what we are talking about is money and resources——

Ms. JESSAMY. Yes.

Mr. RUPPERSBERGER [continuing]. So if we are going to get——

Ms. JESSAMY. And it is also coordination too.

Mr. RUPPERSBERGER. Well, of course, yes, that is important. But from a Federal Government perspective, either Federal laws or Federal money. And if we are going to appropriate Federal moneys, we need to have a specific program that we know will be well-managed and will get results——

Ms. JESSAMY. Yes.

Mr. RUPPERSBERGER [continuing]. And that is why I just brought up those two ideas. And I think that is important. Floyd Pond——

Ms. JESSAMY. Very good ideas.

Mr. RUPPERSBERGER. Floyd Pond, I look back and count the years, when you and I were prosecutors, that was 30 years ago in 1975, and you are still in this business, so I assume you still have a lot of expertise and I thank you for your service throughout these years.

I am a little concerned about the issue of HIDTA—HIDTA, a program that coordinates Federal, State, and local—and, as you know, the decision has been made to move HIDTA into the Justice Department. I have great concerns about that because I think it dilutes the program. Could you give me your opinion on why or whether you think this move with respect to HIDTA is going to have an impact on drug law enforcement, including the issue here today, witness intimidation, and all the other issues we talked about as it relates to drugs?

Mr. POND. It certainly is going to have an impact. We have 28 standing task forces that serve this region. At the request really of the chairman, we pulled our agency administrators and asked them what the impact would be if HIDTA left, and they almost uniformly said that they would have to pull out. We provide them resources, and everybody is aware of that—money to purchase drugs, vehicles, overtime, computers, they are co-located so they work with each other.

But the backbone of HIDTA is this coordination issue. That is why we are so efficient; that is why we do have performance management results. Because there is no duplication in our investigation. We have de-confliction not only in terms of our cases, so everybody knows what everybody else is working so they don't work the same target. But we also have de-confliction in terms of our vets where officer safety—officers are protected through a GPS sys-

tem of making buys or deals against each other in the same neighborhoods.

So the backbone of HIDTA is the intelligence sharing and bringing people together. Pat Jessamy is on the board of HIDTA——

Mr. RUPPERSBERGER. So why would moving to Justice make a difference?

Mr. POND. Because that 800-pound gorilla would eat it up. You know, I don't want to talk about OCIDEF because I want to talk positively——

Mr. RUPPERSBERGER. Right.

Mr. POND [continuing]. But, you know, this program is efficient, is effective. I think Director Walters has been disingenuous with the committee in terms of talking about part because as is well clear, we have implemented performance management and we can speak to what happens with our cases and where they are going and what the results are.

But the key to HIDTA is bringing people together. We have Federal, State, and local—it is not federally dominated. Pat Jessamy and Leonard Hamm all have a voice, and it is one agency, one voice. It is not dominated by the Federal agencies. And that is why it is successful. Because when we started HIDTA, FBI and DEA wanted to run HIDTA, and it was with local leadership—Mike Gambril was a chief in Baltimore County, who you know. And we had local chiefs that stood up and said we are all in this together. And that is the beauty of the HIDTA program.

Mr. RUPPERSBERGER. Based on your expertise, a long period, how many years have you been in this business now?

Mr. POND. Over 30.

Mr. RUPPERSBERGER. 30 years—35 really.

Mr. POND. Yes. You are counting. I am not.

Mr. RUPPERSBERGER. 35—1975, 1985, 1995, 2005. OK. But based on your expertise, what impact do you think it is going to have on drug enforcement throughout this jurisdiction, but throughout the country?

Mr. POND. Well, when you look at drug enforcement at the Federal level, the FBI has just about dropped out. They do still have a few drug squads, but their reorganization is constant and it is redirected. They still have their National Safe Streets programs, so you do get focus from the FBI in terms of violent gangs. DEA will always have their budget, but DEA——

Mr. RUPPERSBERGER. Getting cut.

Mr. POND [continuing]. Is getting cut, and DEA is famous for taking money from other people before they spend their own dollars.

Mr. RUPPERSBERGER. Smart.

Mr. POND. When you look at ATF, ATF is a marginal player with HIDTA. They are a good player. You know, we talked about Federal prosecutions of firearms, so this ATF office in Baltimore I know heard Mayor O'Malley's comments, but they do use Project Disarm aggressively. That is not whether the U.S. attorney chooses that.

The ultimate impact is that we are going to put more and more pressure on local law enforcement and State law enforcement, drug law enforcement to fill this void, because there is no way that these

Federal agencies—and they will tell you themselves that they can't maintain these task forces as they are currently situated with these types of resources.

Mr. RUPPERSBERGER. Lieutenant Bowers, we want to have you say something. You are on the frontline and you were in homicide. You have heard the testimony today. From the frontline, what would you like—from a Federal perspective, what would you like us to do? Bottom line, I think talking to frontline members like yourself from law enforcement, one of the biggest issues is the deterrent.

Mr. BOWERS. Right.

Mr. RUPPERSBERGER. And the Federal deterrent works where it seems State and local doesn't. What would you like us to do to take back to Washington to see how we can effectuate this issue?

Mr. BOWERS. We definitely need a deterrent. When you look at either the victims or the witnesses to crime, if you give them a choice of separation from their family or their loved ones or relocating and not having any contact with them, or on the other hand not testifying, right now they are choosing to not testify. And that cleans it all off with that. We need to make it a deterrent on those that either intimidate or conspire to intimidate individuals that it is not worth it.

Mr. RUPPERSBERGER. Well, it is not like finding the bad guys; how would you recommend that we provide protection? What mechanism would you use to make sure that those witnesses will be—that is the backbone of our county, to stand up as a community against the bad guys.

Mr. BOWERS. Exactly. And as you mentioned earlier, the sources, to use off-duty or police officers that are funded through to supply protection, at least until the trial is over, the hearsay exception would be great. If you can get over the hearsay, then their testimony—you take the emphasis right out of requiring them to stand up and be confronted, that their testimony will come in one way or the other. The emphasis is off of eliminating that source. That source is already there.

Mr. RUPPERSBERGER. Did you have anything else?

Ms. JESSAMY. Yes, in reference to HIDTA, you know, it is one of those things that prosecutors, especially in the city, find to be outstanding. I have four prosecutors right now that are funded with HIDTA, two of whom we are losing funding for and don't know what is going to happen to the other two, one of whom is prosecuting gun cases over in the Federal system. So HIDTA also provides analysts for us, and analysts really give you information to allow you to get better results. And I don't know what we would do without the kind of technical assistance that we get along with HIDTA's participation of what is happening on the streets every single day by planning the strategy and deploying the bodies to impact crime in Baltimore City.

Mr. RUPPERSBERGER. Is the National College of District Attorneys concerned about this issue?

Ms. JESSAMY. The National District Attorneys Association passed a resolution this weekend asking that letters be disseminated, and I think I have written you already relative to HIDTA. I have writ-

ten every Congressman, but, yes, you will be getting letters from DA's all across the country.

Mr. RUPPERSBERGER. I think that is important that they be heard, and that is major issue with respect to HIDTA.

Ms. JESSAMY. It is.

Mr. RUPPERSBERGER. OK, thank you. Thank you, Mr. Chairman.

Mr. SOUDER. Thank you very much. We are continuing to pursue that. Obviously, this having a local vote and participation is extremely important. I think the administration—and I wanted to clarify this in the first panel too—has not cut the drug budget. What they have done is shifted it to where there is more national and less local. I have been one who believes that the State and local can't just always look at the Federal, and quite frankly, you all are going to have to put up more money too. I don't agree with the mayor's statement that Homeland Security is just a national issue. It is everybody's issue. But as long as all of us are saying we are not going to spend more money, the question is how do we cover all this stuff? How are we going to even have a legal system function if people are afraid to testify? How are we going to get a hold of crime in this country if we cut all the local and the Federal interdiction efforts?

I don't want to be like Colombia. Just a few years ago in Colombia, one-third of the mayor's slots were not filled because anybody who ran for mayor was getting assassinated. Finally, after a couple of intense years of intervention, they have all the mayor slots filled. But at one point they had a third of their judges killed. I mean, we can't have this system happen in the United States. So we have to figure out how we are going to do this at the local level and what commitments are going to be made there, at the State level, and at the Federal level. The last thing we need to be doing right now is gutting our problems that are working like the HIDTA.

So I thank you all for your testimony today. It has been very enlightening on the witness protection. And with that, we will go to the third panel. I know it has been a long morning—afternoon now.

[Recess.]

Mr. SOUDER. Subcommittee will come back to order.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that each of the witnesses responded in the affirmative. Thank you very much for your patience today. The first witness is Judge Kenneth Johnson, former associate judge of the Baltimore City Circuit Court. Thank you for coming.

STATEMENTS OF JUDGE KENNETH JOHNSON, FORMER ASSOCIATE JUDGE, BALTIMORE CITY CIRCUIT COURT; DAVID WRIGHT, PRESIDENT, CHARLES VILLAGE COMMUNITY BENEFITS DISTRICT; AND RICKY P., RESIDENT, WEST BALTIMORE

STATEMENT OF KENNETH JOHNSON

Judge JOHNSON. Good afternoon, Mr. Chairman, and the Honorable Cummings, and the Honorable Ruppersberger. Thank you very much for inviting me here today to testify before your committee at this important hearing. And it is indeed a pleasure, a privilege,

and an honor for me to be allowed to share my views here today. In your letter to me dated April 27, 2005, you stated that the hearing was entitled "How Can the Federal Government Support Local and State Initiative to Protect Citizens and Communities Against Drug-Related Violence and Witness Intimidation?"

On Sunday, June 21, 1992, I published an article in the Baltimore Sun, opinion section entitled "The War on Drugs Is Mostly Eyewash." A copy of that article is attached here, my written statement, as exhibit No. 1. Please allow me to read a brief portion from that article. It reads,

> If society postpones the war on drugs much longer, drugs will destroy our institutions. The level of corruption will have so thoroughly infested and corrupted all levels of society as to prevent any effective eradication by law enforcement.
>
> Already we have begun to notice the bribery and murder of potential witnesses and police officers to prevent criminals from being tried and convicted. We also know that the profits from the illegal drug trade contribute substantially to the economy. In the not too distant future, we will see the bribery and murder of prosecutors, jurors, and judges in order to protect drug profits.
>
> When this day comes, the law of the streets will govern and our government will be too weak to regain effective control. The public will cry out, demanding that something be done; it will be more than willing to abandon constitutional liberties in an effort to confront and control the drug trade. Given the sorry state of our present political leadership, there is little hope that our future political leaders will resist the sacrifice of civil liberties to the desperation fostered by the pain and ravages of the drug trade. The time to confront and control the drug trade is now.

That was 13 years ago, sir. As a result of my publishing of the said article and my campaign to make our Nation aware of what will confront us if we did not address the illegal drug trade at that time, my life was threatened on numerous occasions and my family was endangered. The defendant was arrested, pled guilty, and convicted. He was given an extremely lenient sentence. Although at the time of his arrest he had with him a silencer and my photograph. An "X" had been placed on my photograph with the words "Kill this one."

On May 11, 1992, I asked a Baltimore City Grand Jury to investigate the illegal drug trade and determine why importers, wholesalers, drug dealers were not being pursued and prosecuted. The Grand Jury concluded that there was a major problem with law enforcement of the laws relating to the illegal drug trade. A copy of the Grand Jury Report is attached as exhibit 2 to my statement.

Attorney Tim Baker, the U.S. attorney for the District of Maryland from 1978 to 1981, published an article in the Baltimore Sun on Monday, July 26—my birthday incidentally—1993, entitled, "A Rogue Judge and a Runaway Jury." I was the referenced "Rogue Judge," and the Grand Jury that I asked to investigate the illegal drug trade was the "Runaway." Mr. Baker had little experience as a lawyer and apparently did not understand the ravages and devastations caused by the illegal drug trade, or perhaps simply chose to ignore it. A copy of Mr. Baker's subject article is attached as exhibit No. 3 to my statement. Some public officials of Baltimore City also criticized the Grand Jury and me for our efforts with reference to the illegal drug trade. And the Maryland State Prosecutor found little merit in the Grand Jury's Report.

Sadly, Mr. Chairman, the predictions that I made in that article have largely come true. It is my belief that if the Federal, State, and local officials had taken the Grand Jury's Report and my state-

ments against the illegal drug trade seriously, we would not be in this desperate position that we are in today.

The problem of violence and witness intimidation brought on by the illegal drug trade are national in scope. It will take a national coordinated and funded effort to confront and solve these drug problems. The so-called war on drugs was never fought and is not now spoken of. When is the last time any of us have heard two people in authority talk about the war on drugs?

Its numerous failings, including the filling of our prisons and the ruining of countless young lives by arrest and conviction, are still with us. It has been a major factor in the breakdown of family life. Study after study, including studies by our Federal Government, has shown that the rate of drug use among Whites are significantly higher than drug use among Blacks. Yet, our prison population suggests that the rate of drug use among Whites and Blacks is just the opposite. Does anyone seriously contend that racism is not a factor here? There was and is a racial component to our drug enforcement policies. That is, for White drug addicts the criminal justice system views their addiction as a medical problem, but views the Black drug addiction as a criminal problem. Not only is this policy view unfair and unjust, it has and continues to hinder effective law enforcement. I believe that the Federal Government must support State and local levels of government and make enforcement fair, just, and consistent.

The rule of law and our institutions have been weakened by the illegal drug trade. Our criminal justice system is becoming dysfunctional, largely because of the increase in drug and drug-related cases. The enormous flow of cash from the illegal drug trade has been undetected, unaccounted for, and unregulated and has spiraled corruption that hinders effective law enforcement and has increased violence. It has contributed to the unraveling of the social contract between us, the devaluing of life, and the disrespect for the rule of law, all remarkably similar to the effects of prohibition.

Mr. Chairman, let us not be justifiably accused by the generations that follow us of doing nothing in the face of this national drug crisis, an internal crisis that threatens our democratic form of government. Terrorism, the outside threat to us, is no more dangerous to us than the illegal drug threat, the inside threat to us. We would do well to remember that the Roman Empire was not felled by outside forces; it was destroyed from within.

I am deeply concerned that our efforts to address the problems created by the illegal drug trade that we do not abandon our Constitutional rights in the process. The right of an accused person to confront his accuser is an integral part of the due process of law. In denying the accused that right, we run the risk of convicting an innocent person. And the loss of the criminal's Constitutionally protected right will result in the loss of the Constitutional right for everyone.

We can and must create a society where the desire to use illegal drugs will decrease. We can set a course in that direction by reducing poverty, increasing education and job opportunities, and by treating drug addiction as more of a medical problem than a criminal problem. We must also limit the supply of illegal drugs by convicting and jailing the importer and wholesale drug dealers just as

we have the street-level drug dealer. This has never been attempted on a Federal, State, or local level despite the much-touted "War on Drugs." Only the Federal Government can make such an effort.

The Federal Government must guarantee and demonstrate that all witnesses—Federal, State, and local—will be protected from any harm from any source. It must also guarantee that our criminal justice system is fair and just. When it does so, witnesses will know it, and they will come forward voluntarily.

Mr. Chairman, I urge your committee to sound the alarm on the illegal drug trade. It is a cancer on our society. A Band-Aid on a cancer has never been known to cure it. A new, bold, and sustained effort by the Federal Government is urgently needed. You and your committee can begin that effort.

I strongly recommend that a national commission be created to look into the illegal drug trade and its effect on our society. The Kefauver Commission, relating to organized crime in the 1950's, and the Kerner Commission, relating to the causes of social unrest and violence in the 1960's, could be used as a model for such a commission. Some of the laws passed by Congress based on the recommendation of the Kefauver and Kerner Commissions were and are valuable tools in fighting crime and poverty. I speak of the Kefauver Commission and the reco law and of the Kerner Commission—for example, the Civil Rights Act—the Housing Act of 1968 and related laws.

Thank you very much for allowing me to share my views with you. I have attached the exhibits, which includes the Grand Jury Report and several articles I have published, not directly related to this, but relating to my views on society and a just and fair society. Thank you, Mr. Chairman.

[The prepared statement of Judge Johnson follows:]

Circuit Court
for
Baltimore City
111 North Calvert Street
Baltimore, Maryland 21202

Kenneth Lavon Johnson
Judge (Retired)

Room 264 Courthouse East
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Testimony before the
Subcommittee on Criminal Justice,
Drug Policy, and Human Resources
(Government Reform Committee)

Monday, May 2, 2005

Mr. Chairman, thank you for inviting me to testify today before your Committee at this important hearing. It is indeed an honor and a privilege to be allowed to share my views with you. In your letter to me dated April 27, 2005, you stated that this hearing was entitled: "How can the Federal Government Support Local and State Initiatives to Protect Citizens and Communities Against Drug-Related Violence and Witness Intimidation?"

On Sunday, June 21, 1992, I published an article in the

Baltimore Sun, opinion section entitled "The War on Drugs Is Mostly Eyewash". A copy of that article is attached hereto as Exhibit #1. Please allow me to read a brief portion from that article:

> If society postpones the war on drugs much longer, drugs will destroy our institutions. The level of corruption will have so thoroughly infested and corrupted all levels of society as to prevent any effective eradication by law enforcement.
>
> Already we have begun to notice the bribery and murder of potential witnesses and police officers to prevent criminals from being tried and convicted. We also know that the profits from the illegal drug trade contribute substantially to the economy. In the not too distant future, we will see the bribery and murder of prosecutors, jurors and judges in order to protect drug profits.
>
> When this day comes, the law of the streets will govern and our government will be too weak to regain effective control. The public will cry out, demanding that something be done; it will be more than willing to abandon constitutional liberties in an effort to confront

> and control the drug trade. Given the sorry state of our present political leadership, there is little hope that our future political leaders would resist the sacrifice of civil liberties to the desperation fostered by the pain and ravages of the drug trade. The time to confront and control the drug trade is now.

As a result of my publishing the subject article and my campaign to make our Nation aware of what will confront us if we did not address the illegal drug problem at that time, my life was threatened on a number of occasions and my family was endangered. A defendant was arrested, pled guilty, and convicted. He was given an extremely lenient sentence. Although at the time of his arrest, he had a 9 mm handgun with a silencer and my photograph. An "X" had been placed on my photograph with the words: "Kill this one".

On May 11, 1992, I asked a Baltimore City Grand Jury to investigate the illegal drug trade and to determine why the

importer-wholesaler drug dealers were not being pursued and prosecuted. The Grand Jury concluded that there was a major problem with the enforcement of the laws relating to the illegal drug trade. A copy of the Grand Jury Report, which contains my Charge to it, is attached hereto as Exhibit #2.

Attorney Tim Baker, the United States Attorney for the District of Maryland from 1978 to 1981, published an article in the Baltimore Sun on Monday, July 26, 1993, entitled: "A Rogue Judge and a Runaway Jury". I was the referenced "Rouge Judge" and the Grand Jury that I asked to investigate the illegal drug trade was the "Runaway". Mr. Baker had little experience as a lawyer and, apparently, did not understand the ravages and devastation caused by the illegal drug trade, or perhaps, simply chose to ignore it. A copy of Attorney Baker's subject article is attached hereto as Exhibit #3. Some public officials of Baltimore City also critized

me and the Grand Jury for our efforts with reference to the illegal drug trade. And, the Maryland State Prosecutor found little merit in the Grand Jury's Report.

Sadly, Mr. Chairman, the predictions that I made in that article have largely come true. It is my belief that if Federal, State and Local officials had taken the Grand Jury Report and my statements against the illegal drug trade seriously and had taken actions to combat it, we would not be in the desperate position that we are in today.

The problems of violence and witness intimidation brought on by the illegal drug trade are national in scope. It will take a national coordinated and funded effort to confront and solve the drug problem. The so-called war on drugs never was fought and is not now spoken of. Its numerous failings including the filling of our prisons and the ruining of countless young lives by arrest

and criminal convictions are still with us. It has been a major factor in the breakdown of family life. Study after study, including studies by our Federal Government has shown that the rate of drug use among whites is significantly higher than drug use among blacks. Yet, our prison population suggests that the rate of drug use among whites and blacks is just the opposite. Does anyone seriously contend that racism is not a factor here? There was and is a racial component to our drug enforcement policies. That is, for white drug addicts, the criminal justice system views their addiction as a medical problem but views black drug addiction as a criminal problem. Not only is this policy view unfair and unjust, it has and continues to hinder effective law enforcement. I believe that the Federal Government must support the State and Local levels of government to make enforcement fair, just and consistent.

The rule of law and our institution have been weakened by the

illegal drug trade. Our criminal justice system is becoming dysfunctional due to the dramatic increase in drug and drug related cases. The enormous flow of cash from the illegal drug trade, undetected, unaccounted for and unregulated has spiraled corruption that hinders effective law enforcement and has increased violence. It has also contributed to the unraveling of the social contract between us, the devaluing of life, and the disrespect for the rule of law, all remarkably similar to the effects of Prohibition. Mr. Chairman, let us not be justifiably accused by the generations that follow us of doing nothing in the face of this national drug crisis, an internal crisis, that threatens our democratic form of government. Terrorism, the outside threat to us, is no more dangerous to us than the illegal drug threat, the inside threat to us. We would do well to remember that the Roman Empire was not felled by outside forces but was destroyed from within.

I am deeply concerned that in our efforts to address the problems created by the illegal drug trade that we do not abandon our constitutional rights in the process. The right of an accused person to confront his accuser is an integral part of the due process of the law. In denying the accused that right , we run the risk of convicting an innocent person. And, the loss of the criminal's constitutionally protected rights will result in the loss of the constitutionally protected rights of everyone.

We can and must create a society where the desire to use illegal drugs will decrease. We can set a course in that direction by reducing poverty, increasing education and job opportunities and by treating drug addiction as more of a medical problem than a criminal problem. We must also limit the supply of illegal drugs by convicting and jailing the import and wholesale dealers of illegal drugs just as we have the street-level retail dealers. This has

never been attempted on the Federal or State level despite the much touted "War on Drugs". Only the Federal Government can direct such an effort.

The Federal Government must guarantee and demonstrate that all witnesses, federal, state and local, will be protected from any harm from any source. It must also guarantee that our criminal justice system is fair and just. When it does so, witnesses will know it and will voluntarily come forward.

Mr. Chairman, I urge you and your Committee to sound the alarm on the illegal drug trade. It is a cancer on our society. A band-aid on a cancer has never been known to cure it. A new, bold and sustained effort by the Federal Government is urgently needed. You and your Committee can begin that effort.

I strongly recommend that a national commission be created to look into the illegal drug trade and its effects on our society.

The Kefauver Commission (organized crime in the 1950's) and the Kerner Commission (causes of racial unrest and violence in the 1960's) could be used as a model for such a commission. Some of the laws passed by Congress based on the recommendations of the Kefauver and the Kerner Commissions were and are valuable tools in fighting crime and poverty.

Thank you very much for allowing me to appear before you today. I have attached hereto my Biographical Summary and some of my published newspaper opinions as Attachment A hereto for your review.

Kenneth Lavon Johnson

Exhibit I

THE SUN

Perspective

SECTION L

SUNDAY, JUNE 21, 1992

The War on Drugs Is Mostly Eyewash

By KENNETH LAVON JOHNSON

During the course of my tenure in the Felony Arraignment Court last year, not a single case involving a drug dealer at the importer-wholesaler drug-dealing level passed through that court. These drug dealers earn tens of thousands of dollars a week, and they are responsible for crimes of institutional destabilization, such as bribery and corruption.

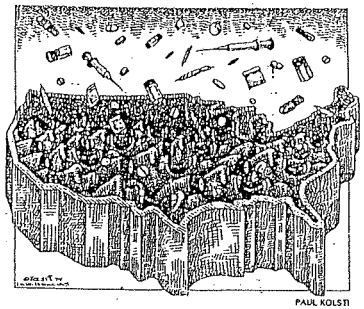
Instead, I saw the street-level retail dealers. They amounted to a total of 7,352 felony cases in ten months, of which 1,722 resulted in guilty pleas. The average age for drug-case defendants was 25 years, and the average education level was 10th-grade. By contrast, the wholesaler-importer drug dealers hold regular jobs as bankers, accountants, lawyers, doctors and businessmen.

Counting such "drug-related" crimes as murders, robberies, thefts and burglaries, approximately 85 percent of all felony cases in Baltimore involve illegal drugs. Yet there is no pressure by society to require the political leadership to confront and control the grave and pervasive problems that are caused by the drug trade.

The dealings of the importer-wholesalers are difficult to detect and prosecute, which is why scant priority has been given to prosecuting lawyers who collect and file false affidavits on behalf of their clients; lawyers who pay alibi witnesses to testify falsely at criminal trials; businessmen and bankers who finance the importation and wholesaling of illegal drugs or who launder drug money and front for drug dealers; and lawyers, accountants and investment bankers who provide the expertise to keep the enormous flow of cash hidden from public scrutiny.

The availability of large sums of cash from the drug trade and the lack of sincere effort on the part of government to control it have corrupted a substantial number of professional people who are now full partners in the importer-wholesaler drug trade. They are not pursued and prosecuted mainly because the social ravages and devastation caused by the drug trade in the inner city have barely touched suburbia.

The government has successfully confined open-air drug dealing to the inner city, where the importer-wholesalers and their professional cadre remain invisible. They cannot be detected with binoculars, arrested and paraded on the evening news as are street-level retail drug dealers. Parading these street-level arrestees on television has fooled the public into believing that something is being done to combat the drug problem — and into thinking incorrectly that the drug problem is a "black problem." The major criminals — the importer-wholesalers, who are usually white — go undetected and unindicted.



PAUL KOLSTI

It cannot be seriously contended that the government cannot drastically slow the supply side of the drug trade with a firm commitment to do so. The financial resources for effective enforcement of the current drug laws would be sufficient to combat the drug trade if the will were present.

The necessary political will will come only when the white (suburban) community feels the pain and ravages of the drug trade to the same extent that they are felt in the African-American (inner city) community. If society postpones the war on drugs much longer, drugs will destroy our institutions. The level of corruption [illegible] infested and corrupted all levels of society as to prevent any effective eradication by law enforcement.

Already we have begun to notice the bribery and murder of potential witnesses and police officers to prevent criminals from being tried and convicted. We also know that the profits from the illegal drug trade contribute substantially to the economy. In the not too distant future, we will see the bribery and murder of prosecutors, jurors and judges in order to protect drug profits.

When this day comes, the law of the streets will govern and our government will be too weak to regain effective control. The public will cry out, demanding that something be done; it will be more than willing to abandon constitutional liberties in an effort to confront and control the drug trade. Given the sorry state of our present political leadership, there is little hope that our future political leaders would resist the sacrifice of civil liberties to the desperation fostered by the pain and ravages of the drug trade. The time to confront and control the drug trade is now.

The drug trade cannot be controlled without jailing the importer-wholesalers and their professional cadre; just as street-level retail dealers and users are jailed. The so-called "war on drugs" is nothing more than a political illusion that mollifies an uninformed public even as large segments of our society are terrorized by crime and corruption and as respect for our institutions is being weakened.

A legitimate war on drugs will require simultaneous fighting on two fronts: the importer-wholesaler supply side, and the demand side. We have not seriously waged against either side. Through education, we can lower the demand for drugs. By jailing importer-wholesaler drug dealers, we can reduce the drug supply. Until society engages in a drug war on these two fronts, the so-called "war on drugs" will remain a convenient political illusion and the country will continue to pay the deathly price.

On May 11, 1992, I asked the Baltimore city grand jury to investigate why the importer-wholesaler drug dealers were not being pursued and prosecuted. It is my fervent hope that the grand jury's investigation and public report will be a call for action before it is too late.

Kenneth Lavon Johnson is a judge of the Circuit Court

Mr. SOUDER. Thank you very much for your testimony. Our next witness is David Wright, president of the Charles Village Community Benefits District.

STATEMENT OF DAVID WRIGHT

Mr. WRIGHT. Mr. Chairman, Ranking Member Cummings, Congressman Ruppersberger, distinguished members of the committee, I am honored to appear before you today.

Witness intimidation has cost my neighborhood dearly. Earlier this year my friend, neighbor, and colleague awoke to flames outside her bedroom window. She was the victim of an attempted firebombing. She was unharmed, but since that time, she has been in protective custody. Now she has decided that she can never be safe in Baltimore City. She has lived in the neighborhood for 33 years.

Baltimore and other cities across this country cannot afford to lose good citizens. Baltimore cannot afford to have good families terrorized by malicious gangs. My neighborhood cannot afford to watch as our children become the next generation of thugs. We cannot sit idly as hopelessness, drug addiction, and crime turn neighbors against our justice system.

I am here today to urge you to invest in a solution to this plague. I implore you to invest in the tools necessary to carry out justice when witness intimidation arises. I implore you to invest in protecting brave citizens. I implore you to invest in a criminal justice system that works against miscreants and works for the good citizens that I need and have as neighbors. I must also ask you to invest in the tools necessary to prevent this depravity and to restore hope to neighborhoods desperate to succeed. With help we can be healthy, peaceful, neighborly, and proud.

My neighbor worked hard to improve our neighborhood. She swept the streets and alleys tirelessly; she talked with her neighbors; she helped to organize community festivals; she talked to the police, and she told the police what she saw and heard; she urged them to act against a wave of drug dealers, against a wave of delinquent adolescents, against the neighborhood being invaded. For this, her home was attacked.

In the days and hours after the tragedy struck, the system worked. When Molotov cocktails crashed against her house, the police were quick to respond. My neighbor was whisked away and secured. Federal agencies assisted, and the resources were there. For this I am thankful. But we must not doubt that the response system must be fortified.

Safety and security for witnesses must never be denied due to a lack of resources. Witnesses must always receive the swift and enduring assistance my neighbor has received. No witness should ever receive anything less. This is the cost we must bear to ensure justice.

We must also bear the cost of reassuring and stabilizing neighborhoods. On the streets of Harwood, our neighborhood, we have seen more police, but they are already starting to dwindle. Though Baltimore suffers from a tremendous strain on its law enforcement, events like this must bring forth a large, sustained deployment of police. We must have a police presence that makes clear to those

remaining to conspire that this will not be tolerated. Those good citizens facing the fear and distress of acts of witness intimidation must see and take comfort in the presence of protectors. Therefore, I ask you to fund a strong police presence in areas that are facing systemic witness intimidation. We must demonstrate our unequivocal commitment to combat this behavior. The police must be on the streets. Their presence must be felt by every worrying mother and every conniving drug dealer.

In conjunction with this demonstration of the power of law enforcement, there must be the presence of hope. We must make clear to our children our commitment to their future. The thugs and criminals of tomorrow are on the corner now. They are aimless and unsupervised. They are vandalizing property to pass the time. Soon they will be approached by drug dealers to serve as lookouts. These young citizens must receive supervised, structured guidance and have role models to combat those temptations that would lead them astray.

Already the foundations exist. The community is concerned and longs to bring activities to these kids. But the local recreation center is destitute, the local after-school programs overwhelmed. Kids show up but there are too few staff to manage them. There are no supplies, and the facility is battered and deteriorating. There is no excuse for this. Baltimore City is desperately reaching out for public and private partnerships to improve these facilities, but we need more help. The rec center needs the resources to carry out its mission, the resources to care and promote hope.

Harwood worries about its young people more than anything else. Funding for a good education, after-school programs, and other opportunities will eliminate the supply of violent criminals of the future. Each person in Harwood knows this, and despite very limited means, good things are underway. But if we fund inventive, effective programs, you will not have to fund protective services for witnesses.

The fuel for so much of this crime and misanthropic behavior is the drug trade. The violent criminals and drug dealers must be arrested, but their clients must receive treatment. Baltimore and other cities are working desperately to provide treatment, but the resources are scarce. Effective programs should be embraced and reinforced in areas where the drug trade is creating a new justice system based on intimidation. I urge you to continue to support entities like the Washington-Baltimore High Intensity Drug Trafficking Area and Baltimore Substance Abuse Systems, Inc. Demand these groups pioneer strong, effective programs. They are making progress.

I am asking, therefore, that as you consider the plague of witness intimidation that you consider the curable causes that cannot be divorced from it. Any allocation of resources to law enforcement should be matched dollar for dollar with the community-building, youth-building, drug-treating efforts the community needs.

The solutions to witness intimidation are clear: protect every witness that needs protection, provide police and encourage community policing strategies, create opportunities for youth development, demand tough sentences and high bails, facilitate a responsive and

transparent justice system, ensure every addict has access to treatment.

I have already lost a very dear neighbor; I cannot bear to lose the entire neighborhood. Thank you.

[The prepared statement of Mr. Wright follows:]

David Gray Wright
2500 Guilford Avenue
Baltimore, MD 21218

Statement by David Gray Wright
President, Charles Village Community Benefits District

Before the House Committee of Government Reform
Criminal Justice, Drug Policy and Human Resources Subcommittee

Witness Intimidation
May 2, 2005

Chairman Souder, Ranking Member Cummings, Congressman Ruppersberger, and distinguished Members of the Committee: I am honored to appear before you today.

Witness intimidation has cost my neighborhood dearly. Earlier this year my friend, neighbor, and colleague awoke to flames outside her bedroom window. She was the victim of an attempted firebombing. She was unharmed, but since that time she has been in protective custody. Now she has decided that she can never be safe in Baltimore City. She had lived in the neighborhood for 33 years.

Baltimore and other cities across this country cannot afford to lose good citizens. Baltimore cannot afford to have good families terrorized by malicious gangs. My neighborhood cannot afford to watch as our children become the next generation of thugs. We cannot sit idly as hopelessness, drug addiction, and crime turn neighbors against our justice system.

I am here today to urge you to invest in a solution to this plague. I implore you to invest in the tools necessary to carry out justice when witness intimidation arises. I implore you to invest in protecting brave citizens. I implore you to invest in a criminal justice system that works against miscreants and works for and with the good citizens that I need (and have) as neighbors.

I must also ask you to invest in the tools necessary to prevent this depravity and to restore hope to neighborhoods desperate to succeed. With help we can be healthy, peaceful, neighborly, and proud.

My neighbor worked hard to improve our neighborhood. She swept the streets and alleys tirelessly. She talked with her neighbors. She made demands on the city. She helped to organize community festivals. She talked to the police and she told the police what she saw and heard. She urged them to act against a wave of drug dealers, against a wave of delinquent adolescents, against a neighborhood being invaded. For this her home was attacked.

In the days and hours after this tragedy struck, the system worked. When Molotov cocktails crashed against her house, the police were quick to respond. My neighbor was whisked away and secured. Federal agencies assisted and the resources were there. For this I am thankful. But we must not doubt that the response system must be fortified.

Safety and security for witnesses must never be denied due to a lack of resources. Witnesses must always receive the swift and enduring assistance my neighbor has received. No witness should ever receive anything less. It is costly - yes. But it is a cost we must bear to ensure justice.

We must also bear the cost of reassuring and stabilizing neighborhoods. On the streets of Harwood – our neighborhood - we have seen more police. But they are already starting to dwindle. Though Baltimore suffers from a tremendous strain on its law enforcement, events like this one must bring forth a large, sustained deployment of police.

Seven young men are accused in this crime. Seven young men plotted their own heinous penalty against a woman who stood against their dishonorable code. We must have a police presence that makes clear to those remaining to conspire that this will not be tolerated. Those good citizens facing the fear and distress of acts of witness intimidation must see and take comfort in the presence of protectors.

Therefore, I ask you to fund a strong police presence in areas that are facing systemic witness intimidation. We must demonstrate our unequivocal commitment to combat this behavior. The police must be on the streets. Their presence must be felt by every worried mother and every conniving drug dealer.

In conjunction with this demonstration of the power of law enforcement there must be the presence of hope. We must make clear to our children our commitment to their future. The thugs and criminals of tomorrow are on the corner now. They are aimless and unsupervised. They are vandalizing property to pass the time. Soon, they will be approached by drug dealers to serve as look-outs. These young citizens must receive supervised, structured guidance and have role models to combat those temptations that would lead them astray. They need someone to care.

Already, the foundations exist. The community is concerned and longs to bring activities to these kids. But the local recreation center is destitute, the local after-school programs overwhelmed. Kids show up – but there are too few staff to manage them. There are no supplies, and the facility is battered and deteriorating. There is no excuse for this. Baltimore City is desperately reaching out for public and private partnership to improve these facilities – but we need more help. The rec center needs the resources to carry out its mission – the resources to care and promote hope.

Harwood worries about its young people more than anything else. Funding for a good education, after-school programs, and other opportunities will eliminate the supply of violent criminals of the future. Each person in Harwood knows this. And despite very limited means, good things are still underway. But if we fund inventive, effective programs you will not have to fund protective services for witnesses.

The fuel for so much of this crime and misanthropic behavior is the drug trade. The violent criminals and the drug dealers must be arrested. But their clients must receive treatment. Baltimore and other cities are working desperately to provide treatment but the resources are

scarce. Effective programs should be embraced and reinforced in areas where the drug trade is creating a new justice system based on intimidation. Desperation, hopelessness, and fear cannot reign supreme in our cities.

I urge you to continue to support entities like the Washington-Baltimore High Intensity Drug Trafficking Area and Baltimore Substance Abuse Systems, Inc. Demand that these groups pioneer strong, effective programs. They are making progress.

I am asking, therefore, that as you consider the plague of witness intimidation that you consider the curable causes that cannot be divorced from it. Any allocation of resources to law enforcement should be matched – dollar for dollar – with the community-building, youth-building, drug-treating efforts the community needs.

The solutions to witness intimidation are clear:

- Protect every witness that needs protection
- Provide police and encourage community policing strategies
- Create opportunities for youth development
- Demand tough sentences and high bails
- Facilitate a responsive and transparent justice system
- Ensure every addict has access to treatment

I have already lost a very dear neighbor. I cannot bear to lose the entire neighborhood.

Thank you.

Mr. SOUDER. Thank you. Our clean-up witness today is Ricky P., a resident of West Baltimore. Thank you for coming. Thank you for being patient.

STATEMENT OF RICKY P.

Mr. P. Thank you, chairman. Thank you, Congressman Cummings and Congressman Ruppersberger. My name is Ricky P. I live in West Baltimore. Congressman Cumming knows how to reach me. But with all due respect, I am not making my address public knowledge to this statement. I am afraid to do that.

I make my living as a barber, and people talk to me while I cut their hair. What I want to say to you, our elected representatives, is this: all of the people I know and the people I meet on my job are just as afraid as I am. They are afraid and they are angry. People are afraid because most all of them know someone who has been shot or killed, often sometime in their own families—their fathers, their mothers, even their children.

People are afraid because, with all due respect, the drug dealers and their guns, not our elected officials and police, are the true law in our city. The drug dealers and their thugs are the forces that will make their will stick by threats and murder if we go against them.

Our people are afraid because they know that if we decide to do the right thing and go against the thugs and their guns, we should be saving our money to take care of our families after we are dead and gone. So that is the first thing I need to tell you, my elected representatives.

And the second thing is this: people are angry because they know—and with all due respect, you know this is as well—that the politicians and the police and the people with money have found ways to make themselves safe while leaving the rest of us to take care of ourselves. A lot of you have moved to suburbs. Some of you live in buildings with guards. The garages where you park your cars are safer than the streets of our community.

This is the truth, honorable representatives. And another truth is that we pay our taxes that pay for the guards and the metal detectors where the powerful people like you work and live. We don't want to take the protection away from you, but the people in my community have asked you why don't our tax dollars pay for the same protection and security where we live and work?

This is the question that people in my community are asking. And the answer to that question is what makes us angry. The answer in the minds of the people of my community is that we must pay to protect the rich and powerful while we ourselves are left to be threatened and killed, especially if we cooperate with the police.

We are being asked to risk ourselves and our families in ways that no one with power and money would accept for himself and the people he loves. People believe this because it is the truth, a truth that we know from the experience of our lives.

Honorable representatives, I respect you because you are trying to do something to protect my family and my community. You are trying to convince the Congress to take just a small part of the tax dollars that we are now using to protect our people, and spend it on protecting us. You always say that these tax dollars are our

money. Well, we would like to use some of that money of ours to protect our families, just as we are trying to protect powerful people here in the United States and people in foreign countries.

If you say that you are determined to uphold the law and that you want and need our help, that is good. We will support that. The fact that we are afraid does not mean that we don't have the courage to do the right thing. However, we are not going to give up our lives for nothing.

You and I know that we have only 3 possible choices about protecting witnesses in court from the drug powers in our community. First, you can spend our tax dollars to put more police officers on our streets so that people in my community won't be confronting the drug dealers face to face and getting themselves killed. Second, you can spend our tax dollars to allow our city and State to give those of us with the courage to stand up in court and tell about the crimes that we see every day the same kind of level of witness protection that the Federal courts and Marshals give to their Federal witnesses that they need.

These 2 choices are the ones that the people of this community want you to make. We pray that you will be doing the right thing. But please don't pretend to protect us when you are not willing to do what is required to be effective. If you want to provide us with more police protection in our community, truly protect us when you need us to testify about the crimes that we see.

Your only other choice, the unwise choice, is this: your only other choice is to give up. Your only other choice is to accept the truth of our community and our streets that the drug gangs are going to be the true law in this country. I must warn you, though, of one final truth. If the Congress continues to make this unwise choice, someday and soon the drug gangs are to be the true law in your communities as well.

This is the truth as I see it. This is my testimony. Thank you very much.

[The prepared statement of Mr. P. follows:]

Testimony of Ricky P. of Baltimore, Maryland,
to the Congress of the United States
May 2, 2005

My name is Ricky P. I live and work in West Baltimore. Congressman Cummings knows how to reach me, but, with all due respect, I am not making my address public knowledge by this statement. I am afraid to do that.

I make my living as a barber, and people talk to me while I cut their hair. What I want to say to you, our elected representatives, is this: All of the people I know and the people I meet on my job are just as afraid as I am. They are afraid, and they are angry.

People are afraid because almost all of them know someone who has been shot or killed - often someone in their own families: their fathers, their mothers, even their children.

People are afraid because - with all due respect - the drug dealers and their guns, not our elected officials and police, are the true law in our city. The drug dealers and their thugs are the forces that will make their will stick by threats and murder if we go against them.

And people are afraid because they know that if we decide to do the right thing and go against the thugs and their guns, we should be saving our money to take care of our families after we are dead and gone.

So, that is the first thing I need to tell my elected Representatives, and the second is this: People are angry because they know (and, with all due respect, you know this as well) that the politicians and the police and the people with money have found ways to make themselves safe, while leaving the rest of us to take care of ourselves.

A lot of you have moved to the suburbs. Some of you live in buildings with guards. The garages where you park your cars are safer than the streets of our community.

That is the truth, honorable Representatives; and another truth is that we pay our taxes that pay for the guards and metal detectors where the powerful people like you work and live.

We don't want to take that protection away from you - but the people of my community have to ask you: "Why don't our tax dollars pay for the same protection and security where we live and work?"

That is the question that people in my community are asking and the answer to that question is what makes us angry. The answer, in the minds of people in my community, is that we must pay to protect the rich and powerful, while we, ourselves, are left to be threatened and killed -- especially if we cooperate with the police.

We are being asked to risk ourselves and our families in ways that no one with power and money would accept for himself and the people he loves.

People believe this because it is the truth - a truth that we know from the experience of our lives. Honored Representatives, I respect you because you are trying to do something to protect my

family and community. You are trying to convince the Congress to take just a small part of the tax dollars that we are now using to protect other people and spend it on protecting us.

You always say that these tax dollars are our money. Well, we would like to use some of that money of ours to protect our families - just as we are trying to protect powerful people here in the U.S. and people in foreign countries.

If you say that you are determined to uphold the law and that you want and need our help, that is good. We will support that. The fact that we are afraid does not mean that we don't have the courage to do the right thing.

However, we are not going to give up our lives for nothing.

You and I know that we only have three possible choices about protecting witnesses in court from the drug powers in our community:

First, you can spend our tax dollars to put more police officers on our streets, so that people in my community won't be confronting the drug dealers face-to-face and getting themselves killed.

Second, you can spend our tax dollars to allow our city and state to give those of us with the courage to stand up in court and tell about the crimes that we see every day the same kind and level of witness protection that the federal courts and marshals give to federal witnesses that they need.

These two choices are the ones that the people of this country want you to make. We pray that you will do the right thing.

But, please, don't pretend to protect us when you are not willing to do what is required to be effective. If you won't provide us with more police protection in our communities and truly protect us when you need us to testify about the crimes that we see, your only other choice - the unwise choice - is this:

Your only other choice is to give up. Your only other choice is to accept the truth of our community and our streets that the drug gangs are going to be the true law in this country.

I must warn you, though, of one final truth. If the Congress continues to make this unwise choice, some day (and soon), the drug gangs are going to be the true law in your communities, as well.

This is the truth as I see it. This is my testimony.

Thank you.

Ricky P., a citizen of the United States.

Mr. SOUDER. I have been hearing all day about an incredibly frustrating problem that is certainly spreading. Do you believe you could have—let me ask Ricky this question, also the judge and David—do you believe that we could actually provide enough police to provide protection to everybody?

Mr. P. No, I don't believe you can provide that type of protection. It would be very costly. However, not so much—if we saw more police presence, we would be a lot more willing to step up to the plate instead of maybe one or two that always steps up to the plate. So I believe if you had more police presence in the neighborhood, a lot less would be going on than it is now.

Mr. WRIGHT. Yes, I believe that you can put enough police on the streets of Baltimore to make a substantial dent in this problem, especially once you have reached the threshold that a neighborhood like Harwood has reached. Putting police on the streets, out of cruisers—the cruiser culture really has ruined Baltimore City, that police are not actually out there getting to know the community, getting to know the nuances of who is new, who is on what corners, and really in Baltimore who is brothers with whom.

But I think if you saturate an area for a short time, then you can actually see the levels of crime go down substantially and stay low if you get the police in there and visible and actually interacting with the community in a positive way, which is another problem we have here.

Judge JOHNSON. Your Honor, the short answer is no, we cannot do it that way. In the short run it would be the Band-Aid on the cancer, and we would be back to where we are. That would not be the approach that I would recommend.

Mr. SOUDER. And we are trying to be in Colombia again in a few weeks and we are trying to put a continued full-court press down there. We functionally don't control our southwest border, which is where much of it comes in.

Be in El Salvador because one of the problems we have is El Salvadorian gangs—I mean we get illegal immigrants into the United States that get convicted of a crime; we sent them back to El Salvador. I remember last time I was in El Salvador there were roughly—I think it is a minimum of 25,000 to 30,000 El Salvadorians who went to America, weren't criminals, learned the drug and crime in the United States. Then we deported them, and now there are 30,000 criminals in El Salvador and their police force is like 8,000 people. And now they have spread those into our major cities.

It is exasperating to try to figure out how to address this. Clearly, if you pulse the police in a neighborhood, you will get a short-term reduction. If that neighborhood gets involved, then, and feels like there are officers in the neighborhood and they get emboldened and do community policing, that helps, then tends to shift to other neighborhoods unless you do it simultaneously.

Clearly, we can't have all the witnesses intimidated out; you can't have people afraid to go out on the streets. But it is very hard to figure out how to do this kind of combination. Like you say, if we give up it just gets worse. Every time we have backed off it gets worse. But what you are describing in your neighborhood and your neighborhood, it is just—I mean, it is intolerable. And how can we do that? It is in the suburbs, but the level is different in the sub-

urbs. A lot of the suburban kids will come in and get the narcotics in the more urban neighborhoods and then it spreads there.

I thought the judge made an interesting point about how we treat suburban kids versus urban kids and often on racial grounds. One of the challenges here is that because of the way the dealing is done and because of witness intimidation, there does tend to be more—a percentage more of the criminal element in where you have the hardened networks. But there is no question that ability to hire—if you are more affluent you get to hire an attorney. We have looked at some statistics, agreed to do hearings. We have had some hearings on this. But it is just hard not to get discouraged and just to keep plugging with this when we hear it. Judge, you look like you wanted to add something.

Judge JOHNSON. Well, no, sir, except I agree with you. It is frustrating and that is why I recommend that you recommend that we pawn a commission. And the reason for a commission is because we can get scholars, retired Congressman, and retired Senators, and retired police officers, and would have professors from the academic world, and they can come up with some solution. And that commission recommendation—those recommendations coming from there have a much higher percentage of being passed by the Congress than coming from other sources. That has been my experience in my 42 years at the bar. But that would happen.

Then, we could address the problem. In my view, sir, the reason why America rightly responded like it did to September 11th, and I am a veteran. I served 4 years in the JAG corps and 3 of which in Southeast Asia during the Vietnam War. I was in the Military Justice Division for the Pacific Command, and I wanted to go fight real bad too after September 11th. We don't have that type of thing with this inside threat, this drug threat, to make us all real, real mad. The people who are getting angry is like Mr. Ricky here because he is there where he sees everything, just like the effects of a September 11th creeping on the rest of it, but he has it. And that is not going to come any other way in my view unless we create a commission and centralize, get the whole Nation focused on it, get the Congress to then pass the laws, and we go after it. We can never give up. I will never give up.

When I was threatened, I didn't run. There are causes in life, riveted in oneself that you have to stand for. And I am willing to stand. And I know others who are willing to stand.

Mr. SOUDER. Well, I would say at a minimum if you find a guy with a loaded gun with a picture that said I am going to eliminate this many, that there ought to be a severe penalty. I mean, that is a good place to start. It is almost like we have to make some examples on the witness intimidation because a lot of—what is really hard to sort is what is bluffing and what is real. But we need to take down some of the bluffers. And clearly, and what we have heard today, is there are enough real cases that we can focus then in on the real cases. If I get some of the people who are taking advantage—it is like if somebody kills 3 people, they can threaten 300 more because those people wonder whether they are going to be like the 3 who got killed. And we have to somehow separate that.

But it has been fascinating today to listen to all the different types of challenges with it and the level of the witness intimidation, what that does in a community. Mr. Cummings.

Mr. CUMMINGS. Yes, and I thank you all too for very outstanding testimony. Ricky, tell me this, you talked about the fear that people have and you talked about us as a government protecting people. And you have heard all the testimony today. What kind of specific things do you think would be most effective in doing that?

Mr. P. Well, No. 1 would be more money allocated to the local governments. Like David said here, I would like to see more feet police. You know, I have been in business now for about 25 years, and I remember when the police used to know most of the business owners, used to come in and say hello and had a relationship with them. Now, most of the police in my community I don't even know. It is like sometimes I can't tell the difference between the police and the drug dealers. You know, sometimes I can't tell the difference. The police have just as bad of an attitude as the drug dealers.

And, you know, I listen to a lot of different people and see a lot of different things, and, you know, over the past 3 days I have heard of three shootings. And the three shootings come from one person helping the other person up. And so since he helped the other person up to take him to the hospital, he got shot. You know, just things like that I hear every day in my community, you know. And the police presence, I might see the police locking some young fellow up for throwing trash in a dispenser and then taking him off to central booking and locking him up when they are taking 2 and 3 hours at a time taking him away from the community where there are real issues going on in our community. I see a lot of that going on.

Mr. CUMMINGS. I would just like all of you to just talk about the "stop snitching" DVD. I don't know how many of you all are familiar with that. And if you are not, you don't have to. But it is interesting that when the papers reported on now the tee-shirts with "stop snitching," one of the things that a lot of the young people said was that well, it is just a fad. It is not a big deal. You know, this is what is in style now and we want to go to the outer limits, but we are not really trying to send a message. Do you think those kinds of things do in fact have an impact on the public?

Mr. P. Well, to some degree that is true, especially with our youth. But, see, the drug deals in our community are the per se role models for a lot of our people. Because a lot of our community, people who have become successful have moved on and not come back to the community and give back to the community. So all the children have to see as they grow up are the drug dealers with the big cars and the jewelry and the clothes, and they are fascinated by that. Do you understand?

And it is easier—you know, I have taken on several youth in my salon and tried to teach them and go to school and the requirements, they do their homework and study when they are in there, but if I am giving them $50 a week or $40 a week and they can stand on the corner and make $1,000 a day, I cannot combat that. How can I change their mind to say well, this is wrong? This is short-lived. You know, most of society now, they want instant grati-

fication. So they don't want to hear about the long-term; they want to know what they can have right now. And as opposed to me hiring your son and giving him $40 or $50 a week to sweep in the barbershop and he can stand on the corner, like I said, and make $500 to $1,500, you know, I lose almost every time.

Mr. CUMMINGS. Mr. Wright.

Mr. WRIGHT. I haven't seen the "stop snitching" video per se, but I will agree that we need more people like Ricky on the streets, role models, because we are now two generations into a drug culture that is taking young Black males off the streets of Baltimore and eliminating a whole generation of role models. That worries me enormously, and I think that is what needs to be disrupted, that we have to somehow get role models back into the neighborhoods, back on the streets, give them places to go to bring the kids before they fall prey to the drug dealers. That is one way you disrupt it.

Because with Edna's case there are now seven men indicted. Nobody won in that case. Edna has now left the State. Seven more young men are off the streets. I wouldn't be surprised if some of them have children that will no longer have fathers. And we are just seeing the cycle repeat itself. I think what you need to do is, you know, get good, tough men in, good working men to say, you know, shape up. You know, you can't live to be just 25 and then go to jail. That is not a proper way to be a citizen in this country.

Judge JOHNSON. Mr. Cummings, I think that we all have to admit that our society has become more tolerant of the drug culture. And what Mr. Ricky P. has said is correct, and I agree with what he said. And the drug dealer can make a lot more money—and he is the role model—than one could make at McDonald's, short-term gain. One day the whole country, if we don't stop this, will become more tolerant of drugs. It is OK, so if anybody snitches period, not only the underclass, but the middle and upper-class will get the same fate. We have to stop it now, stop the tolerance for it.

I have not seen it, but that is not unusual because I don't watch television, didn't grow up with it, never found any use for it, but we have to not tolerate that. We have to create a society where there is no tolerance for that.

Mr. CUMMINGS. Judge, let me ask you this—and this is my last question. I mean, I know you talked about back in 1992 about what you saw then and what you saw coming. And how long were you on the bench?

Judge JOHNSON. 19½ plus years.

Mr. CUMMINGS. Did you see this problem evolving, this witness intimidation problem evolving when you were on the bench?

Judge JOHNSON. Oh, yes, but it is in attachment 1 in the article I wrote.

Mr. CUMMINGS. You saw it?

Judge JOHNSON. I saw it. One of the reasons I wrote that article was because I saw often—I have tried over 100 murder cases as a trial judge. The witness would get on the witness stand and he recants. Now why was he recanting? He was recanting because the defendant's lawyer, the drug dealer's lawyer who was being tried for murder, had sent the cousins or brothers or friends or homeboys so to speak out to visit the witness. And he gets the witness's ad-

dress at the time of the arraignment. The first police report contains no witness' name, but at the time of the arraignment, then he is entitled to the name and address of all witnesses, the lawyer is. So the lawyer tells the relatives who the witnesses are. And they go to him and say we hear that you are snitching on us. And he said oh, no, no. I never told the police anything. Well, come on down to my lawyer's office and tell him that. So he goes down to the lawyer's office; the lawyer takes an affidavit saying the police was lying on him; he never made the statement or what have you. A year later he comes to trial, the State take him over the police statement, he says yes, yes, all that happened. And then the lawyer confronts him with this affidavit.

And that is what I meant by those forced affidavits being filed to get witnesses off. The lawyer has just as much blood on his hand as the trigger man. And when I wrote the article, they went after me like I had stolen something, the cartel and the drug lawyers because they knew I knew what I was talking about. I got this information firsthand on numerous occasions from the bench as well as from police lieutenants and detectives and homicide detectives and what have you. And I saw it and I called it. So it was there.

But let me say this to you, Mr. Cummings: the price I paid for this was OK because I never saw another false affidavit since that time. So it is all right. I stopped it. And you can stop it too. Take a stand.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. SOUDER. Mr. Ruppersberger.

Mr. RUPPERSBERGER. Yes. First, I want to thank the panel because you are the frontline. And the battle we are having in our communities is just as serious as the battle in Iraq. And the first thing I do want to say as a sidebar, instead of paying for polls as sometimes we do as elected officials, I find if you go to a barbershop or a hair salon, you will find out more what is going on in the community. So I like what you are saying.

Try and again find and look at solutions. The first thing, you all alluded, I think all three of you—we can talk and the previous panels about the resources we need, the money that we need to put into different programs, but one of the things we didn't talk about but you raised the issue was dealing with children, getting children before they get to the level where we have lost them. And that takes resources and buddies programs, pal programs, getting children and teenagers off the street.

When I was in Baltimore County we had a very active pal program, and one of the things we knew to get those tough kids is you had to hook them to get them in because a lot of the street kids wouldn't go into these programs. So we developed a karate program. And as soon as you offer karate, a lot of the bad kids would come in, and then you have them and you hooked them.

But if we don't deal with end of the spectrum, the young children, getting to them, we are always going to have problems. Now I think one thing that hasn't been talked about here today, and I would like to just develop your opinion a little bit, is about community policing. Community policing is very, very important. And, Ricky P., do you have a community association where you live?

Mr. P. Well, yes, I have a strong community association where I live at. However, when you are dealing with—see you are talking about community policing when most of the young children belong to the community. So we are talking about a community policing where the drug dealers are their kids, you understand? So they don't want to tell on their kids or they are not going to snitch on their kids or they are not going to form a commission to tell on their kids.

Mr. RUPPERSBERGER. Well, here is my point: community policing, a part of what community policing is about for someone to go into the community and developing really a non-confrontational relationship with people in the community that understands and really gets intelligence about what kids are having problems, what kids' parents are involved, whatever. And by getting that information they can direct a problem or solve a problem before it gets started.

The same thing in schools. You put police officers in schools in a non-confrontational way, they can usually deal with the fight after school or somebody might get hurt, stabbed, shot, whatever, by dealing and having those relationships.

And I think, you know, I know, getting to your community, do you have an active community association where people come and they meet and talk about community issues?

Mr. P. Yes, but understand this: now, just take for instance last summer. I live across the street from a school, so a lot of kids tend to go up on the lot all the time in the summertime and hang out and everything. So I went up there one time to try to talk to the kids and ask them, you know, they just built a recreation center. Why don't you come to the recreation center and talk about some of your needs? In the course of that I got my window shot out by a BB-gun, they burned a fire by my house. You know, every time you seem like you want to stand up, don't nobody want to stand up beside you——

Mr. RUPPERSBERGER. Well——

Mr. P. In my community I have a lot of elderly people. And a lot of elderly people are going to go in their doors and stay in their doors. They are not going to come out.

Mr. RUPPERSBERGER. Let me ask you something else, another program that I thought was effective that I have been involved with is the Citizens on Patrol. Now, government can't do it all. Now, our country is a great country because we as citizens stood up and took care of problems. But we need coordination and we need help, especially in your area, what you are talking about.

And what Citizens on Patrol basically did was get the group of citizens together, which gave them strength and power. And we were able to get communication where we would have walkie-talkies. We didn't want the citizens to stop a crime. And basically it got to the point 24/7 we had citizens who would take a certain night that we would have three or four in a car in different hotspot areas in the neighborhoods. And then the word got out, and believe it or not, we did a study, and when the word got out that they had citizens on patrol in communities, the crime started to drop. But the reason it worked is because the whole community stood up.

Now I would like to hear, Ricky P. and David Wright, your opinion. Do you have any type of Citizens on Patrol, and if not, do you

think we could develop something in some of these communities to try to deal with the problem? Because we want to walk away from here today with solutions, and it is important that we do that.

Mr. P. See, now, I have seen like two blocks or three blocks away from mine another community having Citizens on Patrol, and let me tell you how that works. They move from those two-block radius or three-block radius and go down to another two or three blocks away and still—you know, I mean, I don't want to get off your question, but I watch all day long where I see 100 cars come by my community, coming out of my block, and 98 of them, sir, are county people. See, and when you look at this and you see this all day, you got to know that your police know this. And if your police——

Mr. RUPPERSBERGER. There is the point. And you know who the drug dealers are.

Mr. P. Right.

Mr. RUPPERSBERGER. You are in the community.

Mr. P. Right.

Mr. RUPPERSBERGER. But if you have community policing, it is a different relationship. It is knowing the community, knowing who the people—so that community police officer knows what you know and can use their authority and their expertise to get the narcs or whatever they need to do. But, you know, Citizens on Patrol does work if it is coordinated. But you can't have one community two blocks away and another one not. That is what community policing is about. And I think it is something we need to focus on, and I think it might work, in your community especially. And I would like to hear, David Wright, your position on that too.

Mr. WRIGHT. Citizens on Patrol has been difficult. In the hardest areas of Baltimore, in the worst areas, we found that we can't get people to sign up. It is too dangerous because of what Ricky said, that as soon as you exert a positive influence, you are singled out and attacked. But what has worked are things like the crime watch numbers, which has led people to sign up to have an anonymous notification system so that when they call 911 to report things, they are not automatically handing over their information to the police. Because we found that what happens is that if somebody calls the police through the regular 911 system, the police show up. They are looking around to see what happened with the incident. They go to the person who reported it. That person then gets associated with the police, they get singled out, their car will be vandalized, they will feel threatened.

So that in neighborhoods where theft and burglary are the primary crimes, Citizens on Patrol is wonderful because there you are looking for people who are demonstrating unusual activity. In the tougher neighborhoods of Baltimore, the interplay of family and friends and the harshness of the situation, the harshness of the reality kind of precludes Citizens on Patrol. But things like crime watch does really have a much better impact.

Let me say as well that I think we have heard today a number of times that a lot of citizens don't want to move after they have been intimidated. And that really what that speaks to is dedicating resources to having police, because if those witnesses are going to stay in that neighborhood, they need to feel like there is somebody

around and that clearly to some extent the resources are there for moving citizens.

And let me say as well that it is not only the financial burden of moving and the loss of the community, but for Edna it has been absolutely a horror and a day-in and day-out anxiety as her world was disrupted for 3 months. And the psychological anxiety was enormous. It is facing that kind of trauma that really rules out moving out of your community. You know, a lot of folks stay in Baltimore for generations and their lives and their grandparents are here and they won't move. So the least we can do, I think, is to put police on the streets out of their cruisers, have them visit the barbershop.

Mr. RUPPERSBERGER. Well, it is a sad state of affairs when you can't have Citizens on Patrol, when citizens can't come together because of fear and intimidation. So law enforcement has to do the job. But I really think we have to refocus on that community policing to an extent.

Mr. WRIGHT. Absolutely.

Mr. RUPPERSBERGER. We need a balance.

Mr. P. But I think law enforcement need to take back that community first.

Mr. RUPPERSBERGER. Well, I don't disagree.

Mr. P. Once they take back the community, then we can institute——

Mr. RUPPERSBERGER. But they are not going to take back the community if they don't get at least source information and resources. Not that somebody has to come out front all the time, but just to get information. And if you are telling me you know the neighborhood——

Mr. P. Yes.

Mr. RUPPERSBERGER [continuing]. And police aren't talking to you——

Mr. P. Yes.

Mr. RUPPERSBERGER [continuing]. In a confidential and informant way, that means they are not doing their job.

Mr. P. Yes.

Mr. RUPPERSBERGER. So hopefully we will learn from this hearing today. Thank you.

Judge JOHNSON. Did you want my response to that?

Mr. RUPPERSBERGER. Yes, sure. You are the judge.

Judge JOHNSON. I was. I am back to being an old country boy again, sir.

Mr. RUPPERSBERGER. If I believe that, you will tell me another one.

Judge JOHNSON. I agree with what both of my panelists have said here, and let me just add, Mr. Congressman, the waters and the fires have gathered too close around us for that community policing to be working anymore. The cancer is here, and that Band-Aid is the community policing. It is too late.

Mr. RUPPERSBERGER. I disagree with that. I don't believe it is ever too late. We can't give up. But you are right; we have to have the big fist first to come forward to give people the confidence to come forward.

Mr. SOUDER. Well, these are massive questions that—and one of the things that—well, history may not repeat itself but often rhymes, and we need to not repeat mistakes of the past. And the one thing I learned early on when I was a staffer was working with the Bloods and the Crypts and gangs in Los Angeles, and we had this bright idea that we were going to do programs for kids who were in gangs to try to get them out of the gangs. Guess what? The number of kids in gangs increased because there weren't any programs for the kids who weren't in gangs. So in order to get in the programs you had to join a gang. So we watched the Bloods and the Crypts double because of that program. And so you have to figure out logical ways of building.

And what I have come to believe is that you have to have a clear, swift, certain punishment for violating the law. Then we need to look at reward systems and how you do other things in the community. But you can never address the fact that you can pay $40 in your barbershop and they can get $1,000 on the street corner.

Mr. P. No.

Mr. SOUDER. Yet we are continuing to reinvent this stupid policy internationally. Because down in Colombia the President wants to give people all this kind of stuff if they will stop growing coca. No, they need to stop growing coca; then we will talk.

The same thing right now in Afghanistan where we are talking about heroin. We don't go into your street and say oh, we will build you a new road, we will do all this kind of stuff if you just stop, you know, doing this on the street. We say no, you are going to stop doing it on the street. And we need to say the same thing to people growing heroin and the people growing coca, that we are not going to put up with this. We are not going to buy them because we can't. We can never meet the amount of money they can make growing heroin poppy and coca. Yet we are repeating this in our international budget.

At the local level, some of these problems that you have addressed is we need mixed housing. And I have gotten in an area of my hometown of Ft. Wayne where we were fifth in crack for a while. It was just overrun. And we tried to do mixed housing. But this stuff is hard. We just need to keep at it.

Because as we worked with HUD and I got then Secretary Martinez to come in and we launched this thing to try to put middle-class housing with the Black Ministerial Alliance in Ft. Wayne, guess what? A house that cost $140,000 to build in the suburbs, I got—not me. The Democratic mayor, myself, others went to the homebuilders, said you have to get involved here. They built houses that were then priced at $90,000 in the urban center to try to get mixed housing. Because like you say, there aren't any role models. How do we get people back in? So to try to do mixed housing.

Well, guess what? Now people are complaining because evaluation of those houses, which cost $140,000, same house in the suburbs but sold for $90,000 are now valued at $65,000 because they can't buy them. So they are claiming that their bank loan doesn't equal the equity of the house. This is hard. Because here we had the builders donating, we had the HUD Secretary in, we had a model thing, and now the equity isn't there because ultimately the

crime rates are still there, the school rates are still there. It takes a long time to re-habit, but we have to have multiple things.

But one thing is for sure, and that is what we got out of this hearing today, is if you are a witness in a crime, you can't be shot. And the police have to have a method to protect the witnesses and where we have people willing to be brave enough to come forth, we have an obligation to try to protect those people. And through that, then focus on those neighborhoods. And where there is a will, we ought to find a way to defend those people and reclaim. And if it moved next door or a couple blocks, it moves next door. But where people are committed, we have an obligation as a society to do that. And I thank Mr. Cummings and Mr. Ruppersberger for being here and for Mr. Cummings' lead in this. Thank you each for your testimony and thank everybody for the patience this long hearing. Thank you very much. The subcommittee stands adjourned.

[Whereupon, at 2:22 p.m., the subcommittee was adjourned.]

STATEMENT OF HEATHER CARTWRIGHT
CHIEF, VICTIM WITNESS ASSISTANCE UNIT
United States Attorney's Office
District of Columbia

Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives

(Submitted for the postponed April 12, 2005 hearing)

"How Can the Federal Government Support Local and State Initiatives to Protect Citizens and Communities Against Drug-Related Violence and Witness Intimidation?"

Chairman Souder, Ranking Member Cummings, and Members of the Subcommittee: I am Heather Cartwright, Chief of the VictimWitness Assistance Unit in the United States Attorney's Office for the District of Columbia. It is an honor to appear before you today to discuss the problem of witness intimidation and the various Department of Justice programs designed to address witness security and availability.

My interest in witness assistance and security issues grew out of my personal experience as a federal prosecutor. I served as an Assistant United States Attorney for the District of Columbia from 1990 to 1998, where I prosecuted criminal cases in both D.C. Superior Court and the United States District Court for the District of Columbia.

I am currently the Chief of the Victim Witness Assistance Unit at the United States Attorney's Office for the District of Columbia. I manage several programs in support of victims and witnesses in cases before the D.C. Superior Court and the United States District Court. These programs include victim assistance for a wide variety of victims; witness security; witness logistical support; and victim notification. The Unit is staffed with 26 professionals.

Prior to my appointment as Chief of the Victim Witness Assistance Unit, I spent five years at the United States Department of Justice's Office for Victims of Crime (OVC). As an Attorney Advisor to the Director of OVC from 1998 to 2000, I oversaw the redrafting of the Attorney General Guidelines for Victim and Witness Assistance. The guidelines are the Justice Department's basic policy manual on the treatment of crime victims and witnesses. In 2000, I was appointed the Director of the Federal Crime Victims Division at OVC where I administered Crime Victims Fund monies to support programs to assist victims of Federal crimes. I have also coordinated two National

Symposiums on Victims of Federal Crime, the premier training conference for victim assistance personnel in the Federal, Military, and Indian Country criminal justice systems.

Nature of the Problem

Witness intimidation is a serious problem for the criminal justice system. Witness intimidation takes many forms, ranging from outright explicit death threats from an organized crime "hit man" to more subtle pressure on citizens not to cooperate in providing information about criminal activity to law enforcement. In the Federal system, we have a range of options available to enhance witness security. These include the Federal Witness Security Program, the Short Term Relocation Program, which is unique to the District of Columbia, and the Emergency Witness Assistance Program. Let me describe each of these programs briefly.

The Department of Justice Federal Witness Security Program

The most restrictive and secure Federal program is the Department of Justice Federal Witness Security Program (WSP). This program has been the subject of numerous movies and television depictions, and it is what comes to mind for most lay persons when they think of witness security. The program includes a complete change of identity for the witness and his or her household. It is available only to persons who are crucial witnesses in significant prosecutions. The program is available to Federal law enforcement and prosecution agencies, as well as state and local agencies. The state and local agencies must first secure the approval of the local U.S. Attorney as part of their applications. In addition, state and local agencies are asked to reimburse the Justice Department for the expenses incurred in connection with securing the witness.

The procedure for requesting the placement of a witness into the WSP begins with an application, which the Federal prosecuting agency, or, in a state case, the state prosecuting office (with endorsement from the local United States Attorney), forwards to the Office of Enforcement Operations (OEO) in the Criminal Division of the Department of Justice. The Federal investigative agency involved in the case, or the state investigative agency through the state prosecuting office, forwards to OEO an assessment of the danger to the witness, as well as an assessment of the risk the witness would pose to the general public in a relocation community. In order to qualify for the WSP: the case must be extremely significant; the witness's testimony must be crucial to the success of the prosecution; and there must be no alternative to placement of the witness in the Program. These factors, particularly the first, must outweigh the risk of harm that the witness would pose to a new community.

Witnesses who have been authorized to receive Program services are terminated from the Program if they fail to abide by Program guidelines. Since the Program is voluntary, witnesses can leave it if they so desire, and they are expected to sign a statement indicating their intention to terminate their participation.

Protection is also provided to prisoner-witnesses through the Program. The Federal Bureau of Prisons (BOP) has the responsibility of administering the day-to-day operation of the Program as it relates to prisoners. Prisoner-witness Program participants are separated from those against whom they are testifying, or who will present a threat to them. If family members of a prisoner-witness are endangered as a result of the prisoner's cooperation, they can receive protection through the Program while the prisoner is incarcerated, if it is determined that there is no other means of keeping them safe. When a prisoner-witness is released from custody, the case is evaluated to determine if full services of the Program are warranted.

From the Program's inception in 1970 through December 31, 2004, a total of 7,862 witnesses have been authorized into the Program. The total number of participants including family members is 17,132. In recent years, the number of witnesses authorized per year has been approximately 140; on average, over 80 percent of these witnesses are prisoner-witnesses who are incarcerated when initially admitted into the Program. The cost of initial relocation and providing services to a witness without family members is approximately $75,000 per year, and the cost for a family of four is about $110,000. Over 95 percent of the witnesses authorized have some type of criminal record, most being former members of a targeted criminal organization. The program has been extremely successful in enabling the criminal justice system in the United States to win cases against major organized crime groups. However, a very large percentage of Program participants, both in the U.S. program and similar programs in other countries, have
demonstrated that they do not wish, or are unable, to remain completely exiled from their former lives, leading to their expulsion from their respective programs when they break program rules.

The District of Columbia Short Term Relocation Program (DC-STRP)

The Short Term Protection Program, now called the D.C. Short Term Relocation Program (DC-STRP), was established as a pilot program in 1991 and was designed to meet specific and unique needs in the District of Columbia. Deriving its authority from the Federal Witness Security Program, the relocation portion of DC-STRP is operated on a day-to-day basis by the United States Marshals

Service (USMS), and the Program is overseen by the Criminal Division's Office of Enforcement Operations. The DC-STRP was designed to help combat the problem of gang-related violence and intimidation against witnesses in cases prosecuted by the United States Attorney's Office in the District of Columbia. The District of Columbia is unique in that all violent adult crimes are prosecuted by the United States Attorney, as opposed to a state or local prosecutor.

The purpose of DC-STRP is to provide temporary relocation and removal of the witness from the danger area. Subsistence for these witnesses – and for their immediate families or persons closely associated with them – is also provided. Although the DC-STRP operates under the same legal authority as the full services Program, which makes the requirements for admission extremely rigorous, there is no name change or other documentation provided. The objectives of DC-STRP are (1) to help reduce the witness's immediate, rather than long term,
personal security concerns, and (2) to help ensure the availability of the witness's testimony for the prosecution of acts of violence, obstruction of justice, or other similar offenses. As with the WSP, if a witness later chooses to return to the danger area, there is no assurance that he or she will not be harmed. Because of security concerns related to the lack of an identity change, current DC-STRP guidelines prohibit DC-STRP participants from working or admitting children into school while in the program. This is a significant limitation for many participants.

Emergency Witness Assistance Program (EWAP)

In 1995, recognizing the limited mission of the WSP, the Department of Justice Criminal Division conducted a study to evaluate witness security options available to Federal prosecutors. The study revealed that the United States Attorney's Offices (USAOs) were concerned about threatened and intimidated witnesses. As a result, a working group developed the Emergency Witness Assistance Program (EWAP). The purpose of the EWAP is to provide the USAOs with the flexibility to address a critical need: assistance to witnesses on an emergency basis to ensure their well-being and to ensure that they will be available for court proceedings or other activities related to an ongoing case. The program also addresses the physical, mental, or emotional reservations that witnesses or prospective witnesses may have about participating in a specific matter before or after they have agreed to cooperate with, or to testify or be available for, the government.

EWAP assistance may be provided to witnesses and victims who are witnesses where the more formal protection and security programs, administered under the provisions of the Witness Security Reform Act, are not available or are inappropriate. Its purpose is not to provide physical

protection for witnesses. It addresses a witness's fears about assisting the government. It seeks to promote the peace of mind of witnesses when they have relevant information to contribute, thereby enhancing their ability to testify. EWAP assistance does **not** include any protective services, custody arrangements, or a law enforcement presence and does **not** relieve a recipient of any responsibility with regard to debt, custody, child support, court, or other obligations. The program only provides emergency financial and other assistance to witnesses for the purposes stated above. Such assistance will not exceed one month, unless there are extenuating circumstances.

Each individual USAO has its own protocol outlining the procedure for accessing EWAP funds in conformance with national program guidelines issued by the Executive Office for United States Attorneys, and each USAO has its own allocation of EWAP funding. The decision as to how, when, and whether or not EWAP funds are used is entirely within the discretion of the United States Attorney. Generally, however, the national guidelines allow EWAP funds to be used to provide the following services: (1) transportation to enable a witness to leave his or her neighborhood, town, city, or state temporarily; (2) temporary housing or moving expenses; (3) temporary subsistence (a reasonable portion of Federal per diem standard); (4) emergency telephone service to assist the witness to keep in contact with the USAO; (5) child or elder care; (6) other transportation costs, as reasonably necessary for school or immediate medical or counseling needs.

EWAP is considered a last resort as a source of funding for witness assistance, and does not replace available case funds or other governmental and community resources. Assistance is only available for witnesses with fears, reservations, or concerns about being a government witness. The assistance funds are limited to frightened or endangered witnesses only and cannot be used simply because the witness is indigent or requires services. EWAP assistance cannot exceed one month and $3,999 per witness, unless there are extenuating circumstances. The USAO discloses EWAP information to the defense as part of the discovery process. Witnesses cannot be "reimbursed" for their out of pocket expenses.

Conclusion

Witness intimidation is a serious challenge to law enforcement at all levels: local, state and Federal. In the Federal system we have some excellent programs to help us enhance the security of victims and witnesses to crime. Each program has its own limitations, and a good deal of time is spent trying to identify which program is appropriate and available for each witness. A great deal of a witness's security is dependent on the witness's own conduct. We can arrange for a

witness to be relocated out of a danger area. It is then up to the witness to refrain from revealing the new location to anyone who might be a danger or might communicate the new location to those who would harm the witness. In addition, the witness must stay away from the danger zone and from anyone who may be associated with the persons trying to harm the witness.

It is important to have a range of options for relocation. Many witnesses do not qualify for the established WSP programs, or they may need longer term solutions than the EWAP program offers. In addition, many witnesses are not willing to comply with the strict rules of the formal WSP or DC-STRP or to make the significant sacrifices that entry into those programs entails. Some witnesses are not equipped with the living skills to relocate out of an area where they have lived their entire lives. In some situations, local state, Federal, and non-government social services programs may be a better option than a formal witness security program, and have a higher chance of success in keeping a witness away from a dangerous location.

We in the criminal justice system are very appreciative of the courage and strength of character witnesses exhibit when they agree to cooperate with law enforcement in the face of very real fears for their safety. The good news is that by working with witnesses to find the solution that best meets their needs and addresses the level of danger to which they are exposed, witnesses are able to safely testify against dangerous criminals. We could not prosecute cases against drug dealers and gangs without these witnesses, and we use our very best efforts to arrange for our witnesses' safety.

Thank you for this opportunity to speak about this important topic. I will attempt to answer any questions you may have at this time.

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