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ADDRESSING WITNESS INTIMIDATION AND ENCOURAGING WITNESS COOPERATION

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WHAT IS WITNESS INTIMIDATION?

CONTINUUM OF CONSEQUENCES

- Don't know the witness exists
- Refuses to cooperate
- Complies with subpoena but refuses to testify
- Testifies falsely
- Recantations
- **Injury or death of witness**

WORK EVERY ANGLE

- Victim/witness advocates
- Investigation of intimidation
- Legal strategies
- Courts
- Community

BASIC PRINCIPLES

- Coordination from crime scene to post-trial
- Trauma informed
- Cultural awareness
- Call on every case
- Don't make the victims/witnesses do the work



IMPACT OF PANDEMIC

INITIAL MEETING

RISK ASSESSMENT

- Violent crime cases, gang activity or organized crime
 - In the same/different gang
 - Family in the gang
- Domestic Violence
- Other factors
 - In the same neighborhood
 - Friends/family in common
- Can be in any case

INITIAL MEETING

Victim/Witness Advocate

- Contact information
- Means of communication
- Social services needed
- Safe use of social media
- Safety plan
- Identify "danger zones"

INVESTIGATOR

- Safety planning
- Relocation
- Threats

INITIAL MEETING

Prosecutor

- Learn what they need
- Contact information
- Stay in touch

CASE MANAGEMENT SYSTEM

- Track witnesses
- Contact information
- Risks
- Requests for relocation

RELOCATION

- Who qualifies?
- Consider relocation early in the case
- Create protocols
- Temporary relocation
- Permanent relocation
 - Moving expenses
 - Rental costs
 - Storage
 - Family issues

VIGOROUS EARLY INVESTIGATION

- Jail/Prison
 - Calls
 - Visitor logs
 - Cell searches
- Phone records
- Informants
- Surveillance
- Social media
- YouTube

VIGOROUS PROSECUTION

- Specially assigned prosecutor/vertical prosecution
- Bring witness intimidation charges – possibly consolidate with main case
- Use of the grand jury
 - Secrecy
 - No defendant

ARREST TO ARRAIGNMENT

BAIL AND BOND

- Initial charging document without witness's name
- High bail – let the judge know the concerns
- Order of protection

PRELIMINARY HEARINGS

DISCOVERY

PROTECTIVE ORDERS

- Redaction:
 - Witness pedigree
 - Search warrant affidavit
 - Police paperwork
 - Photographs and videos (body worn cameras)
- Delay discovery
- Limit defendant's access to discovery

DEFENSE DISCOVERY

BRADY AND GIGLIO

- Exculpatory information
- Inconsistent statements
- ***Benefits to witness***

HEARINGS AND TRIAL



ENGAGING JUDGES

- Pennsylvania Bench Book
 - 2007 - Forum on witness intimidation
 - 2009 - Bench Book suggested
 - 2011 - Bench Book published
 - 2013 - Updated
 - 2014 - Updated
 - 2018 – Updated

INTRODUCTION

“Justice requires a search for truth in an environment that respects the rights of all parties to the system. Truth cannot be spoken in fear. Witness intimidation strikes at the very heart of our system of criminal justice, crippling our ability to function fairly, decently and with integrity. It cannot be tolerated. *Judges stand as guardians of the courthouse: the place where wrongs will be redressed without fear or recrimination. It is the responsibility of the court to create an environment in which truth can be spoken.* This bench book is designed to be a

CREATE A PROCESS WITH THE COURTS

Motions *in Limine*

- Evidence:
 - Prior acts of intimidation
 - Forfeiture by wrongdoing
 - Admissibility of witness's fear of testifying
 - Anonymous witness
- Controlling the courtroom
- Closing Courtroom

COURTHOUSE AND COURTROOM SECURITY

COURTROOM SECURITY

- Special court staff
- Screening at the door
 - Names and ID of spectators
 - Cell phones
- Prosecutor staff in courtroom
- Announcements in court

ENVIRONMENTAL DESIGN

- Courthouse
- Prosecutor's Office

COURTHOUSE SECURITY

- Safe waiting areas
 - Surveillance cameras
 - Separating families
 - Safe entry and exit
-
- **Press** – make sure they don't reveal a witness

WITNESS PREPARATION

- Getting to and from the courtroom
- Safety outside the courtroom
- Familiarity with the courtroom

NEW APPROACHES

NEW EXPERTISE

- **Office legal expert**
- Train legal and support staff
- Witness Intimidation Investigator

CULTURAL COMPETENCE

- Implicit bias
- Understanding your victim and witness

COMMUNITY

- Meet with community groups and religious institutions
- Communications strategy
- Host a witness intimidation forum
- Mothers In Charge

COORDINATION

- Courts
- Police
- Hospitals
- Social services
- Community groups

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