

Testimony of  
**The Honorable James P. Fox**

June 5, 2007

TESTIMONY  
OF  
HONORABLE JAMES P. FOX  
DISTRICT ATTORNEY  
SAN MATEO COUNTY, CALIFORNIA  
AND  
PRESIDENT-ELECT  
NATIONAL DISTRICT ATTORNEYS ASSOCIATION  
BEFORE A HEARING OF THE  
COMMITTEE ON THE JUDICIARY  
ON  
EXAMINING THE FEDERAL ROLE TO WORK WITH COMMUNITIES TO PREVENT  
AND RESPOND TO GANG VIOLENCE:  
THE GANG ABATEMENT AND PREVENTION ACT OF 2007

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BEFORE THE COMMITTEE ON THE JUDICIARY  
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INTRODUCTION

Chairman Leahy, Ranking Member Specter and Members of the Committee on the Judiciary:

My name is James P. Fox and I am the elected district attorney in San Mateo County, California and have served in this capacity for approximately twenty-five years.

I have been involved in the criminal justice system for forty-one years in a variety of positions including juvenile probation, deputy district attorney, criminal defense attorney and elected district attorney in 1982. I am a past President of the California District Attorneys Association and have been a chairman of the Legislative Committee of the California District Attorneys Association since 1990.

I would like to extend my sincere thanks to Senator Feinstein for her invitation to testify today before the Judiciary Committee. I appreciate the opportunity to share my thoughts and concerns on gang-related crime in our communities; the potential for the successful intervention and prevention of gang formation; the protection and relocation of witnesses to gang-related crime; and the federal government's role in providing assistance to state and local authorities for responding to and preventing these crimes.

Currently I serve as the President-Elect of the National District Attorneys Association (NDAA) and will begin my tenure as President at the end of July. NDAA is the largest and primary professional association of prosecuting attorneys in the United States. Formed in 1950 as the "National Association of County and Prosecuting Attorneys" and given its present name in 1959, NDAA has approximately 7,000 members, including most of the nation's local prosecutors, in addition to, assistant prosecutors, investigators, victim witness advocates and paralegals. The National District Attorneys Association provides professional guidance and support to its members, serves as a resource and education center, follows public policy issues involving criminal justice and law enforcement, and produces a number of publications.

The views I am expressing are those of both the National District Attorneys Association as well as the California District Attorneys Association (CDAA). The CDAA has endorsed this legislation.

### The National Gang Problem

Over the last four years, several of my colleagues on the board of directors of the National District Attorneys Association have had the privilege of testifying before either this Committee or the House Subcommittee on Crime, Terrorism and Homeland Security regarding gang crime and related issues. I would commend to you the September 17, 2003 testimony of Robert P. McCulloch, Prosecuting Attorney, St. Louis County, Missouri before the Senate Committee on the Judiciary; the April 5, 2005 and February 17, 2007 testimony of Paul A. Logli, State's Attorney, Winnebago County, Illinois before the House Subcommittee on Crime Terrorism and Homeland Security; the April 24, 2007 testimony of Kamala Harris, District Attorney, San Francisco, California before the House Subcommittee on Crime Terrorism and Homeland Security; and the May 5, 2005 testimony of Patricia Jessamy, State's Attorney, Baltimore City, Maryland regarding witness intimidation during a Congressional field hearing held by the House Subcommittee on Criminal Justice, Drug Policy and Human Resources.

The examples provided during testimony almost four years ago highlighted the insidious problem that has and continues to invade our communities. Today they simply mirror the stories that can be read in newspapers on any given day. This is just a sampling of the testimony:

"In Denver the gangs and gang members are long-time Denver, "home grown," criminals but the vast majority of their culture in Colorado can be traced back to California. Beginning in the mid-to-late 1980's the California gangs started to "franchise" to the Denver-area. Intelligence reports showed that California gang members viewed the lack of competition from local gangs; coupled with local law enforcement's and the community's relative lack of "gang sophistication," as making Denver easy prey, and labeled Denver the "The Big Easy." While the migration was from primarily Southern California gangs, Colorado has seen the migration of a significant number of

Chicago-area gangs. From the late 1980's to the present, the number of gang members and gangs in Denver has grown steadily to the present estimated figure of 13,000 gang members in the metro-Denver area.

In years past, street gangs tended to emanate from Denver County, and the neighboring urban center of the city of Aurora. In the last 5-10 years, the gang problem has quickly expanded into neighboring suburban communities and counties. Additionally, gang-related issues have recently expanded to new frontiers in the agriculture communities in Alamosa and Castilla counties, as well as in the mountain/resort community of Eagle County. While the outlying communities may not have the sheer number of gang members, their gang related crime problem has grown significantly.

The gangs in the metro-Denver area have historically used drug trafficking as their criminal enterprise of choice. However, with the drug trade comes a wide assortment of other violent felonies, including armed robberies, aggravated assaults, homicides, etc. To conduct their business, and more often to protect their distribution locations, the gangs will often resort to means of extreme violence. Within the gangs' drug business, the Denver-area has seen what appears to be a greater and more wide-spread use of juveniles to commit and participate in gangs' business, particularly the drug transactions. Drugs (most common cocaine, with a recent surge in "meth") are the primary, but not exclusive, criminal enterprise for Denver-area gangs. Many gangs are also heavily involved in property crimes - auto thefts and business and residential burglaries. Recently, there have been reports of some traditionally African-America street gangs expanding into the area of prostitution. Likewise, Denver has seen a significant increase in Asian gangs becoming more and more involved with some traditionally white collar crimes (check and credit card fraud) as well as loan sharking and extortion.

Chicago tells a similar story. The gang problem in and around Chicago is widespread. While "only" listing 98 identified gangs in Chicago the membership is estimated to be over 100,000 - and this is only within the city limits. The gangs are well established with corporate structures and as many as three generations of a family in the gang. Gang leaders are frequently in their 40's and 50's.

With the demolition of numerous housing projects the impact on the Chicago gangs has been to geographically disperse gang members into other areas of the city and into the suburbs. This has had a major impact on the ability of law enforcement to collect intelligence about criminal activities. Since many of the suburbs have small police departments another problem has arisen over their ability to take any action to curtail the gang activity. In one instance a gang shot out the tires on the four police cars in the town and literally disabled the force for several days.

Another difference from previous gang activity has been that over turf battles. The gangs today are as antagonistic as seen previously. Frequently they operate more on corporate lines forming trade alliances to maximize profitability. Prosecutors in Chicago state that gang members are more into "making money" than worrying about gang rivalries. They further observe that this is carried through in the efforts of many gangs to develop enterprises to launder profits from criminal enterprises. Some of these businesses include construction companies, car washes, beeper shops, recording and music related businesses and restaurants.

In Phoenix the Police Department has on file two hundred and forty eight (248) criminal street gangs and lists membership as six thousand forty two (6,142) permanent members and three hundred twenty one (321) temporary associate members.

Hispanic gang members make up the majority of the gangs and gang members followed by Black gang members, Anglo members, and Asian.

In 1992 Phoenix suffered 918 gang related violent crimes. Even though the number has been declining since then they still suffered 159 gang related violent crimes in 2002.

They have not seen any growth of specific gangs or new gangs coming into Phoenix. The one gang that has seemed to change criminal activity is the Mexican National gangs known as "Wetback Power" or "Doble". These gangs have been around for about 10 years. These gangs formed to protect themselves from the traditional Mexican-American and Black street gangs. These gangs are now doing alien smuggling, home invasions on other illegal aliens, and ripping off Coyotes (alien smugglers).

More-and-more rural communities find they are not immune from the influx of gangs. In Snyder County, Pennsylvania, a relatively small county in central Pennsylvania the District Attorney recently met with the State Police officer assigned to gathering intelligence on gangs in his jurisdiction. He found out that one of the major bike gangs had infiltrated a local club that had been originally organized for charitable purposes and had "taken over" the club. This was done by gradually recruiting outside members until the local people no longer wanted to associate with the group. In the past 3 - 4 years, Snyder County had seen an increase in gang related crime (burglary and drugs primarily). There is a state police barracks in the county and the District Attorney frankly admits that without it they "totally lack the resources to deal with a problem of this sort."

According to the Federal Bureau of Investigation currently there are approximately 800,000 gang members belonging to about 30,000 violent street gangs, motorcycle gangs and prison gangs in the United States. According the 2004 National Youth Gang Survey there were approximately 760,000 gang members and 24,000 gangs were active in more than 2,900 jurisdictions that city (population of 2,500 or more) and county law enforcement agencies served in 2004.

Complexity characterizes the gang issue in all of our communities and the safety of our citizens is seriously jeopardized as a result. But the fact of the matter is this is not a local community issue it is a national epidemic requiring federal assistance. With the relative ease with which gang members can today cross state lines and international borders, utilize ever-emerging technologies to communicate and perpetrate crimes, recruit and employ juveniles in the organizations, and successfully interfere with the criminal justice system through the intimidation of witnesses, a solution will inevitably require the pooling of federal, state and local funding for enforcement purposes; increased cooperative agreements and partnerships among federal, state, and local authorities; the establishment of efficacious witness relocation and protection programs; and the implementation of preventive programs in each and every community to stop juvenile recruitment into a life of crime by gangs.

In 2002 the National District Attorneys Association developed a comprehensive policy on juvenile crime issues and as part of that document adopted the following policy statement and commentary as they relate to gang activity and the increasing involvement of juveniles in it:

**Policy:** Adequate resources should be provided to prosecutors to assist in the prosecution of gang-related crimes and the protection of witnesses.

**Commentary:** Prosecutors need to set a high priority within their offices concerning gang issues. Depending on the size of the jurisdiction and the gang problems in existence, community programs may vary. The error most often made by the prosecutor and other law enforcement officials in a community is to ignore the developmental stages of gang activity. According to the National Youth Gang Survey, in 1995, an estimated 31,000 gangs were operating in 4,800 U.S. cities with more than 846,000 members, half of whom were under age 18. Gangs exist in all types of jurisdictions, from rural to urban.

Gang activity is not mere delinquency. Gang exploits have become increasingly more criminal in nature. Crimes that are designated "gang-related" tend to be overwhelmingly violent. It is important that the consequences imposed reflect the serious level of behavior. Prosecutors must recognize the need for public safety and the goal of deterrence. As a gang becomes organized to commit crimes for profit, control and reputation, its members and "wannabe's" likely are directed to perform criminal acts. The gang itself then reaps the profits. This harms the victim and society as a whole.

Even if prosecutors give the gang issue a high priority, little can be accomplished unless adequate resources are provided to assist them. This can be done by providing sufficient detention space, appropriate prevention programs and human resources to enable all personnel within the juvenile justice system to do their jobs efficiently and effectively. The success of preventive programs in curtailing gang activity within a community must be able to rely on the prosecutor taking action against those who, in spite of preventive intervention, continue their gang involvement. There are those individuals who must be isolated from their peers by institutional detention. Only those prosecutors with adequate staff, court support and placement opportunities have achieved some success.

One issue often overlooked is the ability to protect witnesses who testify against gang members from retribution by the gang. Whether real or imagined, a witness must feel that taking the witness stand will not result in retaliation by the gang members on themselves or their family. The ability of the prosecutor to provide protection, move a witness, or otherwise arrange for relocation and similar services can go a long way in promoting the cooperation of a frightened witness. This is one area in which the federal government can provide both technical and financial resource assistance to local prosecutors.

### The Gang Problem in California

California is experiencing the same problems that other states are with gangs. These include random acts of violence, sometimes simply because of the color of the clothes that a victim is wearing, stray bullets striking innocent victims and witness intimidation. A March 4, 2007 Los

Angeles Times article illustrates a portion of this multifaceted issue:

"In 1997, 11-year-old Marquis Wilbert, an African American youth with no gang affiliation, was shot and killed by a 204th Street gang member on a bicycle.

In September 2001, Robert Hightower, a 19-year old Pasadena high school senior, was shot to death after hugging his sister, who he had been visiting. A 204th Street gang member shot him, according to court testimony, because he was upset that a black boxer had beaten a Latino in a prizefight.

In 2003, Eric Butler, 39, was shot to death as he drove from the neighborhood's lone business, the Del Amo Market, which the gang considered to be in its territory. He'd gone there to intervene after gang members began harassing his 14-year-old stepdaughter. She was shot in the back and lives today with a bullet lodged near her spine."

To place my remarks in context - let me briefly tell you about my office and jurisdiction.

The District Attorney's Office is the largest legal office in San Mateo County. I have a staff of 123 including attorneys, investigators, program administrators and support staff. We prosecute felony and misdemeanor crimes committed in San Mateo County as well as traffic infractions, county ordinance violations, and juvenile cases. The office advises and conducts investigations for the grand jury. It also conducts investigations on welfare fraud, theft, embezzlement and other cases pending trial. During 2006 there were approximately 2300 felony case filings, 16,000 misdemeanor filings and 2000 juvenile filings in San Mateo County. The office also acts as Public Administrator to oversee the probate of estates.

San Mateo County is located immediately south of the City and County of San Francisco and the San Francisco International Airport is located in San Mateo County, so many of you have probably been in our county but didn't realize it. My county is as diverse as any in this nation. We have a population of approximately 720,000 representing every culture and ethnic group imaginable. The 2000 Census shows that San Mateo has a white population of 49.8%; Hispanic or Latino of 21.8; African-American of 3.3%; Asian of 19.8% and Pacific Islander of 1.2%.

San Mateo County has established both a Gang Task Force, as well as a Gang Intelligence Unit. My county has 20 incorporated cities and a total of 23 law enforcement entities. The Gang Task Force and the Gang Intelligence Unit are supported with active participation by the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Every law enforcement entity participates by providing either staffing or some other type of resource.

The majority of gangs in San Mateo County would not qualify as an "enterprise" as defined in the federal RICO statute and therefore would not be subject to federal prosecution. Many of the gangs have loose associations with gangs throughout the country, but have no financial or business relationships with the larger organizations.

The primary interests of many of our gangs are turf, respect and colors. We have had a number of victims without any gang affiliation shot because they unfortunately chose to wear either red or blue in an area where those colors were challenges to fight.

The collaboration between federal and local authorities in San Mateo County should serve as a model at the national level. There are many cases which are, and should be, prosecuted at the local level. However, the fact of the matter is that there are some cases which would be better handled at the federal level to ensure public safety. The determination as to whether a case should be prosecuted at the federal or local level should be made thoughtfully on a case-by-case basis involving both federal and local officials. This determination should be made based upon the evidence obtained and a consideration of which level of prosecution would be of the greatest benefit to public safety. This is the same standard currently used by the FBI in the Model Safe Streets Task Forces.

#### Witness Intimidation

Gangs whether comprised of adult or juvenile members are increasingly using tactics designed to intimidate witnesses and victims in an effort to interfere with the criminal justice process. This behavior intensifies the prosecutor's role in fighting gang violence. We must find new methods of protecting those individuals brave enough to come forward as witnesses. Of course, witness intimidation is not limited to gang related crime. This interference with the criminal justice system occurs in the prosecution of many violent crimes.

District Attorney Kamala Harris in her testimony of April 24, 2007 recounted the following incidents, which occurred in San Bernardino, California:

Two witnesses in San Bernardino were killed after coming forward to testify in violent criminal cases. Eighteen year old Melquiades Jose Rojas testified against two alleged gang members in a murder case in San Bernardino. Shortly after he testified, he was found shot to death on the side of a road. He had been shot twenty-five times in the head and chest. He had qualified for witness relocation, but he had returned home and had not relocated at the time he was killed. In another case, a defendant broke into the home of a witness who had testified against him. The defendant also killed the witness's father and wounded his infant son.

The greatest obstacle facing prosecutors today is obtaining the necessary resources to develop and implement witness protection and relocation programs in their localities. In my own state only three million dollars is allocated for witness protection programs across the entire state. Los Angeles County alone needs more than three million dollars to adequately provide for victims and witness relocation. I believe it would be fair to say that in many other areas of the country even less state and local funding is available for such programs. Unfortunately most programs that are in existence are unstructured attempts to simply relocate witnesses temporarily without any established mechanism for actually protecting witnesses in the future. The programs are often only band-aids for the short term. They consist of police and prosecutors repeatedly relocating a witness in an effort to keep the witness safe until the time of trial. Unfortunately there are not the types of programs in place that are necessary to keep witnesses safe long-term. Witnesses that know they are risking their safety and that of their family and friends by coming forward to assist the authorities and will not be protected past the time of trial are not very likely to cooperate with law enforcement.

The federal government can greatly assist local communities by providing funding and resources necessary for such programs to combat the increasing level of violent gang related crime in communities across America. The "Gang Abatement and Prevention Act of 2007" would provide

the necessary financial assistance for this purpose as well as make available the resources of the United States Marshall's Service whose intensive witness protection program has proven effective.

#### The Federal Response to Gang-Related Crime - The "Gang Abatement and Prevention Act of 2007"

According to the Bureau of Justice Statistics (National Survey of Prosecutors, Prosecutors in State Courts, 2005, Steven W. Perry, July 2006, NCJ 213799) there are about 2,344 state court prosecutor offices in the United States employing approximately 26, 500 criminal attorneys. These attorneys are responsible for trying approximately 95% of the criminal cases in this nation. Unfortunately with increased demands and ever shrinking state and county budgets local law enforcement and prosecutors must look to the federal government to assist with the gang problem.

It is imperative that federal, state, and local authorities cooperate, coordinate and communicate in order to effectively address gang related crime. Every jurisdiction does not have the same gang related issues. As a result it is critical that responses to this problem be flexible so that local communities may decide upon the most appropriate solution for their citizens. Findings by the Office of Juvenile Justice and Delinquency Prevention, National Criminal Justice Reference Service have indicated that this is the proper approach.

Title III of the "Gang Abatement and Prevention Act of 2007" would provide the necessary funding needed to improve enforcement efforts; establish multi-jurisdictional teams in high intensity gang areas; hire addition prosecutors to prosecute more cases; and provide much needed technology, training and information to law enforcement and prosecutors. The training of law enforcement and prosecutors in the gang arena is extremely important to the outcome in the courtroom, the safety of the witnesses, and the well-being of the community. I would urge this committee to consider the federal authorization of training programs such as the National District Attorneys Association's program at the National Advocacy Center. Already well-established the program provides excellent training for prosecutors in specialized areas of prosecution.

I believe that state and local prosecutors need federal assistance in response to the gang activities across the nation. The assistance must take the form of funding, technical assistance, and multi-jurisdictional cooperation. Local prosecutors must play a key role in determining the appropriate solutions for the needs of their communities.

On behalf of the nation's prosecutors, I would like to thank the Committee for the opportunity to share my views on the gang issue and the "Gang Abatement and Prevention Act of 2007." I would urge the Committee to take the necessary steps to provide states with the assistance needed to carry out our enforcement efforts, protect critical witnesses, and train law enforcement and prosecutors.

#### ENDNOTES

Written testimony of Robert P. McCulloch, Prosecuting Attorney, St. Louis County, Missouri during September 17, 2003 hearing before the Committee on the Judiciary on Gang Violence and Witness Intimidation.



Violent Gangs, Federal Bureau of Investigation, website [http://www.fbi.gov/hq/cid/ngic/violent\\_gangs.htm](http://www.fbi.gov/hq/cid/ngic/violent_gangs.htm) accessed June 1, 2007.

Arlen Egley, Jr., and Christina E. Ritz, Highlights of the 2004 National Youth Gang Survey, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice, April 2006 available at <http://www.ncjrs.gov/pdffiles1/ojjdp/fs200601.pdf>

OJJDP, Juvenile Offenders and Victims: 1999 National Report, supra, p. 77.

OJJDP, Juvenile Offenders and Victims: 1999 National Report, supra, p. 78.

OJJDP, Juvenile Offenders and Victims: 1999 National Report, supra, p. 78.

Sam Quinones, How a Community Imploded, L.A. Long Ignored Harbor Gateway. Now a Latino Gang Calls the Shots, Los Angeles Times March 4, 2007.

"Communities need to take a localized, yet comprehensive approach in assessing their gang problem and developing strategies and solutions. Every community has factors that make the youth gang problem unique to that jurisdiction. Learning about these factors requires involvement by all elements of the community. The Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression emphasizes five strategies that communities should focus on to address gang activity and membership: community mobilization, social intervention, opportunities provision, suppression, and organizational change and development. These five strategies, and the current evaluation being conducted in five cities, are detailed on page 25. Part of this comprehensive approach is understanding that "homegrown" risk factors are more likely sources of gang formation or expansion than is gang migration. Communities need to look at their local situation to understand the nature of the gang problem." National Criminal Justice Research Service, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice, available at [http://ojjdp.ncjrs.org/pubs/makingadiffer/critical\\_3.html](http://ojjdp.ncjrs.org/pubs/makingadiffer/critical_3.html).