

Testimony of
The Honorable Robert McCulloch

President
National District Attorney Association
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TESTIMONY

OF

HONORABLE ROBERT P. MC CULLOCH
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ST. LOUIS COUNTY, MISSOURI

AND

PRESIDENT
NATIONAL DISTRICT ATTORNEYS ASSOCIATION

BEFORE A HEARING OF THE
OF THE COMMITTEE ON THE JUDICIARY

ON

GANG VIOLENCE & WITNESS INTIMIDATION

SEPTEMBER 17, 2003

My name is Bob Mc Culloch. I am the elected prosecuting attorney in St. Louis County, Missouri and am honored to serve as the president of the National District Attorneys Association. I want to thank you, on behalf of the National District Attorneys Association, for the opportunity to present our concerns on the increasing gang violence we see all across the United States and share some thoughts on the problem of witness intimidation.

To place my remarks in context - let me briefly tell you about my jurisdiction. St Louis County is the county immediately surrounding the city of St Louis. It has a population of over one million

people living in a diverse community. I currently supervise a staff that includes 52 assistant prosecuting attorneys. Annually, my office prosecutes more than 6000 felony cases.

My family has a deep commitment to law enforcement in our community. I have been a prosecutor for 20 years and my father, my uncle, my brother and many of my cousins have been or are career police officers. Combined we have over 125 years of law enforcement experience in the St Louis area.

OUR GROWING GANG PROBLEM

Some eight years ago the NDAA Board of Directors meet in California and, at the Drug Control Enforcement Committee meeting, we heard a presentation about the proliferation of meth labs in the state and the problems they were causing both as an illegal drug and as an environmental threat. At the time many listened politely, commiserated with California in "its" problem and went on to what were viewed as more pressing issues. Since then we all know that meth abuse has raged rampant across the United States. Those who were shortsighted enough to believe it "only" a California problem were sorely wrong - in fact Missouri is now second, only to California, in meth production.

Our problem with gangs follows a similar analogy and it may be too late to get ahead of the power curve. Gangs were a big city problem many in law enforcement believed - they would never invade middle America. We could almost see the Grade B comedy about the gang member in the middle of Missouri and the pratfalls as cultures clash.

But it's not a comedy and it is happening- every day and in every one of our communities. The big cities still have the majority of the gangs but their tentacles reach out from the cities into every aspect of our society. Suburban kids used to drive into the city to get their drugs but they don't have to anymore as the drugs get delivered to the suburbs through regular supply lines. Gang graffiti and costumes are seen in even the most yuppie of suburbs now. The "thug" culture is romanticized in music video and in the movies.

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."

In my own jurisdiction, St Louis County law enforcement officials have documented nearly 4000 gang members in approximately 180 identifiable gangs. Most of the smaller units are associated with one of about 10 different large groups with affiliates in many parts of the country. While some of the associations are loose, many have very close ties to the nation-wide gangs. This gives the members much greater mobility, in turn enabling them to hide from law enforcement and their other enemies.

While most of our gang members are home grown, a significant number have well documented origins in established gangs from both coasts and the Chicago area. Increasingly our gang members have migrated to other parts of Missouri, far from St. Louis.

The primary criminal activity of the gangs is still drug trafficking. However, as the gangs mature they have moved first to car jacking and then to organized auto theft. Along with these, and in particular drug trafficking, comes a significant amount of violent crime. We are currently experiencing the early stages of a turf war between rival drug gangs. Law enforcement has documented an increase in the number of murders and assaults committed by, and upon, rival gangs.

Many of these cases are likely to be solved only on paper. That is, we will be able to determine who committed the crime but because of the very real threat of retaliation against any witness we still may not be able to develop a prosecutable case.

WITNESS INTIMIDATION

Prosecutors across the county believe that the issue of witness intimidation is the single biggest hurdle facing any successful gang prosecution. As you can see from the following examples the various jurisdictions are trying to establish some type of program but lack of resources and the witnesses themselves are difficult obstacles to overcome.

For many prosecutors a witness protection program simply consists of a bus ticket or a motel room.

In Denver prosecutors believe that the issue of witness intimidation has become so pervasive that while the number of gang crimes has increased tremendously, the number of case filings (case investigated by the police in which the D.A. accepts and files formal charges) has decreased. They feel that the biggest reason for the lack of a successful prosecution (whether it be a mere filing or a conviction) is the witnesses' claim of fear of retaliation. Now the mere suggestion of a gang related crime has caused witnesses to assume that they will be the subject of retaliation, and therefore they refuse to cooperate with the investigation from the outset.

Recently, in Denver the district attorney prosecuted a felony case in which a criminal of some renown was convicted of first degree murder. While awaiting his own trial on yet another homicide, a critical witness was attacked and sexually assaulted by a gang member, who reportedly was working on "contract" for the killer in an effort to prevent this witness from testifying in the second murder trial. Likewise, recently in Denver County the district attorney prosecuted a capital case for the murder of a witness to a gang's drug trafficking activities in a neighboring county. Currently, there are several "unsolved" homicides where the victim was at one time a cooperating witness for the prosecution, and was presumably executed by the retaliating gang members.

In Colorado there is a program available for temporary witness relocation but they lack the resources for any type of witness "protection." If a witness makes a report of intimidation, and it is deemed credible, funds can be made available within a relatively short period of time (usually within a day), whereby the witness is relocated; the new location is selected by the witness, and that location must be affordable to the witness, and one that appears to be reasonably "safe." The district attorneys office, through the state fund will pay for the cost of relocation and the initial costs to set-up the witness in the new location, thereafter, the witness must support himself in that location.

This program has had mixed results. There is no question that simply having this option available has been a remarkable comfort to fearful witnesses. In fact, often times the simple suggestion of relocation is enough to assuage the witnesses' fears, and they do not relocate yet continue to cooperate.

On the other hand, the Colorado system has its drawbacks. Funding is limited, so all that can be offered is the cost of transportation and establishment in the new location; after that it is the responsibility of the witness to pay for the new location. Frequently the witness fails to honor his end of the bargain, is evicted, and the process must be started again. This is particularly true because most times the witnesses to a gang crime are of limited economic means. The temporary "placing them on their feet" in the new location is not enough to sustain the witness to completion of the case.

Perhaps most significantly Colorado cannot provide any witness "protection." Ideally a fund would have the money and flexibility to allow for the payment of over-time to police officers to increase patrol and/or to provide some visible safety deterrence, if not protections, to the

endangered witness for at least the initial stages of the relocation. This presence certainly would be a benefit for the witness.

In Connecticut a Witness Protection Program was officially established in October of 1999 and is operated out of the Office of the Chief State's Attorney.

It was created in response to the January 1999 murders of Karen Clarke and her 8 year old son, Leroy "BJ" Brown. BJ was a witness who was scheduled to testify against Russell Peeler, the individual charged with the May 1998 murder of his mother's boyfriend, Rudy Snead. BJ was a witness to an earlier attempted murder, a drive by shooting, of Snead. BJ provided the police with a statement which accused Russell Peeler of this crime.

Eight months later, Snead was murdered and Russell Peeler was charged with this crime. It was determined that the weapon used in the drive by shooting was the same weapon used in the murder. In December of 1998, the trial court ordered the release of the state's witness list to Peeler's defense counsel. Less than a month later, on January 7, 1999, BJ and his mother were ambushed and killed as they carried groceries into their house. Russell Peeler is now serving a life sentence without the possibility of parole for the murders of BJ Brown and Karen Clarke.

In response to this heinous crime, the Governor, requested then Chief State's Attorney, John M. Bailey, Chairman of the Governor's Law Enforcement Council to convene that body to "evaluate the effectiveness of the current policies on witness protection and the laws relating to victims, witnesses and pre-trial detention of criminal defendants".

After an examination of these issues, the counsel presented recommended legislation which created a comprehensive witness protection program to be operated out of the Chief State's Attorney's Office. In October of 1999, the majority of the council's recommendations were enacted into law and the "Leroy Brown, Jr. and Karen Clarke Witness Protection Program" was created.

To date, the Connecticut Witness Protection Program has opened a total of 257 cases and has assisted over 670 individuals. This number includes family members of the witnesses. The policy of the program provides for the protection of witnesses in criminal proceedings where there is evidence of a substantial danger the witnesses may suffer from intimidation or retaliatory violence. The program provides funding for services rendered to witnesses who have been, or may be victimized due to pending testimony. Appropriations for the program are allocated from Connecticut's General Fund. Last fiscal year (July 2002 to June 30, 2003) the program disbursed a total of \$212,094.00.

The program provides funding on a case by case basis for the protection, temporary relocation, semi permanent relocation, or permanent relocation of witnesses and their families, friends or associates. The program is funded by the State of Connecticut. To be eligible for the program, a witness must be deemed by the prosecutorial official to be at risk of harm. A witness at risk of harm is defined in the statute. Any witness is eligible for the services of the program regardless of the crime being prosecuted or the degree of the offense.

The types of services provided to the witnesses in the program, include, but are not limited to, armed protection, escort, marked or unmarked surveillance or periodic visits or contact by law enforcement officials, temporary or permanent physical relocation to an alternate residence, housing expenses, transportation or storage of personal possessions, basic living expenses including food, transportation, utility costs and health care, and other services as deemed necessary by the program.

The Witness Protection Unit is responsible for the operations of the program and is responsible for determining the types of services a witness in the program may be entitled to. There are established procedures that the local prosecutorial officials must follow in order to seek assistance from the witness protection program. All witnesses certified into the program must enter into a written agreement that establishes the conditions of the program.

Although, the unit has been in operation for almost four years and operates very smoothly, there are always obstacles in witness protection. A few of these obstacles are affordable housing within which to relocate a witness and their family to, criminal records and behaviors of witnesses and the emotional trauma of witnesses.

Savannah, Georgia, had also developed a pilot protection program with "had" as the operative term. Their pilot program was funded by an 18 month Justice Department grant but ran out of money. The district attorney in Savannah firmly believes that had the program been allowed more time, it would have had a significantly greater impact on their witness intimidation problem.

The Savannah program was developed in response to an incident in which a murder occurred in a parking lot in front of 300 people - not one was willing to identify the perpetrator! The situation was so bad that in 1997 the prosecutor representing the state in murder cases stated that almost every witness summoned to testify has been subjected to some form of intimidation.

In reviewing the problem the Savannah district attorney developed the following observations: Witness intimidation, to a remarkable extent, occurs almost entirely within the following circumstances: after a violent crime; when the defendant and victim are either known to one another (domestic violence being a classic example) or have some tie between them, and the victim and defendant do not live far apart. Further that gang violence was classically a fertile breeding ground for witness intimidation

The program they put together merged both proactive and reactive elements. In the proactive phase the program efforts ranged from having defense counsel warn suspects of the additional consequences of interfering with a witness to checking old phone records to see if previous intimidation efforts had taken place. Efforts were made to enlist the media and community leaders to speak out against witness intimidation.

Reactive efforts included close tracking of cases, enhanced victim-witness efforts, zealous prosecution of witness tampering offenses, thorough briefings for witnesses as to the court system; minimalizing public disclosure of information in regard to witnesses, and using old case information in bond hearings.

Chicago's witness protection program has averaged 100 relocations each year since 1994 and costs over \$1.5 million annually. They try not to use hotels because of the cost and have attempted to use shelters instead but have found that the gangs are sophisticated enough to place gang members in the shelters just to look for hidden witnesses. Many of the witnesses are in low paying jobs or on welfare and the efforts to protect them from intimidation increase their economic plight as they lose housing, jobs and community support.

The Cook County State's Attorneys office has a Witness Relocation Unit that assists witnesses in moving out of gang "turf" when threatened or attacked. Funding limitations, however, make them gear their efforts towards temporary solutions.

Again witness protection efforts are not a city problem alone. In Mercer County, Pennsylvania, the district attorney has established his own program. He began a Witness Protection Program in 1999. Because of the small size of the county, it has had only six cases since that date. Under his program witnesses are relocated temporarily to a hotel in a different community. Off duty police officers are paid to provide security. He then attempts to locate out of state family members or friends to assist in relocation. The district attorneys office pays for transportation to a new location and provides a stipend for start up expenses. His victim-witness staff facilitates public assistance transfer and assistance with address change. The defendants generally lack the sophistication (to date) to track someone moved to a different state but the prosecutor is sure that this will change.

In Missouri the victim's rights statutes provide that victims and witnesses are entitled to "reasonable protection" from harm or the threat of harm from a defendant. Other statutes provide that a court may order a defendant or any other person to refrain from harassing or intimidating a witness. In other words - to obey the law.

These are what we refer to as "feel good" laws. They make those involved feel good but do nothing to protect a witness from death or serious injury. The criminals we deal with are much more intimidating than a court order telling them not to "annoy" a witness.

Missouri does have a significant witness relocation statute. The statute allows the Department of Public Safety to expend up to \$95,000 for the protection of a witness and their family. The money can be spent for the direct personal protection of the individuals or for indirect protection by the purchase, rental or modification of housing. Our statute had only one major problem - no money has been appropriated to fund the program for many years.

In St. Louis County I do what I can to protect our victim's and witnesses. Unfortunately, this is generally limited to a bus ticket to a distant relative or a few days in a hotel. Even then, we are only able to provide that protection during the most dangerous periods - those immediately following the crime and immediately preceding the trial. Actual police protection during this time is rarely a possibility.

Although crime has been declining for several years, the crimes and criminals we see tend to be much more violent than those of the past. This violence will no doubt expand to include more victims and witnesses in the future.

On behalf of America's prosecutors I, and the National District Attorneys Association, urge you to take steps to provide federal assistance to state efforts to fight our gang problems and to provide us with the resources to effectively protect those brave enough to confront the gang bangers. We look forward to continuing to work with you on addressing this growing problem.

NATIONAL DISTRICT ATTORNEYS ASSOCIATION

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Robert P. McCulloch received his Bachelors Degree in 1974 and JD in 1977, both from St. Louis University. He clerked for the Honorable Joseph G. Stewart of The Missouri Court of Appeals before becoming an Assistant Prosecuting Attorney in St. Louis County in 1978. Robert P. McCulloch was in private practice from 1985 - 1990 when he was elected Prosecuting Attorney of St. Louis County. He has held office since January, 1991, as Prosecuting Attorney of St. Louis County.

St Louis County is the geographical area immediately outside the city of St Louis, and has a population of over 1 million. His office has 52 assistant prosecutors and prosecutes over 6000 felonies each year.

Robert P. McCulloch is President of the National District Attorney's Association and past president of the Missouri Association of Prosecuting Attorneys.