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# Improving witness COOPERATION

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National Institute of Law Enforcement and Criminal Justice  
Law Enforcement Assistance Administration  
United States Department of Justice

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ACQUISITION

## **IMPROVING WITNESS COOPERATION**

### **Summary Report of the District of Columbia Witness Survey and a Handbook for Witness Management**

**By**

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# FOREWORD

Contrary to popular belief, the key to solving many crimes lies not with criminal justice agencies but with citizens. Unless crimes are reported promptly to police, unless witnesses are willing to come forward and give information to police and then testify in court, the likelihood of arrest and conviction is significantly diminished.

Just how crucial a role witnesses play can be seen in this study of witness cooperation in the District of Columbia, sponsored by the National Institute. The study found that more than half of all felony and misdemeanor arrests result neither in plea bargains, convictions, nor acquittals. Instead, the typical arrest results in outright dismissal. The reason these cases wash out? Quite often, it is because witnesses fail to cooperate.

After interviewing 1,000 witnesses, the researchers concluded that much of this lack of cooperation stems from the way witnesses are treated by the criminal justice system. Many witnesses said no one explained just what was expected of them. Often, police and prosecutors fail to accurately record the witness' name, address, and telephone number.

These problems are not unique to the District of Columbia. For example, an analysis of data in Detroit is revealing strikingly similar statistics. The Chicago Crime Commission, in a sample study of street crime prosecutions, found that witness problems were the leading cause of dismissals by the Cook County State Attorney's Office. Chicago, New York, and Cincinnati report that the problems of inaccurate addresses and poor communications found in Washington, D.C., account for a significant portion of their witness problems as well.

One of the most significant findings of the study is that the number of witnesses is the single most important factor contributing to convictions. The greater the number of lay witnesses in a case, the greater the likelihood of conviction.

This finding is borne out in other Institute-sponsored research. A recently completed study of the criminal investigation process in 156 police departments, for example, found that information from the victim and witnesses—not detective work—is the critical factor in solving most serious crimes. Unless this information is given to the responding police officer, a detective is not likely to turn it up on his own.

To help remedy the situation, the Institute project produced a handbook of witness management, outlining specific recommendations to help police and prosecution agencies improve their treatment of witnesses. The handbook includes a number of steps that can be readily taken, with little or no additional expense, to improve communication with the witnesses and gain their cooperation.

GERALD M. CAPLAN  
*Director*

**PART 1**  
**SUMMARY REPORT OF THE**  
**DISTRICT OF COLUMBIA WITNESS SURVEY**



# PREFACE

The Witness Cooperation Grant (Number 73-NI-99-0013-G) was awarded to the Institute for Law and Social Research (INSLAW) on January 14, 1973, by the National Institute for Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration, U.S. Department of Justice. The grant evolved from a convergence of interests of the United States Attorney's Office for the District of Columbia (responsible for local "street crime" prosecutions), INSLAW, and the National Institute for Law Enforcement and Criminal Justice.

INSLAW and the United States Attorney's Office, which had been working together for some time on the development and refinement of the automated PROMIS (Prosecutor's Management Information System), were actively seeking to begin a statistical analysis of the large and exciting data base of street crime prosecutions accumulated in PROMIS. With the encouragement of the then United States Attorney, Harold H. Titus, Jr., and the then Chief Assistant United States Attorney for the Superior Court Division, Charles R. Work, the president of INSLAW, William A. Hamilton, contacted the National Institute to seek funding.

Stanley R. Kalin, then Chief of Courts Programs for the National Institute, agreed that PROMIS data were quite worthy of research and suggested that the data base would make the District of Columbia an ideal site for a witness cooperation study that the National Institute was planning to commission. The names and addresses of witnesses are included in the data base, along with the prosecutor's reasons for case rejections and terminations, including reasons associated with various witness problems. The data would, it was thought, provide insight into the dimensions of the witness cooperation problem in a large, urban setting and also facilitate the drawing of a sample of cooperative and noncooperative witnesses for a field survey of witness attitudes.

The suggestion to study witness cooperation was most timely because the U.S. Attorney's Office and INSLAW were also jointly engaged in a project to analyze and improve the operating systems associated with street crime prosecutions and were acutely aware of the need to make improvements in witness management.

The central objective of this study is to probe why individuals who had been identified as lay (nonpolice) witnesses at crime scenes in Washington, D.C., were later labeled by prosecutors as noncooperators. In its attempt to provide an answer to this apparent riddle, the study led to findings that have important implications, not only for prosecutors, but for the police and judiciary as well.

Frank J. Cannavale, Jr. shouldered the principal responsibility for the preparation, execution, and interpretation of this unique witness cooperation study.

His untimely death in October 1974, shortly after he completed the first draft, represented the loss not only of an exceptionally competent professional, but also of a friend for whom even superlatives fail to do justice. Frank had a rare combination of compassion, warmth, humaneness, considerateness, and humility.

Although Frank assumed full responsibility for the study, INSLAW, of course, shares it and dedicates this book to him, a brilliant colleague and a friend who will be remembered.

WILLIAM A. HAMILTON  
Institute for Law and Social Research  
Washington, D.C.

# SUMMARY

An article in a Los Angeles newspaper reports that criminal justice personnel throughout the nation are growing uneasy about increased reluctance by witnesses to cooperate with investigators and to testify in court.<sup>1</sup> Bearing out that conclusion, a law enforcement spokesman in Detroit quips, "With a shooting in a bar, you'll have 30 people tell you they were in the john at the same time."<sup>2</sup> And, in Philadelphia, a survey of assistant district attorneys there reveals that 80 percent of them consider the problem of witness noncooperation as either serious or very serious.<sup>a</sup>

Those observations, among many others, underscore the importance of finding an answer to this question: Once a citizen has been identified as a witness at the scene of the crime, why may that person later be labeled as a noncooperator by the prosecutor? This is the central issue on which the witness cooperation study focused.

## Highlights of the Summary

The National District Attorney Association has observed that "prosecutors are ill-equipped to handle, and have little information on, the very real problems faced by the victims and witnesses with whom they must deal. . . Prosecuting attorneys are typically too pressed by time, heavy case loads, and crises to reflect long on the situation of the crime victim or witness."<sup>3</sup>

With the objective of shedding light "on the situation of the crime victim or witness" in terms of why some witnesses (whether victims or not) fail to cooperate with prosecutors, the Institute for Law and Social Research (INSLAW)<sup>b</sup> conducted an LEAA-funded study of cases received by prosecutors in Washington, D.C. during the first six months of 1973.<sup>c</sup> With support from the prosecutor's office,

<sup>a</sup> Implemented by F. Emmett Fitzpatrick, Philadelphia District Attorney, the survey was conducted during December 1974 and January 1975. National District Attorneys Association Commission on Victim Witness Assistance, *Philadelphia Unit Report*, February 1975.

<sup>b</sup> INSLAW is a nonprofit corporation chartered in the District of Columbia.

<sup>c</sup> In the District of Columbia, the United States Attorney serves as the local prosecutor. About 75 lawyers are assigned to the D.C. Superior Court (equivalent to a state court of general jurisdiction), where prosecution of local "street-crime" cases is conducted. About 15,000 allegations of such crimes were considered for prosecution during 1973.

INSLAW studied a random sample consisting of 1,941 closed felony and misdemeanor cases involving 2,997 lay (nonpolice) witnesses. Of these witnesses, 922 were interviewed in their homes. (Because of the sampling techniques employed, the household survey of the 922 witnesses provided a representative profile of the estimated 7,665 witnesses involved in all cases received by Washington prosecutors during the first half of 1973 and closed prior to the sampling in October 1973.)

An unusual aspect of the study was that, for the first time, a sample of known witnesses was drawn on the basis of whether they had been involved in cases identified by prosecutors as rejected or dropped because of witness problems. Witnesses' replies about their criminal justice-related experiences, attitudes, and decisions were analyzed in terms of whether they had been labeled as "noncooperators."

Information about whether a given witness had been classified as a "noncooperator" was stored in PROMIS (Prosecutor's Management Information System), a computerized system containing about 170 information items on each case, including witnesses' addresses and the reasons why cases were rejected at screening or dropped or dismissed at a subsequent prosecutive stage. Such reasons include the witness' nonappearance at the prosecutor's office or at court proceeding, refusal to come to case screening, "signing off" in writing (renouncing any further interest in pursuing the prosecution), etc.

For the purposes of this study, *a witness is said to have been labeled as a noncooperator if the case had been rejected, dropped, or dismissed by prosecutors or the court for one or more of the aforementioned witness reasons indicative of an unwillingness to assist.*

*If a case had not been rejected, dropped, or dismissed because of those witness-related reasons, the witness(es) associated with that case are said to have been labeled as cooperators.*

Of 922 interviewed witnesses, 707 were classified as cooperators, 215 as noncooperators. Of the "cooperators", 455 were associated with felony cases and 262 with misdemeanors. Of the "noncooperators," 123 were involved in felony cases (none of which ever reached the point of indictment by a grand jury), and 92 were associated with misdemeanor cases.

A principal conclusion of the study is that communications difficulties between police/prosecutor and witness prevented prosecutors from ascertaining the true intentions of many witnesses. As a result, many witnesses were regarded as noncooperators when this was not necessarily their conscious choice. The impact on prosecutive effectiveness is obvious: many cases may have been rejected, dropped, or dismissed when they could and should have been pursued, had communications problems not led prosecutors to misinterpret witnesses' intentions.

This finding evolved as follows: Scores of cross tabulations were analyzed to determine those witness-related characteristics most closely associated with "noncooperation"; the 24 characteristics found most promising were then subjected to an analysis<sup>e</sup> designed to reveal whether they were causally linked to prosecutors' decisions to reject or drop cases because of perceived witness problems. The 24 characteristics, or factors, included nine that were demographic in nature, ten that related to witness attitudes, and five that pertained to what respondents said about their role as witnesses. They (1-9, 11-25) were analyzed to determine if they helped explain variations in witness cooperation, the dependent variable (#10).

#### *Demographic*

1. Years lived in D.C.
2. White-collar or blue-collar worker
3. Income
4. Years of education
5. Ever in the military
6. Marital status
7. Age of witness
8. Race
9. Sex

#### *Attitudes and Characteristics*

10. Witness cooperation
11. Number of witnesses
12. Ever a defendant
13. Judge not fit
14. Punishment should be limited
15. Citizens can help control crime
16. Police need controls
17. Prosecutors do their best
18. Police hindered

<sup>e</sup> This analysis was based on the logit form of multiple regression.

19. Witness-defendant—stranger-nonstranger relationship.
20. Fear of reprisal

#### *Role as Witnesses*

- 21.-25. Factors indicating whether witness was asked to discuss case, victim was asked to serve as witness, and various combinations thereof

In spite of this extensive analysis, only three factors seemed at least partially to explain why the noncooperator label was attached to some witnesses.

1. *Number of witnesses.* The greater the number of witnesses per case, the less likely the case would be dropped because of witness "noncooperation." When there are several witnesses in a case, there may be a "failsafe" situation whereby the case could be prosecuted effectively even if only one of the witnesses remained steadfast.

2. *Relationship.* The closer the relationship between witness and defendant, the greater the likelihood that the former would be labeled a noncooperator. The implications are that witnesses are more inclined to persevere in the prosecution of strangers than of friends, relatives, or other acquaintances. When the witness knows the defendant, the former may develop a forgive-and-forget or a fear-of-reprisal attitude and, therefore, not testify. Also, prosecutors have been observed to reject cases when there is a nonstranger witness-defendant relationship *in anticipation of* noncooperation even though lack of cooperation was not observed in those cases.

3. *Never asked to discuss the case or serve as a witness.* Witnesses who said they were never asked to discuss the case by police or prosecutor or to serve as witnesses were more likely to be classified as noncooperators. (As noted later, this may suggest the existence of communications problems between police/prosecutor and witness.)

Given the dozens of witness-related factors examined in this study, particularly witness attitudes and characteristics, one might expect that more than three factors would appear as causal indicators of why prosecutors rejected or dropped certain cases for witness-related reasons—unless what caused prosecutors to drop such cases was frequently *not* an indication of uncooperativeness. That is, what the prosecutor recorded as the reason for dropping a case may not have been what the witness saw himself or herself doing.

This possibility was explored by a series of four questions that interviewers asked witnesses. Answers by 94 percent of the 215 prosecutor-labeled "noncooperators" were susceptible to interpretations inconsistent with the noncooperator label. For example, 102 "noncooperators" told interviewers they had agreed to serve as witnesses. But if the witnesses' responses were accurate (some may not have been), how could they have been classified as noncooperators, except through a misinterpretation of their actions or intent by prosecutors?

Of course, there are alternative explanations for this apparent inconsistency; for example, many "noncooperators," not wishing to admit their uncooperativeness, may have given interviewers self-serving, inaccurate answers. Others may have forgotten what their attitudes really were; that is, many who said they agreed to serve as witnesses actually may have declined.

Nonetheless, even under generous assumptions regarding how many of the "noncooperators" (for example, up to 75 percent) gave self-serving or otherwise inaccurate replies (i.e., were indeed noncooperative), this still means that prosecutors were apparently unable to cut through to the true intentions of 23 percent or more of those they regarded as uncooperative and, therefore, recorded the existence of witness problems when this was a premature judgment at best and an incorrect decision at worst.

What might account for this frequent gap between what the prosecutor reported and what the witness intended? Further analysis led to the conclusion that a substantial part of this gap was faulty communications between the police or prosecutor on the one hand, and the witness on the other.

By *faulty communications* is meant not only failure by police and/or prosecutor to make contact with witnesses either orally or by mail, but also all those impediments that prevent witnesses, once contacted, from clearly understanding the communication or easily responding to what is communicated.

These are examples of inadequate communications through *failure to contact* witnesses:

1. Through an analysis of why interviewers could not locate 23 percent of 2,997 witnesses at the addresses stored in PROMIS, the conclusion was reached that often inaccurate witness names and addresses were recorded by police at the crime scene (this problem could be reduced if police attempted to check witnesses' orally-supplied infor-

mation against their identification documents). This, of course, effectively severed future communications by prosecutors with witnesses, such as by phone or through service of subpoenas, which would have alerted witnesses when to appear in court.

2. Failing to contact a witness in order to arrange an appearance at trial, the prosecutor's office may sometimes have to leave a telephone message, which is never passed on to the witness. Time constraints do not permit follow-up by the prosecuting attorney, and there is a scarcity of qualified support staff to do it. The witness fails to appear, which, in all likelihood, leaves the prosecutor little choice except to check as the reason for dropping the case "witness no show." Thus, in effect, the witness is labeled as a noncooperator.

These are examples of *impediments* that prevented comprehension or encouraged witnesses to respond inadequately when communications were established:

1. Police were observed asking witnesses to reveal their identities within hearing distance of suspects. Chances are that some potentially cooperative witnesses, fearing reprisal, changed their minds about revealing their true names and addresses. (When the study's 922 respondents were asked in an open-ended fashion about changes that would make witnesses more willing to cooperate, the recommendation offered by more witnesses than any other—28 percent—related to procedures pertaining to improved witness protection.)

2. A witness was instructed by police to go to "the prosecutor's office" to discuss the case. When he arrived, the witness discovered several rooms fitting that description. Confused, he never did meet with the prosecutor. He may well have been labeled a noncooperator, but this was never his conscious choice.

Forty-three percent of 594 respondents stated that they did not receive an explanation of the major steps of the court process from police, prosecutor, or judge. And, among other data, 14 percent of the 922 surveyed witnesses suggested that communications improvements—such as giving them more advance notice—would increase cooperation.

To understand more clearly how communications difficulties could develop, one must realize that all the cases in the witness study involving "noncooperators" were processed by prosecutors in a mass-production, assembly-line fashion, where

responsibility for a case and its witnesses shifts repeatedly from one prosecutor to another as the case proceeds from one prosecutive or court event to another. As with a manufacturer's assembly line, responsibility for the case is fragmented among several persons and time is at a premium. When someone is unable to install a key prosecutive component, such as effective communications with witnesses, the case stands an excellent chance of being rejected, dropped, or dismissed—time pressures are often too great to permit identification of inadvertent errors, much less their correction. The one exception to the assembly-line process in the Washington, D.C., jurisdiction under study is for felony cases that have passed beyond the grand jury indictment stage. These cases, which are handled by a single prosecutor from indictment through final disposition, are seldom terminated because of witness problems. Indeed, in the sample, not one instance of noncooperation occurred in postindictment felony cases.

This study suggests that because of inadequate communications, many citizens were not aware of their position as witnesses in the case. They were not fully informed of what was expected of them or when or where it was expected; and they were unaware that the case was dropped for reasons implying witness noncooperation.

A significant part of the problem appears to have been generated by inadequate police procedures and was passed along to the prosecutor's office. Nonetheless, that office bears the responsibility for initiating remedial action, some of which would require police cooperation and coordination.

### **Current vs. Prior Findings**

Previously published articles, reports, and studies suggest two major categories of reasons for witness noncooperation. First, the literature suggests that involvement in, or the operation of, the criminal justice system presents witnesses with so many major inconveniences and problems that, all too frequently, even initially cooperative witnesses wish they had never stepped forward and vow never to do so again. In this regard, among the most commonly cited system-related reasons for witness noncooperation are trial delay, loss of income, inappropriate physical accommodations, and witness intimidation.

The second major category of explanations found in the literature for witness failure to cooperate

with prosecutors is an initial predisposition (not necessarily related to prior contact with criminal justice agencies) that prevails over any thought of volunteering help.

While by no means contradicting findings cited in the literature, the major (and unexpected) conclusion of this study suggests a new approach to the cooperation problem and has implications for police, prosecutor, and judge alike. The prime research findings do *not* pertain to arcane, deep-seated predispositions that cause witnesses not to cooperate. Rather, the principal conclusion emerging from the data is that inadequate communications between police/prosecutor and witness was a significant cause of prosecutors' labeling many witnesses as noncooperators during the period under study—not only because the communications difficulties tended to discourage or "turn off" some witnesses from cooperating, but also because the system, by casting a false shadow of noncooperation on many witnesses, led the *prosecutor* into misinterpreting their true intentions. A number of witnesses who were seemingly willing to cooperate were, unknown to themselves, classified by prosecutors as noncooperators. Fortunately, the defective procedures responsible for such an outcome are not intractable but are susceptible to straightforward corrective action.

### **Where and How of the Research**

The study involved a random sample drawn in October 1973 consisting of 1,941 felony and misdemeanor cases received during the first six months of 1973 by prosecutors in Washington, D.C. (In the District of Columbia, the United States Attorney serves as the local prosecutor; about 16,000 "street-crime" cases are reviewed annually.) Associated with the 1,941 cases were 2,997 lay (non-police) witnesses, of whom 922 were interviewed. All 1,941 cases had been closed prior to their inclusion in the sample.

A number of reasons accounted for the selection of Washington as the research site. First, helpful cooperation was offered by Washington's prosecutors.

A second reason was that witness noncooperation was regarded as a significant problem. A previous analysis, for example, revealed that about 23 percent of 1,457 cases were rejected for prosecution because of what was considered as witness noncooperation.

Third, valuable witness data were available because of the existence in the prosecutor's office of PROMIS (Prosecutor's Management Information System)—a computerized system designated by the Law Enforcement Assistance Administration (LEAA) as an Exemplary Project and containing about 170 informational items on each case. Among these data are the reasons why cases are rejected, dropped, or dismissed by prosecutor or court at screening or subsequent prosecutive stages. These reasons include those indicative of witness problems, such as when the complaining witness indicates, in writing, an unwillingness to prosecute, fails to appear at case screening or trial, etc.

The foregoing witness-related reasons for case rejection during the prosecutory process serve as the basis for this study's operational definition of cooperative and uncooperative witnesses:

1. *If a case had been rejected, dropped, or dismissed by prosecutor or court for one or more of the aforementioned witness reasons indicative of an unwillingness to assist, each witness as-*

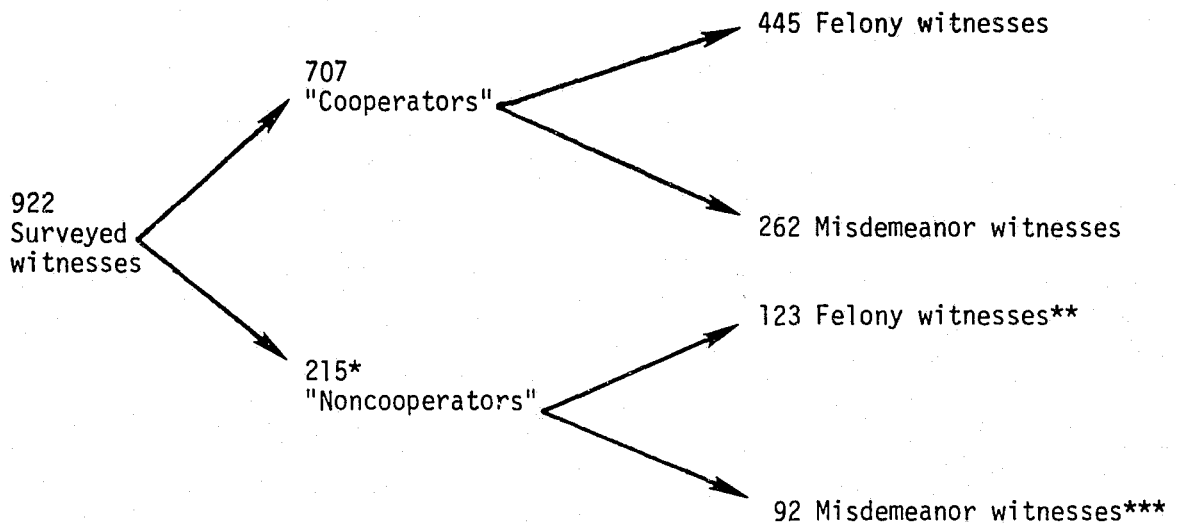
*sociated with that case is said to have been labeled as a noncooperator.*

2. *If a case had not been rejected, dropped, or dismissed because of those witness-related reasons, each witness associated with that case is said to have been labeled as a cooperator.<sup>†</sup>*

In effect, therefore, PROMIS can identify those witnesses who were regarded by prosecutors as noncooperative; that is, the individuals associated with cases rejected for witness-related reasons. This ability of PROMIS makes the witness study a unique and pioneering effort: for the first time, a sample of witnesses could be drawn systematically on the basis of whether they had been identified by prosecutors as noncooperative.

Of the 922 interviewed witnesses, 707 were classified as cooperators, 215 as noncooperators. Figure A-1 indicates how many of each group of witnesses were associated with felony cases and with misdemeanors.

<sup>†</sup> Chapters 2 and 9 provide further details about the rationale for this definition.



\* About 50 percent were labeled as noncooperators at case screening.

\*\* All 123 were labeled by prosecutors as noncooperators during the preindictment stage.

\*\*\* Of the 92, 27 were associated with cases originally filed as felonies by prosecutors but subsequently changed to misdemeanors. Of the 262 "cooperator" misdemeanor witnesses, 70 were associated with cases originally filed as felonies.

**Figure A-1.** Number of Felony and Misdemeanor Witnesses in the Survey

The replies of the 922 interviewed witnesses were subjected to scores of cross tabulations to determine those witness-related characteristics most closely associated with noncooperation; the 24 characteristics found most promising (p. 6) were then subjected to the logit form of multiple regression analysis in order to identify those characteristics causally linked to prosecutors' decisions to reject or drop cases because of perceived witness problems. The 24 characteristics, or factors, included nine that were demographic in nature, ten that related to witness attitudes or characteristics, and five that pertained to what respondents said about their role as witnesses.

### **Do Demographic Traits Help Explain "Noncooperation"?**

Because of the sampling techniques employed, the traits of the 922 interviewed witnesses present a representative picture of the characteristics of the estimated 7,665 witnesses associated with the cases received by prosecutors during the first six months of 1973 and closed prior to the sampling in October 1973. A key question, of course, is whether those traits (race, sex, etc.) were related to noncooperation.

The 922 witnesses are comprised of two major groups: residents of Washington (799) and individuals who lived in the Maryland and Virginia suburbs (143). The most striking contrast between the two groups relates to race: 81 percent of resident (D.C.) witnesses are black, whereas this is so for only 30 percent of the 143 nonresidents. A substantially higher percentage of nonresident witnesses are male, married, and veterans. The nonresident witnesses also exhibit greater mobility, are better educated, and earn considerably more income. A much higher percentage of nonresident witnesses are employed in a professional, technical, or managerial capacity than is true for witnesses who live in Washington.

Another way to view the 922 witnesses is to regard them as either victims (516) or nonvictims (406). Generally, the same sharp demographic contrast between resident witnesses and nonresident witnesses also holds for resident and nonresident victims and nonvictims.

With a few exceptions, there is little difference—in demographic terms—if a resident or a nonresident is a victim or nonvictim witness. Regarding the exceptions, victim witnesses are a somewhat

older group than nonvictims; a greater proportion of victims have seen military service; employed victims are somewhat more likely to be working in the private sector and are more concentrated in professional, technical, and managerial occupations, in contrast to clerical, sales, and service positions.

When compared with the District of Columbia population as a whole, resident witnesses are a somewhat younger group, include a greater proportion of blacks and males, and are more likely to hold jobs. The major similarities between resident witnesses and the general population occur in the demographic categories of marital status, educational attainment, and family income.

Contrasted to the general population, resident witnesses who were *victims* include a greater proportion of blacks, are more likely to be male, encompass a higher percentage of veterans, embrace a greater proportion of persons with jobs, and, if employed, are more likely to work in the private sector.

Prosecutors seemed to regard victim and non-victim witnesses about equally cooperative (that is, about the same proportion of victims as nonvictims—75 percent versus 78 percent—were associated with cases not rejected for witness-related reasons). In terms of place of residence, however, prosecutors labeled a greater percentage of resident witnesses (25 percent) than nonresidents (16 percent) as noncooperators.

Given the strong demographic contrast between resident and nonresident witnesses, one might assume that one or more demographic traits—such as race or income—would help explain why nonresidents seem more cooperative with prosecutors. But merely because those who possess a specific set of demographic traits are associated, or correlated, more closely with "witness cooperation" does not necessarily mean that there is a *causal* link between possessing those traits and being cooperative.

Fortunately, statistical techniques are available that measure the net effect that each of several factors, such as demographic characteristics, may have upon the event or occurrence under study, such as "witness cooperation."<sup>8</sup> Such a technique was applied in this study with regard to such demographic variables as the witness' age and whether he or she had lived less than one year in Washington, was employed in a white-collar occupation

<sup>8</sup> The technique used in this study was multiple regression in conjunction with logit analysis.

(professional, managerial, technical, clerical, or sales), earned less than \$8,000 annually, was male, obtained less than a high school education, was black, served in the military, and was presently married.<sup>h</sup>

Not one of the foregoing nine demographic traits was found to affect significantly the prosecutor's decision to label a witness as noncooperative. This was true when the analysis was run for all witnesses, for just victims, as well as for resident witnesses only.

### **Are Witnesses' Attitudes and Predispositions Related to "Noncooperation"?**

What conditions, circumstances, and procedures encountered by lay witnesses during the course of their contact with criminal justice agencies are associated with, or help explain, prosecutor-perceived witness noncooperation? What predispositions of witnesses might account for prosecutors' labeling of certain witnesses as noncooperators?<sup>i</sup>

A logical point at which to begin answering those questions is to probe witness attitudes pertaining to the reasons most commonly cited in the literature as accounting for witness noncooperation: trial delay, loss of income, inappropriate physical accommodations, and witness intimidation. Regarding trial delay, loss of income, and inappropriate physical accommodations, the 922 witnesses replied in part as follows to an open-ended question about changes that would enhance cooperation:<sup>j</sup>

1. Twenty percent recommended speedier trials.
2. Fifteen percent advocated increased witness fees.
3. Twelve percent either suggested better physical accommodations or recommended other convenience-related improvements.

That more witnesses did not make such suggestions might be regarded as surprising, except that, in contrast to many jurisdictions, the D.C. Superior Court is relatively current, pays witnesses \$20 per

<sup>h</sup> In addition to these nine demographic traits, 15 other factors were also probed simultaneously. See page 6.

<sup>i</sup> It is impossible to determine whether any of the predispositions or attitudes reflected in the study's survey were entirely independent of witnesses' contacts with the criminal justice system.

<sup>j</sup> That is, the question did not require respondents to choose among a limited number of possible replies but permitted witnesses to answer in a spontaneous, unguided manner.

day, and does have some facilities for the comfort of witnesses.

The fourth factor commonly cited by the literature as contributing to noncooperation, that of witness intimidation, was a stronger concern of witnesses: in response to the open-ended question, 28 percent of the 922 witnesses advocated better protection of witnesses before, during, and after trial. The type of case—felony or misdemeanor—did not affect the likelihood that witnesses would experience fear of reprisal. Nor did witnesses who had been defendants mention this fear more frequently than those who had never been defendants. (About 27 percent of the 922 witnesses said they had been defendants in other cases, perhaps indicative of a "community" of individuals who are frequently involved in the criminal justice process.)

About the same proportion of victims (29 percent of 516) and nonvictims (27 percent of 406) experienced fear of reprisal. Residents were more likely (30 percent of 779) than nonresidents (17 percent of 143) to voice concern about reprisal, while a greater proportion of women (31 percent of 375) than men (26 percent of 547) expressed such a concern.

Although one might assume that the majority of the 28 percent who expressed fear of reprisal would have been classified as noncooperators by the prosecutor, approximately the same proportion were labeled noncooperative as were categorized as cooperative. Thus, fear of reprisal, in the context of this study, does not appear to be associated, or correlated, with the prosecutor's decision to regard a given witness as a noncooperator.

This same lack of correlation also applies to the other three principal factors cited in the literature as the prime causes of noncooperation.

When these four literature-cited causes were subjected to a form of statistical analysis that, going beyond mere correlation, sought to determine whether a cause-and-effect relationship existed between trial delay, loss of income, inappropriate physical accommodations and other inconveniences, or fear of reprisal, on the one hand, and prosecutor-perceived noncooperation on the other, none of those factors was found to contribute to an understanding of why some witnesses were labeled as noncooperators.<sup>k</sup>

<sup>k</sup> Multiple regression was the statistical technique utilized. However, among other reasons, because many witnesses did express fear of reprisal, this factor was subject to further analysis, as noted later.



A series of questions probed how 875 witnesses regarded the type of treatment people who commit crimes receive from criminal justice personnel. The large majority of witnesses believed police, prosecutors, and judges are fair/too easy rather than too harsh. There appears to be a strong inclination to view judges as being too easy in comparison with police and prosecutors.

Victims are less inclined to rate police as too hard and judges as fair, while being significantly more disposed to regard judges as too easy.

Over 70 percent of approximately 875 witnesses agreed with the following statements:

1. A person should always cooperate with police. (However, 43 percent agreed that many police are corrupt.)
2. Most prosecutors do the best they can. (But 28 percent agreed that prosecutors are pretty ruthless people.)
3. Judges are very intelligent, try to be fair in all their court decisions, and are sincerely interested in the rights of citizens. (However, 20 percent agreed that most judges will accept bribes.)

The opinions of victims closely paralleled the above views of all 875 witnesses. The responses of women witnesses, however, reflected a greater distrust of police and indicated greater skepticism about the criminal justice system than was the case for men.

As for witnesses' attitudes toward crime and criminals, at least 70 percent of the respondents agreed with the following:<sup>1</sup>

1. All people who break laws should be punished.
2. Some acts are legally defined as crimes when they really should not be.
3. A lot of people disobey laws every day, and police ignore it.
4. Citizens should take more interest in what can be done to control crime in our society.
5. There would be less crime if there were not so much poverty and prejudice in our society.

At least 70 percent of the victims also agreed with the above statements.

Almost 27 percent of the 922 witnesses indicated they had been defendants in other cases. About 46 percent of the witness-defendants stated they, as defendants, were not treated fairly by police, with physical mistreatment heading the list of complaints. As might be anticipated, witnesses who

<sup>1</sup> The number of witnesses to whom the 70 percent applies ranges from 737 to 922.

were defendants in other cases possessed attitudes toward the criminal justice system that were markedly different from those of witnesses who had never been defendants. The opinions of witness-defendants are relatively negative, particularly attitudes toward police, prosecutory fairness, and punishment.

Recalling the wide demographic gap that separated resident from nonresident witnesses (urban blacks and suburban whites), one might conclude that their respective attitudes regarding the criminal justice process would also be dissimilar. The witness study did not support such a conclusion.

In 28 of 37 attitudinal queries, the proportion of resident witnesses holding given opinions came within 10 percentage points of the proportion of nonresidents adhering to those same views. The differences that did exist regarding the proportions of residents and nonresidents holding each of the 28 opinions did not indicate a consistent philosophical difference between the two groups.

As noted earlier, an analysis of witnesses' opinions regarding trial delay, loss of income, inappropriate physical accommodation and other inconveniences, and fear of reprisal revealed neither a correlation between those factors and prosecutor-perceived noncooperation nor a cause-and-effect relationship between them and the likelihood that a witness would be labeled as a noncooperator.

The same general procedure was also followed for the other witness attitudes and predispositions: Scores of cross tabulations were analyzed to determine those attitudes most closely *correlated* with "noncooperation"; the attitudes/predispositions that seemed to be the most promising were then subjected to analysis designed to reveal whether they were *causally linked* to the prosecutors' decisions to label witnesses noncooperative by rejecting or dropping cases because of witness problems. The following attitude-related factors were identified as closely associated with such decisions (except for "fear of reprisal," listed below because so many witnesses mentioned it) and thus were included in the causal analysis:

1. Defendant status, which indicates whether the witness had ever been a defendant
2. Judge not fit, which reflected a sentiment that judges are not fit to administer justice
3. Punishment should be limited, which is an opinion that some laws are unfair and not all persons who break the law should be punished
4. Citizens can help control crime, which reflects

the belief that citizen concern and less poverty and prejudice will reduce crime

5. Police need controls, which indicates an opinion that police are corrupt and have too much authority
6. Prosecutors do their best, which expresses the sentiment that, generally, prosecutors are fair and try to aid the public by convicting criminals
7. Police hindered, which represents an opinion that the courts and prosecutor hinder the police and that citizens should cooperate with the police
8. Fear of reprisal, which reflects the need for better protection of witnesses, improved procedures to keep the witness' identity from the defendant, and greater assurance that witnesses will be protected after testimony
9. Number of witnesses, which indicates how many persons police recorded as having witnessed the crime
10. Relationship of the witness to the defendant, which reflects either a stranger or nonstranger relationship

When advanced statistical techniques were applied to the preceding ten factors, only "number of witnesses" and "relationship" were found to be of significant help in explaining why certain witnesses were labeled as noncooperators.<sup>m</sup>

Regarding "number of witnesses," the more witnesses in a given case, the less likely the case would be dropped because of witness noncooperation. One explanation for this is that, in certain types of cases, witnesses may tend to reinforce each other's cooperative tendencies and to shore up one another's resolve to the point where, for example, fear of reprisal or other misgivings are overridden—as might occur when a group of acquaintances or friends witness a street mugging.

As for "relationship," the closer the relationship between witness and defendant, the greater the likelihood that the former would be labeled as a

<sup>m</sup> The "advanced statistical techniques" are multiple regression in conjunction with logit analysis. In addition to the ten attitude-related factors, nine demographic traits were also analyzed concurrently, as well as five other factors pertaining to whether the witness recalled being a witness, was a victim, remembered being asked to discuss the case or serve as a witness, and agreed to serve as a witness. Thus, a total of 24 factors were probed by multiple regression analyses. Findings did not vary significantly when the analyses were conducted for all witnesses, for victims only, or for just resident witnesses.

noncooperator. The inference here, of course, is that witnesses are more inclined to persevere in the prosecution of strangers than of friends, relatives, or other acquaintances.

However, do "number of witnesses" and "relationship" affect witness cooperation from the witness' perspective or the prosecutor's or both? Does a relatively large number of witnesses in a case make a *witness* more disposed to cooperate because of "safety in numbers," etc., and/or does the *prosecutor* regard a multiwitness case as synonymous with "strong case," so that poor cooperation by one of the witnesses would not cause the prosecutor to label the individual noncooperative, as he might well have if the person had been the sole witness?

Thus, the factor "number of witnesses" probably does not help explain "witness cooperation" *exclusively* in terms of "this is what makes witnesses cooperate."

The same conclusion is also applicable to "relationship." On the one hand, a nonstranger relationship probably tends to foster a forgive-and-forget attitude on the part of the witnesses as well as possibly heightens fear of reprisal, inasmuch as the defendant is well enough acquainted with the witness to be aware of where he or she resides, etc.

On the other hand, "relationship" might be explaining as much about the prosecutor's motivation as it is about the witness'. Observations of prosecutive practice reveal the tendency of prosecutors to reject cases when there is a nonstranger witness-defendant relationship *in anticipation of* noncooperation, not on the basis of *observed* noncooperation in those cases.

In addition to "number of witnesses" and "relationship," another interesting and strong finding resulted from the application of causal analysis. Among the other factors analyzed (p. 6) was one that indicated whether a person who recalled being a witness said that he or she was never asked to discuss the case or serve as a witness by the police or prosecutor. Such a person was more likely to be labeled noncooperative. This finding suggests that better communications are necessary between police/prosecutor and witnesses. (For example, of 567 witnesses who were asked if they received instructions regarding their right and duties from police, prosecutors, or judges, 43 percent replied in the negative.)

At this juncture, the observation that must be faced squarely is that, in spite of exhaustive anal-

yses of a wide array of demographic, procedural, and attitude-related factors, only "number of witnesses," "never asked to discuss," and "relationship" seemed at least partially to explain why the noncooperator label was attached to witnesses by prosecutors.

Given the dozens of witness-related factors examined in this study, particularly witness attitudes and characteristics, one might expect that more than three factors would appear as causal indicators of why prosecutors rejected or dropped certain cases for witness-related reasons—unless what caused prosecutors to drop such cases (thereby labeling the involved witnesses as noncooperators) was frequently *not* an indication of uncooperativeness. That is, what the prosecutor recorded as the reason for dropping a case may not have been what the witness saw himself or herself doing.

### **Would Noncooperators Really Cooperate?**

The possibility of a gap between prosecutors' perceptions and witnesses' intentions was explored by a series of four questions that interviewers asked witnesses. Answers by 94 percent of the study's 215 prosecutor-labeled noncooperators were susceptible to interpretations inconsistent with the noncooperator label. As noted by figure A-2, of the 215 "noncooperators":

1. Sixty asserted they had never been victims-witnesses. Did police and prosecutor fail to alert these individuals that they were witnesses? If so, their "noncooperation" did not reflect uncooperativeness in terms of conscious choice.
2. Thirty-one more stated they were never asked by the police or prosecutor to discuss the case or to serve as a witness. If so, how could noncooperation be imputed to such persons?
3. One hundred and two additional individuals claimed that they had agreed to serve as witnesses. If their claims are taken at face value, a logical conclusion is that the true intentions of the 102 were not properly interpreted by the prosecutors or the court.
4. Nine more said they were never asked to serve as witnesses. If never asked, the nine could not be regarded as uncooperative through conscious choice.

Of course, there are explanations, other than those suggested above, for the replies of the 202 "noncooperators." For example, many of them,

not wishing to admit their past uncooperativeness, may have given interviewers self-serving, inaccurate answers. Others may have forgotten what their attitudes really were. For instance, many of those who said they agreed to serve as witnesses actually may have declined.

Obviously, therefore, one cannot logically conclude that all 202 "noncooperators" were labeled as such by prosecutors in error. Nonetheless, even under generous assumptions regarding how many of the "noncooperators" (for example, up to 75 percent) gave self-serving or otherwise inaccurate replies (i.e., were indeed noncooperative), this still means that prosecutors were apparently unable to cut through to the true intentions of 23 percent or more of those they regarded as uncooperative and, therefore, recorded the existence of witness problems when these were premature judgments at best and incorrect decisions at worst.

What might account for this frequent gap between what the prosecutor reported, and the witness intended? Explanations for this gap are discussed next.

### **Why Did Prosecutors Mislabeled Witnesses?**

The possible misclassification of witnesses as noncooperators in spite of their intentions to cooperate has important implications for prosecutive effectiveness: Many cases probably were rejected when they should have been pursued. Two principal reasons are advanced to account for this mislabeling of witnesses:

First, prosecutors were observed labeling witnesses as noncooperative, not on the basis of perceived noncooperation in that case, but in anticipation of it. For example, the assumption was occasionally made that witnesses would not persevere in the prosecution of a friend or relative no matter how cooperative the witness initially seemed to be. Although this prediction may have proved true in some cases, it most likely was erroneous in others and helps explain the witness' different perception.

Second, and believed to be more important, witness mislabeling resulted from a failure to communicate effectively with witnesses. By *failure to communicate* is meant not only failure by police and/or prosecutor to make contact with witnesses either orally or by mail, but also all those impediments that prevent witnesses, once contacted, from clearly understanding the communication or easily

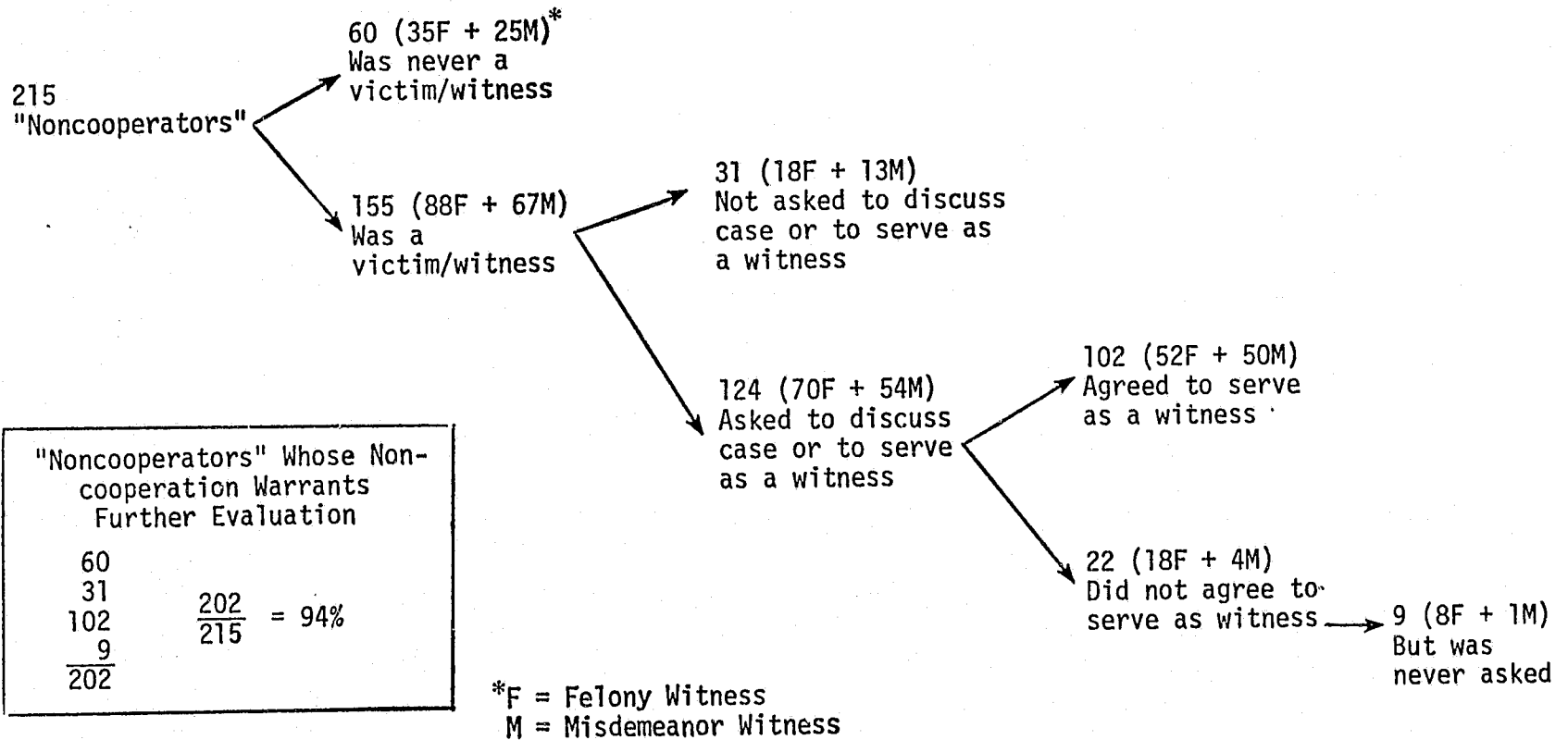


Figure A-2. "Noncooperator" Status of 202 Witnesses Warrants Further Evaluation

responding to what is communicated. Faulty communications were strongly indicated by the previously discussed finding that resulted from a causal analysis of the data: individuals who recalled being witnesses and who claimed they were never asked to discuss the case or serve as a witness were more likely to be labeled noncooperative.

These are examples of inadequate communications through failure to contact witnesses:

1. Through an analysis of why interviewers could not locate 23 percent of 2,997 witnesses at the addresses stored in PROMIS, the conclusion was reached that often inaccurate witness names and addresses were recorded by police at the crime scene (a problem that could be reduced if police attempted to check witnesses' orally-supplied information against their identification documents). This, of course, effectively severed future communications by prosecutors with witnesses, such as by phone or through service of subpoenas, which would have alerted witnesses when to appear in court.

2. Failing to contact a witness in order to arrange an appearance at trial, the prosecutor's office leaves a telephone message, which is never passed on to the witness. Time constraints do not permit follow-up by the prosecuting attorney, and there is a scarcity of qualified support staff to do it. The witness fails to appear, which, in all likelihood, leaves the prosecutor little choice except to check as the reason for dropping the case "witness no show." Thus, in effect, the witness is labeled as noncooperator.

These are examples of impediments that prevented comprehension or encouraged witnesses to respond inadequately when communications were established:

1. Police were observed asking witnesses to reveal their identities within hearing distance of suspects. Chances are that some potentially cooperative witnesses, fearing reprisal, changed their minds about revealing their true names and addresses. (When the study's 922 respondents were asked in an open-ended fashion about changes that would make witnesses more willing to cooperate, the recommendation offered by more witnesses than any other—28 percent—related to procedures pertaining to improve witness protection.)

2. A witness is informed by the arresting officer where and when to meet the prosecutor to discuss the case. The officer instructs the witness to go to

the "prosecutor's office in Building B." (Potentially confusing, such a building designation could have been misunderstood as C, D, E, G, etc.) But, upon arriving, the witness discovers that there are several rooms known as "the prosecutor's office." As a result, he never does meet with the prosecutor. Chances are he was labeled noncooperative, but this never was his conscious intention.

Highlighting communications problems, survey data revealed that about 43 percent of 594 witnesses stated they did not receive an explanation of the major steps of the court process from police, prosecutor, or judge. And, among other data, 14 percent of the 922 surveyed witnesses suggested that communications improvements—such as giving them more advance notice—would increase witness cooperation.

To understand more clearly how communications difficulties could develop, one must realize that all the cases in the witness study involving "noncooperators" were processed by prosecutors in a mass-production, assembly-line fashion where responsibility for a case and its witnesses shifts repeatedly from one prosecutor to another as the case proceeds from one prosecutor or court event to another. As with a manufacturer's assembly line, responsibility for the case is fragmented among several persons and time is at a premium. When someone is unable to install a key prosecutive component, such as effective communications with witnesses, the case stands an excellent chance of being rejected, dropped, or dismissed—time pressures are often too great to permit identification of inadvertent errors, much less their correction.

(The one exception to the assembly-line process in the Washington, D.C. jurisdiction under study is for felony cases that have passed beyond the grand jury indictment stage; none of the study's "noncooperators" were involved in such cases. These cases, which are handled by a single prosecutor from indictment through final disposition, are seldom terminated because of witness problems. Indeed, in the sample, not one instance of "noncooperation" occurred in postindictment felony cases.)

This study suggests that because of inadequate communications, many citizens apparently were not aware of their position as witnesses in a case, were not fully informed of what was expected of them or when/where, and were unaware of the noncooperator label attached to them.

To a significant degree, therefore, both prosecutor and witness suffered at the hands of "the system"—one which made reliable, timely communications between the two extremely difficult.

### Further Findings and Concluding Observations

One of the research problems encountered during the course of the study was that completed interviews were secured from only 922 out of 2,997 witnesses. For about 23 percent of the 2,997, individuals could not be located because they were not known at a given address, or the building at an existing address was vacant, or there was no such address.

Analysis of why the bad-address problem was so extensive led to the conclusion that police, at the crime scene, were not routinely verifying witnesses' orally-supplied names and addresses, such as by requesting witnesses' driver's licenses or other identification information that police inaccurately recorded, most such errors could have been avoided through verification. These errors effectively severed future communication. Subpoenas, for example, directing witnesses to appear in court would, in all probability, be returned as "addressee unknown," or "no such address." If those witnesses were essential to the case, their nonappearance would force decisions to dismiss or nolle cases for a witness-related reason, which would label the missing witnesses as noncooperators. Had they been contacted, many might well have cooperated.

As for witnesses who purposely misinformed officers, verification of addresses might have detected this and, as a result, probably would have induced some of them to cooperate.

Also, part of the bad-address problem may have resulted, not from witnesses' initial intentions to supply inaccurate address data, but from officers' indiscreet questioning of witnesses within hearing distance of suspects. Fearing reprisal, some witnesses may have felt that discretion was the better part of valor and, therefore, provided police with false names and addresses.

Table A-1 lists the major factors that, in the context of this study, seem to offer the best explanation of why some witnesses were regarded as noncooperators. Columns 2 and 3 indicate whether the underlying responsibility for the existence of a given factor rests with the witness or with the criminal justice process and its personnel. Factors

1, 2, and 3 of the table are findings resultant from statistical analyses designed to unearth factors causally related to prosecutor-perceived noncooperation. Factor 4 was revealed through personal observations, while factor 5 was identified as the result of an analysis seeking to explain why so many interviews were not completed.

Factor 6, fear of reprisal, seems to be a likely cause of noncooperation inasmuch as this concern was cited by 28 percent of all 922 surveyed witnesses in response to an open-ended question: "What changes do you think would make witnesses more willing to cooperate?" In all probability, fear of reprisal is closely allied with "nonstranger relationship," as noted in factor 2a of the table.

As the table indicates, the most evident and influential causes of prosecutors' labeling witnesses noncooperative are those generated by the criminal justice process itself; that is, the conditions, circumstances, and procedures of criminal justice agencies are causally related to the prosecutor's decision to designate many witnesses as noncooperative. The most significant of such system-related causes seems to be a breakdown in communications between police/prosecutor and witness (factor 3). This breakdown was such that, in a substantial number of instances, it apparently caused prosecutors to misread witnesses' true intentions and to label many witnesses as noncooperative when, in fact, they were willing to cooperate and were unaware of the noncooperator designation.

Furthermore, there are strong indications that this communications gap was responsible for adversely affecting witnesses' willingness to cooperate with the prosecutor regarding *subsequent* cases in which they might become involved. Particularly relevant is the finding that, although 95 percent of 635 witnesses stated they agreed to serve as a witness (or presumably would have if asked) in their present cases, only 81 percent of them asserted they would be willing to serve as a witness on another case in the future. The logical inference is that this reduction of about 15 percent was caused by the witnesses' reactions to one or more criminal justice factors. A prominent one seems to have been a communications breakdown, according to survey data.

On balance, the various noncooperation factors listed in Table A-1 contribute more toward an understanding of what motivates *prosecutors* to label

**Table A-1**  
**The Prosecutor's Noncooperation Label: Caused by Witnesses or the System?**

<i>"Noncooperation" Factors</i>	<i>Witness-generated</i>	<i>System-generated</i>
1. The fewer witnesses per case, the more likely they will be regarded as noncooperative.		
a) Prosecutor tended to equate "one witness case" with "weak case" and was more inclined to regard witness(es) as noncooperative.		X
b) Witness less willing to cooperate if not supported by co-witness(es)—safety in numbers.	X	
2. Nonstranger relationship between witness and defendant increased the likelihood of a noncooperation label.		
a) Nonstranger relationship fostered "forgive and forget" attitude in witnesses, as well as heightened fear of reprisal.	X	
b) Nonstranger witness-defendant relationship resulted in prosecutor anticipating noncooperation, even though it had not yet been observed in that case.		X
3. If a person agreed to be a witness but was never asked by police or prosecutor to discuss the case or to serve as a witness, the person was more likely to be regarded as noncooperative; that is, communications problems (fostered by an assembly-line prosecutive process) between police-prosecutor and witness frequently caused prosecutors to perceive noncooperation when this was not necessarily so.		X
4. Prosecutors cite witness noncooperation, rather than the true reason, to reject cases.		X
5. Failure of police to verify names and addresses of witnesses often precluded subsequent prosecutor-witness communication, which resulted in a greater number of noncooperator-labeled witnesses than otherwise might have been the case.		X
6. Fear of reprisal resulted in noncooperation label.		
a) Witnesses, on an independent basis, anticipated intimidation from defendants.	X	
b) Witnesses feared reprisal after defendants learned of witnesses' identity through indiscreet police questioning or through appearance of defendant in witness room.		X

witnesses noncooperative than toward an appreciation of what motivates *witnesses* in that regard. To make the same point another way, the motivation causing prosecutors to use the various witness-related reasons when rejecting a case (which constitutes our definition of "witness noncooperation") basically reflects a prosecutory assembly-line environment, which often causes hard-pressed prosecutors to misread the true intentions of witnesses, primarily as the result of poor communications.

Thus, the predominant finding able to emerge from the data is that system-related factors, especially inadequate communications, were frequent causes of prosecutor-perceived noncooperation in the period under study—not so much because the systemic difficulties discouraged *witnesses* from cooperating, but because the system, by casting a false shadow of noncooperation on many witnesses, caused the *prosecutor* to misinterpret their true intentions.

This finding does not rule out the possibility that system-related difficulties, such as trial delay, also influenced witnesses not to cooperate and, therefore, helped account for the prosecutor's noncoop-

eration label. To the extent that additional factors explaining the witness' motivation not to cooperate were, in fact, present, they simply "paled" in this sample—failed to come through the data—since so much "noncooperation" apparently resulted from prosecutor's perceptions based on considerations other than witness behavior. (The isolation of circumstances under which such factors might be significant in explaining witness problems is a subject of ongoing research under the PROMIS Research Project.) This was an unexpected twist to this study, but one that, obviously, constitutes an extremely valuable finding.

### **Relating Principal Findings to Corrective Action**

In one sense, the principal finding of this study is encouraging. Since a major cause of prosecutive decisions to label witnesses as noncooperators appears to relate principally to a communications breakdown that, in effect, masks witnesses' true intentions and misleads prosecutors, the "noncooperation problem" is of a type more easily remedied than if it were caused exclusively by deep-

seated witness predispositions or occasioned by attitudes triggered by witnesses' reactions to criminal justice failures more intractable than are communications difficulties.

Essentially, the solutions to communications-related "witness noncooperation" are unglamorous and must be effected largely through better management of the prosecutor's office. Solutions pertain to verification of witnesses' names and addresses, maintenance of accurate witness records, and procedures that maximize coordination and communications between police, prosecutor, and court, on the one hand, and witnesses on the other, especially in continued cases.

On the basis of this witness study, only when measures such as the foregoing have upgraded prosecutive management to the point where effective and timely communications with witnesses is reasonably assured—and other systemic difficulties alleviated—can prosecutors, with confidence, begin to speak in terms of *witness* noncooperation. This is not to deny that witness problems do, in fact, exist. Rather, one should first be certain that the noncooperation attributed to witnesses is not a problem that, at least in part, resides in the prosecutor's office itself.

A significant part of the problem appears to have been generated by inadequate police procedures and was passed along to the prosecutor's office. Nonetheless, that office bears the ultimate responsibility for initiating remedial action, some of which would require police cooperation and coordination. Based on this study's findings, suggestions for improved witness management are contained in INSLAW's "Handbook for Witness Management" which includes as appendixes (1) an illustrative booklet containing useful information for witnesses, and (2) a description of how the Washington prosecutor's office has implemented a witness notification unit, which combats many of the communications problems cited here.

### Notes

1. Philip Hager, "Justice Sought for Witnesses, Victims of Crime," *Los Angeles Times*, December 2, 1974.
2. William M. Bulkeley, "Head Homicide Sleuth in Detroit Is a Man with Endless Work," *Wall Street Journal*, January 16, 1975.
3. NDAA document (undated) pertaining to the solicitation of proposals regarding evaluation of the Commission on Victim Witness Assistance.



**PART 2**  
**HANDBOOK FOR WITNESS MANAGEMENT**

## PREFACE

Someone once quipped, "Law enforcement is not a game of cops and robbers in which the citizens play the trees." All the more so for those citizens who are witnesses. However, they require competent, professional handling consistent with their vital prosecutory role if they are to exhibit something more than tree-like passivity. That is what this Witness Management Handbook is all about.

The suggestions in this handbook for improved witness management stemmed from the insights and findings of LEAA-funded research by the Institute, *A Study of Witness Cooperation with District of Columbia Prosecutors*. Consistent with that study's conclusions, many of the methods and procedures advocated herein are directed toward establishing clear and timely communications between police/prosecutor and witness.

Though many recommendations may appear to be unglamorous or tedious, they are not pie-in-the-sky but are capable of being implemented in a relatively straightforward manner. What is more, their payoff in cost-benefit terms can be extremely rewarding.

Special thanks are due to Robert H. Cain, who so capably developed and prepared the initial draft of this publication. Gratitude is also owed to Sarah J. Cox, who researched and wrote for Washington-area witnesses a valuable informational manual, which Appendix A, *You, the Witness*, closely parallels. Finally, appreciation is extended to James C. Brandenburg, District Attorney in Albuquerque, New Mexico, on whose witness-feedback questionnaire Appendix C is based.

This handbook has been designed to be as pragmatic and operations-oriented as possible. Hopefully, in addition to being read, the handbook's suggestions will be given serious study. Prosecutory effectiveness can ill-afford to take witnesses for granted, like so many trees.

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# I. WITNESS MANAGEMENT: ITS PRIORITY AND IMPLICATIONS

Once a citizen has been identified as a witness at the scene of the crime, why is that person in some cases labeled later as a noncooperator by the prosecutor? According to the witness cooperation study, which is summarized in Part I, a substantial part of the "noncooperation" problem stems from inadequate witness management by police and prosecutors.

## The Prosecutory Assembly Line

In many jurisdictions, the burgeoning volume of cases within each component of the criminal justice system dictates the employment of mass production techniques, with attendant fragmentation of responsibility. Probably the most serious fragmentation of responsibility occurs within the prosecutor's office, particularly in the high-volume misdemeanor area. In some jurisdictions, felonies also are handled in an assembly-line fashion.

Similar to the conditions on a manufacturer's assembly line, a number of prosecutors are responsible for the "construction" of a case, and time to devote to any one "assembly operation" is at a minimum because the constant flow of incoming cases requires a relatively fast-moving production line. When someone forgets, or does not have time, to install a key prosecutive component, the case stands an excellent chance of being rejected or dropped.

A critical component that too frequently suffers major neglect because of assembly-line pressures is effective witness management. As the National District Attorneys Association observes, "Prosecuting attorneys are typically too pressed by time, heavy caseloads, and crises to reflect long on the situation of the crime victim or the witness. . . . In short, the entire area of victim and witness relations is left to chance."<sup>1</sup>

## The Witness: Mainstay of Prosecutory Effectiveness

Given the universal importance prosecutors attach to witnesses, the prevalence of inadequate witness management is ironic at best, disastrous at worst. Spokesmen for the prosecutor's office in

Washington, D.C. put the problem in real-life terms. One underscores the high priority assigned to witnesses: "When the witness doesn't show up, it is a case that is eventually going to wash out—nine times out of ten."<sup>a</sup>

Another prosecutor here reported that a large number of cases were being lost "through cracks in the system"—and a major crack was ineffective witness-management procedures: "One research project which was recently completed was a study of witness cooperation. . . . [We found that there] was poor communication between the witness and prosecutor's office or the witness and the police."<sup>b</sup> (The study he referred to comprises Part 1 of this book.)

A principal finding of the witness cooperation study suggested that prosecutors often misinterpreted the true intentions of witnesses and labeled them noncooperators when, indeed, witnesses may have been willing to cooperate and were unaware of the noncooperative designation. Such a situation developed largely because of less than adequate witness management—specifically, communications difficulties between police/prosecutor and witnesses misled prosecutors regarding witnesses' true intentions.

The result, in effect, was that many cases were dropped when they perhaps could have been pursued; prosecutive performance suffered; and a critical law enforcement resource—citizen assistance—was wasted in too many cases. That is, the prosecutor believed the witness to be uncooperative, whereas the latter might well have cooperated if he or she had been given the chance. This, as well as other aspects of deficient witness management,

<sup>a</sup> *WMAL Radio, The Legend of Lenient Justice: A Summary* (Washington: The Evening Star Broadcasting Co., 1973), p. 4. This report summarizes a 27-part criminal justice series aired from May 29 to June 8, 1973.

<sup>b</sup> *PROMIS*, a videotape prepared in 1974 by the Institute for Law and Social Research, Washington, D.C. *PROMIS* (Prosecutor's Management Information System) is a computer-based system for public prosecution agencies. *PROMIS* has been designated as an Exemplary Project by the Law Enforcement Assistance Administration (LEAA) and, among other things, dovetails with LEAA's Career Criminal Program.

are not lost upon the public to whom the prosecutor's office is accountable.

Fortunately, however, witness-management difficulties are not intractable; indeed, compared with many other problems of the criminal justice system, witness-management deficiencies can be alleviated through the application of relatively straightforward, inexpensive methods and procedures. Though perhaps an unglamorous task, the implementation of those procedures can significantly contribute to a highly visible and critically important result: efficient utilization and cultivation of witness cooperation, a resource constituting the lifeline of prosecutive performance.

### **Attaining Improved Witness Management**

All prosecutors want productive relationships with witnesses, but, achieving that goal in the midst of pressures generated by an assembly-line environment is another matter.

Efficient witness management does not usually result from a few dramatic changes but is achieved through a series of relatively simple steps whose cumulative effect can be substantial. Some steps re-

quire police/prosecutor coordination and cooperation to implement. Others require action by the prosecutor's office alone.

Many of the steps outlined here may be already operational. Several others may have to be modified in light of local conditions and phased in as time permits. A few may be inappropriate for some jurisdictions, yet stimulate thinking that might yield alternative solutions. And some of the witness-management procedures described here as *separate* functions might well be *consolidated*, depending on local conditions and the organization of the prosecutor's office.

The ultimate result of all these efforts to upgrade witness management will be a more effective prosecutor's office in fact as well as in appearance. As this is perceived by witnesses and, eventually, by the general public, a more favorable attitude toward the entire criminal justice system and its officials will be fostered.

### **Notes**

1. NDAA document pertaining to the solicitation of proposals regarding the evaluation of the Commission Victim Witness Assistance.

## II. ASPECTS OF WITNESS MANAGEMENT REQUIRING POLICE/PROSECUTOR COOPERATION

Because the actions and procedures of any given sector of the criminal justice system frequently ripple through and influence the other components, the pursuit by individual agencies of independent, uncoordinated policies regarding the interdependent activities of the criminal justice process is counterproductive at best. Development of measures to enhance witness management is no exception to this observation.

The witness-oriented suggestions outlined in this chapter are among those that should involve cooperation and coordination between police and prosecutor. Mutual benefits will accrue.

### **Police/ Prosecutor Verification of Witnesses' Names, Addresses**

Police usually receive standard instructions to obtain the names, addresses, and phone numbers of all victims and other witnesses at the crime scene. As Washington's Metropolitan Police Department officers are informed, "Witnesses left standing are like water left standing, they evaporate."

In spite of such instructions, evidence indicates that a substantial number of witnesses cannot be located by prosecutors at the addresses recorded by police. The study of witness cooperation with District of Columbia prosecutors,<sup>a</sup> for example, found that of a random sample consisting of 2,997 citizen witnesses, about 23 percent could not be located because they were not known at a given address, or the building at an existing address was vacant, or there was no such address. Studies in other cities, such as New York and Chicago, have uncovered the identical problem.<sup>1</sup>

Obviously, when many witnesses cannot be located, the impact on the prosecutor's office can be devastating. Subpoenas are returned as "addressee unknown," and telephone calls or visits to witnesses' residences are unproductive. Cases that might otherwise have gone to trial must be rejected because of witness problems. Other cases may be so weakened because of a witness' absence that acquittal or dismissal, rather than a guilty verdict or plea, results.

Bad addresses could result from police officers' inaccurate recording, at the crime scene, of the witnesses' orally given names and addresses. This may be caused by carelessness or, more likely by "sound-alike addresses." For example, "15 G Street" might well be recorded as "50 D Street," especially if the witness has an unfamiliar accent or speech defect. Such errors can be minimized by police verification of each witness' name, address, etc. Police could attempt to check the orally-supplied names and addresses against witnesses' driver's licenses or other identification documents. Of course, many bad addresses probably result from witnesses purposely giving police names and addresses other than their own, which are duly recorded. Again, verification could help reduce the problem, except in those instances where witnesses are carrying false identity papers or none at all.

One might argue that verification is academic in such cases, for anyone who supplies false information would not cooperate with prosecutors in any event. However, failure to cooperate initially at the crime scene does not foreordain subsequent non-cooperation; in many—perhaps most—instances it would, but, in others, witnesses might "come around" after having been requested to give their correct names and addresses.

Of course, prosecutors can contribute to the bad-address problem through errors in entering witnesses' identifying data (accurately submitted by police) on prosecutory records. Procedures for double checking such entries could be devised. For example, if the entry of witness data is automated, such as through machine-to-tape equipment, prudence dictates that such information be entered independently by two operators, or subjected to other verification procedures. If discrepancies exist, the data should be automatically flagged for inspection. If data entry is manually transcribed, such as from one form to another, the task of double checking could be assigned to a paralegal or volunteer.

Frequently, citizens lodge complaints with the prosecutor's office directly. In such instances, the address of the complainant (and those of any other witnesses) could be verified by prosecutors through a city or telephone directory. A similar procedure—perhaps handled by a paralegal or volun-

<sup>a</sup> See Part I for a summary of the study.

teer—could be followed when witnesses are interviewed at the case-screening stage.

Admittedly, verification is tedious and unglamorous. But failure to verify opens up a neediness crack through which cases may fall right out the system.

### **Police/Prosecutor Efforts to Allay Witnesses' Fear of Reprisal**

Concern expressed by witnesses about their fear of reprisal by defendants is not uncommon. Whether defendants will seek revenge is irrelevant; what counts is that witnesses occasionally believe this will happen.

Many studies have documented this fear. For example, in response to an open-ended question asking 922 witnesses what changes they thought would make witnesses more willing to cooperate, the most frequent response (28 percent) pertained to recommendations that would enhance witness protection.<sup>b</sup> If nothing else, such a response indicates that police and prosecutors should at least be sensitive to witness concern over the possibility of intimidation by defendants, which could lead to a lack of cooperation.<sup>c</sup>

This sensitivity should be expressed starting at the crime scene when police initially interview witnesses. On occasion, police have been observed asking witnesses to reveal their identities within hearing distance of suspects. Chances are that many potentially cooperative witnesses, fearing reprisal, may change their minds and, as an initial uncooperative act, supply officers with false names and addresses.

Upon first contact with witnesses, prosecutors should inform them that any threats or acts of intimidation—unlikely as they might be—should be reported and that protection is available. (Of course, such advice should be communicated to witnesses in a manner that does not induce fear where none had been present.) All too often information about protection is not volunteered at the outset.

Prosecutors ought to be sensitive to witnesses' fear of reprisal by assuring that not-in-custody de-

fendants waiting at the courthouse for their cases to be called are not permitted to enter the area where witnesses have been told to wait.

Witnesses should be informed of how discovery practice operates locally. For example, as a general rule in the District of Columbia, unless defense counsel discovers by his or her own efforts the identity of government witnesses, that information does not become available until the witnesses are identified to the prospective jurors at the commencement of trial.

To discourage attempts by defendants to intimidate witnesses, both police department and prosecutor's office might combine efforts to press for legislation making such actions a serious crime, if this is not already the case.

Finally, prosecutors may wish to give serious consideration to establishing and widely publicizing a special unit that would vigorously pursue the investigation, revocation of bail (where applicable), and prosecution of those charged with witness intimidation.

### **Briefing the Witness**

One of the findings of the study of witness cooperation in Washington, D.C. suggests that some witnesses do not realize they are witnesses, do not understand what their role is, and/or do not "get the word." In short, communications between police/prosecutor and witness are often not all that they could be.

The communications process should begin at the crime scene. Police officers could inform witnesses that they *are* witnesses and what this means, at least in terms of what they are expected to do next (such as appear at case screening). This orally supplied information might well be repeated on small preprinted, prosecutor-prepared cards that officers could give to each witness at the crime scene. According to some studies, officers should not assume that (1) witnesses regard themselves as such in the absence of being told their status, or (2) when so informed, they understand what "witness" is (for example, some have equated "witness" with "defendant").

Witnesses are perhaps most apprehensive and confusion-prone during the period between the commission of the alleged crime and their first contact with the prosecutor's office. Whether oral or written, directions helping witnesses locate the office should be exceptionally clear and unam-

<sup>b</sup> This was one of the findings of the study summarized in Part I.

<sup>c</sup> For example, see the testimony of W. Vincent Rakestraw, Assistant Attorney General, U.S. Department of Justice, before the Subcommittee on Criminal Justice, House of Representatives, September 17, 1974.

biguous. Police and prosecutor should develop standardized instructions for witnesses in this regard.

Illustrative of the potential for confusion is the instance where a witness was informed by the arresting officer where and when to meet the prosecutor in order to discuss the case. The officer told him to go to "the prosecutor's office in Building B." (Potentially confusing, such a building designation could have been misunderstood as C, D, E, G, etc.) But, upon arriving, he discovered that there were several rooms known as "the prosecutor's office." As a result, he never did meet with the prosecutor, who may well have written him off as uncooperative although this was never the witness' conscious intention.

A clear explanation by officers, along with the information contained on the card given each witness, should eliminate much of the apparent misunderstanding and confusion that exist in the minds of many witnesses.

The information card given to witnesses by officers at the crime scene could mention how to obtain a prosecutor-prepared pamphlet containing additional details about the duties and rights of witnesses. A prototype of such a publication, which could be adapted to local use, constitutes appendix A, "*You, the Witness.*" At their first personal contact with witnesses, prosecutors could assure that each has a copy of this pamphlet.

### **Conveying a Positive Attitude to Witnesses**

Witnesses, particularly those who are victims, can be turned off by certain police or prosecutor attitudes, such as illustrated by the following remarks of witnesses about criminal justice personnel:

He didn't sound concerned.

He acted as if he were doing me a favor taking the report.

Like big deal—it was a theft. They acted like I shouldn't have called them.

They come; they write it down; and they're gone. You never know what happens—they never tell you anything.

No one cares [at the prosecutor's office]; I was just a number.

Police detectives should follow up cases more thoroughly, and keep the victims more informed of the progress or lack of it in the case.

... their impersonal attitude didn't make things better. He was strictly routine. He was just filling in the form all the way.

I would have liked to have known what was going on, but no one from the court offered me any help ... The prosecutor's office made no attempt to help me.<sup>2</sup>

The type of attitude more likely to encourage or inspire cooperation by witnesses is obvious from the above comments.

Attitudes displaying appropriate consideration for the witness are particularly important in such sensitive and serious crimes as rape and child molesting. Callous or tactless behavior and remarks are usually damaging not only to the victim/witness but also to the investigation and subsequent prosecution.<sup>3</sup> Consider establishing special police/prosecutor teams to handle victims and other witnesses in such cases.

### **Expediting the Return of Witnesses' Property Used as Evidence**

As a recent article highlighted, "Seldom is a victim of a burglary more annoyed than when his stolen property is recovered only to be lodged in a police property room as evidence for a trial."<sup>4</sup> For example, one witness whose color TV set had been stolen complained that the defendant had taken it for only two days but court had kept it for five months.<sup>5</sup>

Another witness remarked, "I had my tools taken which I need in my business. Consequently, I had to buy new ones when they said it could be four to five months before they are returned." Still another stated, "I was told I would get some of my property back after he was sentenced. Well now he is in ... for a 90-day diagnostic so I won't get anything until after the first of the year. That makes it seven months."<sup>6</sup> How cooperative will those witnesses—or those to whom they related their problems—be in the future?

To remove such a stumbling block from the path of witnesses, prosecutor's office and police department should attempt to work out a coordinated procedure whereby witnesses' property is returned promptly. In one jurisdiction, for instance, a photograph of the property suffices for evidentiary and identification purposes.<sup>7</sup>

In another jurisdiction, a study was conducted to determine whether any legal reason existed requiring the booking and retention of victim prop-

erty that might be evidence in a criminal case. "This examination indicated that, except in the case of contraband or of substances whose composition was itself an issue in the case, no such reason existed."<sup>8</sup>

## **Preparation of Witness-oriented Guidelines and Standardized Forms**

Procedures governing the foregoing recommendations could be spelled out in a joint prosecutor/police guidelines publication. Its contents might include such information as the following:

1. Types of witnesses needed for each category of crime; that is, for homicide, rape, arson, child abuse, etc.
2. Do's and don'ts of obtaining and recording accurate and complete witness data: names, addresses, etc.
3. Type of information required from victims and other witnesses according to the kind of crime committed.
4. Timing and type of instructions to be given to witnesses regarding what is required of them, what they can expect, and where they may call to have their questions answered.
5. Suggestions about special handling or treatment of victims or other witnesses involved in certain types of crimes, such as homicide, rape, assault on a public official or police officer, other serious assault cases, and child abuse.
6. Procedures regarding retention and return of witnesses' property.

The guidelines publication should be updated and revised as appropriate. One way to determine the need for this is to analyze, on a systematic basis, witness problems that resulted in rejected and dropped cases. This type of feedback can prove invaluable to prosecutor and police officer alike.

Though perhaps a mundane and unexciting aspect of witness (and case) management, the development of well-designed standardized forms for police and prosecutors can prove invaluable. By the time a case has been processed by the police department, scores of individual items of information have been gathered from witnesses and other sources. Well-designed forms could assure that the data can be recorded in a minimum of time, that important data needed by the prosecutor are not overlooked, and that confusion is minimized.

Blocks should be provided for each specific item of information required, and check blocks should

be used wherever possible to eliminate handwritten entries. Standard, carefully chosen item headings and terms should be utilized so that there can be no doubt about the type of information required, thus giving the forms a self-instructional quality.

Special attention should be given to the organization and arrangement of the items on the forms so that closely related items are brought together and the sequence corresponds to the natural flow of information. Color-coding of forms is another simple but helpful technique; for example, printing the prosecutor's copy on yellow paper; the police department's, on blue; the court's, on white; the witness', on green.

Though completion of forms is not a popular task, use of properly designed forms forces uniformity in data gathering and recording, facilitates case screening by enabling the prosecutor to know precisely where to look for any given item of information, and avoids much of the problem of reading lengthy written statements and of having to interpret jargon and abbreviations used by various police officers and different police jurisdictions.

For these reasons, the need for well-designed forms cannot be overemphasized—in fact, they are often the best investment a prosecutor's office and police department can make in improving and simplifying procedures; reducing confusion, errors, and omissions; assuring proper documentation; and saving time.

## **Evaluating the Need and Advantage of a Crime Victims Service Center**

As a study of New York City crime victims noted, many of them were in genuine need of assistance in order to cope with a range of problems occasioned by their victimization.<sup>9</sup> There were problems related to medical care, costs, and insurance; employment loss and need for job training and placement; housekeeping help and other family needs; legal advice.

About 80 percent of the 234 victims interviewed were not aware of the availability of city, state, and federal sources of assistance that could have helped alleviate many of the foregoing problems. What was required, according to the study, was an agency (Crime Victims Service Center—CVSC) to direct the crime victim to other agencies, which, in turn, could provide substantive services for the victim.

Over 85 percent of the surveyed victims indicated they would contact a CVSC type of agency if one



existed. Victims stated they would want such an agency to provide them with direction, referrals, and help in filling out forms. Rather than being an independent agency, it could be consolidated with the prosecutor's witness notification unit and citizen complaint unit (described in the next chapter).

Perhaps through giving victims cards with the phone numbers and addresses of CVSC offices, police and prosecutors could alert victims to the agency. Not only would this simple gesture help restore the confidence of victims in government generally but, in particular, "could contribute to more cooperation with law enforcement agencies."<sup>10</sup>

### Notes

1. See *An Invitation to a Challenge* (June 1974), a report (draft) submitted by Louis P. Benson, in conjunction with the LEAA-aided Crime Victims Consultation Project, under a grant from the New York City Criminal Justice Coordinating Council. See also Chicago Crime Commission, *Dismissed for Want of Prosecution* (March 13, 1974).

2. Comments were from witnesses in New York and California and are cited in *An Invitation to a Challenge*, and in a report based on a survey and research funded by the Police Foundation and conducted by the Sacramento Police Department and the Center on the Administration of Criminal Justice of the School of Law, University of California at Davis.

3. See Morton Bard and Katherine Ellison, "Crisis Intervention and Investigation of Forcible Rape," *The Police Chief*, May 1974, pp. 68-73.

4. "Returning the Loot," *Newsweek*, January 6, 1975, p. 35.

5. Murray Teigh Bloom, "The Witness: Forgotten Man," *Reader's Digest*, November 1974, p. 22. (The article was originally published in the *National Civic Review*, October 1974.)

6. Sacramento Police Department et al. (report).

7. "Returning the Loot."

8. Sacramento Police Department et al. (report).

9. *An Invitation to a Challenge*.

10. *Ibid.*

### III. ADDITIONAL ACTION BY THE PROSECUTOR'S OFFICE

In contrast to the measures outlined in the preceding chapter, many witness-management procedures do not require coordination with other agencies and could be implemented by the prosecutor's office independently without adversely affecting other criminal justice components.

Consistent with a major finding of the witness cooperation study (summarized in Part I), many of the following suggestions strive to forge clear and timely communications between prosecutor and witness.

#### **Adequate Witness Fees and Payment Procedures**

If there is not provision for payment of witness fees, or if such compensation is nominal only, the prosecutor's office might encourage the passage of legislation or promulgation of regulations that would permit payment to witnesses each time they were required to appear before the court or other law enforcement body. The amount of the fee should be at least as high as the minimum wage scale or higher if possible. Authorized automatic adjustments that track the upward movement of the minimum wage scale or cost-of-living index could help prevent the witness compensation level from becoming obsolete after a short period.

Payment should be prompt and the related procedures uncomplicated. For those in particular need, provision could be made for expeditious cash payment, while the other witnesses would be paid by check.

The payment of witness fees to innercity residents is imperative if satisfactory witness cooperation is to be realized. Many of these residents who are victims, or otherwise witnessed crimes, have a low income, are employed on a daily or hourly basis, and when they must be away from their jobs do not receive pay for that period. Thus, in the absence of a witness fee, many cannot really afford to take time off to serve as a complaining or other witness.

Payment of the fee by the prosecutor's office should cover not only court appearances but also attendance at police lineups, hearings, interviews

held by the prosecutor, and any other events at which the witness' presence is needed.

Consideration should also be given to launching a campaign through the press, civic organizations, and unions to encourage employers to pay employees for time lost due to serving as witnesses, or to make up the difference between the fee paid by the governmental agency and the employees' regular pay. The prosecutor's office may wish to make direct contact with the larger employers in this regard.

The implications of failing to compensate witnesses adequately, among other things, were highlighted editorially as follows: "It is unreasonable and self-defeating to expect that citizens—no matter how dedicated—will automatically keep subjecting themselves to personal loss and inconvenience in the name of justice."<sup>1</sup>

#### **Do Current Witness-Management Procedures Require Study and Overhaul?**

If witness management has not received the scrutiny that it deserves, the time is probably ripe for a comprehensive study and appropriate revision or development of detailed, cohesive procedures for the orientation, handling, and notification of witnesses at each stage of the criminal justice process.

The fragmentation of responsibility that, by necessity, exists in a large urban prosecutor's office is particularly troublesome in this area. Although each of the units or individuals involved in the witness-management process may be doing a reasonably good job, all too often there is a little slippage first at one point and then at another, with the end result being that serious slippage occurs and no one knows exactly how or where it happened. It is the exception rather than the rule that someone at the management level is monitoring the entire witness-handling process, checking for bottlenecks and resolving problems—in fact, there may be no one person who has a detailed overall knowledge of what is being done or is supposed to be done.

This situation, plus the fact that each of the or-

ganizational units involved has developed its procedures largely independent of the others, may dictate the need for a comprehensive study and an overhaul of witness management.

## Centralizing Witness Notification

Consider establishing a central witness contact or liaison unit with its own special telephone number to provide information to witnesses, to counsel or assist them regarding their problems, and to coordinate such witness activities as the negotiation of continuances and issuance of subpoenas and other notifications. (Appendix B indicates how the prosecutor's office in Washington, D.C. operates its Witness Notification Unit.)

Breakdowns in communications between the prosecutor and the witness—such as lapses in procedures for notifying witnesses of dates, times, and locations of appearance—are often major weaknesses in the administrative process. In offices where cases are processed on a mass-production, assembly-line basis, these problems are usually rampant. Even where cases are assigned to individual attorneys, witness-management problems frequently arise.

Witnesses may be at a loss to know where to call and whom to ask for if they are not able to appear on the scheduled date, need information, or are confronted with other problems. A call to the court would normally result in referral to the prosecutor's office, where a delay is encountered in obtaining the name of the assistant prosecutor in charge of the case. Finally, a call to the prosecutor may result in nothing more than a busy signal or a response that he is not in the office but will return the call, which, of course, may occur too late to help the witness or at a time when the witness is no longer at the same number he telephoned from.

In those offices where cases are processed on an assembly-line basis, no one individual may have all the facts necessary to help the witness and no one person may be specifically responsible for making certain that all necessary action is taken.

Breakdowns in procedures may result in failure to issue a subpoena; tardy issuance; error in address, appearance date, time, or location; or issuance of two or more subpoenas with conflicting dates, without any explanation as to which is the correct one. Further, the wording of the subpoena currently in use may not be clearly understood, or the

subpoena may not include the name of the office and telephone number to call for information or assistance. Many of these problems may occur in connection with the initial appearance of the witness but are much more likely to arise as the case proceeds down the road with changes in trial dates, case reassignment, and other complications.

The resolution of these problems need not be thrust upon attorneys, whose main efforts must be directed toward the legal aspects of case preparation and court appearances. Consequently, the suggestion is offered that a central witness notification or liaison unit be established, staffed by paralegals. Witnesses, prosecuting attorneys, defense counsel, and the court could look to this unit for information, assistance, and follow-through.

For example, when a lay witness, law enforcement officer, defense counsel, or assistant prosecutor wants a change in trial date, the witness notification unit could contact all parties involved, including the court, negotiate a mutually acceptable date, notify all parties of the new date, take any other needed administrative actions, and complete the necessary paperwork. The channeling of all requests for continuances through the unit and the careful reviewing of the requests would provide the prosecutor with a more reliable means for exercising control over abuses and assure greater consistency in the handling of these matters.

Other responsibilities that personnel assigned to this unit might perform include manning the initial receiving and check-in point for witnesses where "You, The Witness" (appendix A) and witness appearance cards (figure 3-1) could be distributed; reconciling differences between the court calendar and the prosecutor's records in connection with case scheduling; following up or confirming subpoenas; paying witness fees and certifying appearances; notifying witnesses when a case is dropped and the reasons therefor; arranging for transportation; and mailing letters of appreciation and witness-feedback questionnaires (see appendix C)

A witness notification unit could also maintain a central cross-indexed file of names and addresses of witnesses, of police officers in charge of cases, of case numbers, etc., to facilitate immediate response to inquiries of officers wanting to know, for example, the names of witnesses, and vice versa. (The file might be produced as a byproduct of an existing computer system, or of an automated sub-

poena preparation system, or of an on-line computer terminal.<sup>a</sup> (See appendix B.)

For the witness notification unit to operate effectively, it should be manned by permanently assigned, highly trained personnel; placed under the direct supervision of a key prosecutor, chief clerk, or paralegal; and monitored continuously. Attention should be given to developing special procedures and forms, such as those covering subpoenas returned by the United States Postal Service as undeliverable (discussed later). Careful consideration should be given to the reference materials and other aids needed by the unit, including a city directory (if available); court calendars; special indexes; teletype, facsimile transmission, or other special communications equipment; and on-line computer terminals for obtaining data about witnesses, court dates, etc., and possibly for on-line updating of the computer data base.

### **Promptly Notifying Witnesses of Dropped Cases**

In every prosecutor's office, there are certain situations when attorneys know well in advance of the next scheduled court date that the case will be dropped. Yet, particularly in assembly-line prosecutory systems, the case remains in limbo until that date and only then is the witness excused, after having reported to the court. Procedures should be developed so that, immediately upon finding that a case will be dropped, the prosecutor's office notifies witnesses that they will not have to appear.

In those situations where the next event is based on the outcome of a certain action—such as completion of a pretrial diversion program or receipt of results of a test or report—the prosecutor, when negotiating the date of the next court event,

<sup>a</sup> Such an index is essential to effective communications with witnesses and should be developed regardless of whether a special witness unit is established. Although a manual index file can be used for this purpose, the usually preferable and more efficient procedure in the long run is to prepare and maintain the data base in machineable form (computer tape, punched cards, etc.) so that multiple copies can be automatically reproduced for distribution to key points. In those offices that have a computerized information system such as PROMIS (Prosecutor's Management Information System), the index can be produced and printed by a computer, or direct queries can be made by means of a computer remote terminal, as illustrated by figure C-3 in appendix C. (A multipart PROMIS Briefing Series is available for those wishing an overview of key facets of PROMIS. Write to Institute for Law and Social Research, 1125 15th St., N.W., Washington, D.C. 20005).

should request a date that is approximately one week or so subsequent to the outcome of the pending action. For example, if the completion date for a pretrial diversion program or the results of a fingerprint examination will not be known until the 15th of the month, then the court date should be the 22nd. The prosecutor would then establish an internal "case review date" of the 15th of the month, at which time the outcome of the pending action would be known, and the witnesses notified if the case is not going forward.

The monitoring of such cases, as well as notifying witnesses, could be handled by a witness notification unit in order to relieve attorneys of this administrative task. The development of standardized procedures and forms would help assure proper controls over, and timely action by, the unit.

### **Surveying and Analyzing Notification Procedures**

Periodically, the adequacy and results of subpoena and other witness notification procedures should be surveyed and analyzed. Additionally, giving particular attention to cases that have been continued, the prosecutor's office should investigate the reasons for witness no-shows.

Consider use of a form similar to that in figure 3-2 for gathering statistics on returned mail and for indicating corrective action. When one recalls that the study (summarized in Part I) found that faulty communications with witnesses contributed to the "noncooperation" problem, the matter of returned mail takes on particular significance and is one that must receive special attention. Surveying such mail need not be continuous. Rather, it could be conducted on a sampling basis. This should be sufficient to gauge the extent of out-of-line situations and to determine appropriate remedial action.

One procedure by which to diagnose or remedy the underlying causes of returned mail is the following:

1. Check name and address on envelope against information on record to determine possible error.
2. Try to obtain the witness' address or telephone number from his or her employer.
3. Check other sources, such as the telephone directory or city directory, for a better address; also, explore the possibility of using such records as those maintained by other local governmental units or by utility companies.

**U.S. Attorney for the District of Columbia  
 Superior Court Division  
 WITNESS APPEARANCE CARD**

WITNESS NAME

DEFENDANT'S NAME

COURT CASE NUMBER

ARREST DATE

POLICE OFFICER'S NAME

**Reimbursable Court Appearances**

DATE OF COURT APPEARANCE	REASON FOR APPEARANCE	SIGNATURE OF ASSISTANT U.S. ATTORNEY	NEXT SCHEDULED APPEARANCE

Keep this card with you at all times. It is a record of your court appearances in this case. You will be notified as to the date of your first appearance. After each court appearance, write on this card the day of your next appearance. If you have any questions concerning your court appearances in this case, call the U.S. Attorney's Office for the District of Columbia at 426-7626.

You will receive \$20.00 for each authorized court appearance; but payment is not made until the final disposition of the case.

USA 16-233 (Ed. 6-29-72)

**Figure 3-1. Witness Appearance Card**

## REPORT OF RETURNED MAIL

1. Court Case No.	2. Last Name of Defendant	3. Last Name of Addressee
4. Appearance Date	5. Date Mail Sent	6. Date Mail Returned

## 7. REASON UNDELIVERABLE (Check any which apply)

<input type="checkbox"/>	a. Not at this address	<input type="checkbox"/>	f. Address is a construction Site
<input type="checkbox"/>	b. Moved - no forwarding address	<input type="checkbox"/>	g. Address is a street corner only
<input type="checkbox"/>	c. No such address	<input type="checkbox"/>	h. Address inadequate-no street number
<input type="checkbox"/>	d. Building vacant	<input type="checkbox"/>	i. Address inadequate-section not shown
<input type="checkbox"/>	e. Address is a vacant lot	<input type="checkbox"/>	j. Other (specify)

## 8. ACTION TAKEN

<input type="checkbox"/>	9. Error found in address through check of record, item remailed and address changed in records. Type of error:			
<input type="checkbox"/>	a. Wrong Section of City	<input type="checkbox"/>	b. Wrong Street	
<input type="checkbox"/>	<input type="checkbox"/>	c. Wrong Street Number	<input type="checkbox"/>	d. Other
<input type="checkbox"/>	10. Addressee contacted by telephone and correct address entered in records	<input type="checkbox"/>	11. Mail referred to MPD for appropriate action	
BY:		ORG:	DATE:	

Figure 3-2. Report of Returned Mail

4. Contact directly, or through their department, enforcement officers assigned to the case for assistance in locating and notifying the witness when other efforts have failed. (If the prosecutor's office includes an investigation unit, it might provide this assistance.)

If a special witness notification unit of the type described earlier is established, the above tasks should be performed by it. Depending upon the situation and resources available, the local prosecutor will undoubtedly develop additional techniques to remedy witness notification problems, such as possible use of a teletype terminal permitting direct communication with law enforcement units.

### Issuing "On-call" Subpoenas

Regarding the administrative aspects of case processing, one of the most frequently reported complaints of witnesses is the long wait between the time they are requested to report to the courthouse and when the case is actually called. Though this condition can never be eliminated altogether, the use of "on-call" (standby) subpoenas in certain

situations could reduce the number of witnesses who are requested to report at the beginning of the day, only to wait for hours until they are called to the witness stand.

In one jurisdiction, the local Board of Trade has completed arrangements with the court for employees of its member firms to remain at their jobs until their cases are about to come up, at which time a Board of Trade employee stationed at the court telephones the employees, who immediately come to court in a taxicab. This arrangement was worked out at the request of the Board of Trade, since it is less costly for employers to pay the salary of their court representative and taxicab fares than to have their employees off the job for a long period.

The same conclusion might also hold true for the employee-witnesses of local governmental units. Since their salaries and those of court and prosecutor's office employees often come from the same source, the concept of standby subpoenas for government workers may be worth exploring.

If a substantial portion of the witnesses could be brought to the courtroom via the on-call proce-

sure, perhaps the local court would be willing to give priority each day to those cases where the use of on-call subpoenas is not possible or practical. The witnesses associated with such cases would be requested to report at the beginning of the day. In this way, the waiting time for all witnesses could be reduced.<sup>b</sup>

### **Evaluating the Feasibility of Improving Witness Services**

As with complaints about long waits at the courthouse, another frequently reported irritant to witnesses is the paucity of witness services, such as the lack of transportation or reimbursement for the related costs, the absence of witness lounges or other facilities at the courthouse, the dearth of signs in the corridors, and the failure to provide maps indicating how to get to the courthouse and, once there, how to locate the witness lounge, cafeterias in the area, etc.

Of course, a careful survey should be conducted to identify the most important witness needs.

Some jurisdictions pay local witnesses a mileage or other allowance for transportation in lieu of providing the transportation itself, and reimburse out-of-state witnesses for travel, food, and lodging costs. A particular effort should be made to arrange for the transportation of special witnesses, such as those involved in important cases, the sickly or recalcitrant, the elderly, children, and witnesses requiring protection. Automobiles equipped with two-way radios would be ideal for this purpose.

Particular attention should be given to keeping the witness lounge clean, orderly, and comfortable. If possible, suitable reading materials, even a television set, could be provided. If films dealing with the role of the witness in the criminal justice system are available, they might be shown. Most important, however, is that the witnesses be given personal attention by having someone visit the lounge periodically to ensure that all the persons present actually belong there and to inform them of the progress being made in the court. Also, arrange for a brief orientation ("pep talk") about the importance of the witnesses' attendance, the prosecutor's appreciation of their willingness to help ensure that justice is done, and their role as a

<sup>b</sup> For a brief account of how the on-call or telephone alert system operates in one jurisdiction see, M. T. Bloom, "The Witness: Forgotten Man," *Reader's Digest*, November 1974, p. 24.

witness. It may be possible to enlist volunteers from local bar associations or law schools to provide this personal attention.

### **Special Attention to Witnesses in Career-criminal Cases**

In his September 24, 1974 address to the annual convention of the International Association of Chiefs of Police, President Ford announced the launching of the Career Criminal Impact Program. Designed to target and track professional criminals, the program also entails assigning priority to cases of persons who habitually commit serious crimes and processing their cases expeditiously.

As the President noted, "There is also need for greater citizens' cooperation, particularly as ready and willing witnesses... What can be done? First of all, we go back to good management... Better scheduling, better notification of witnesses, and fewer continuances will serve to cut down the terribly frustrating waste of the witness' time."

Consistent with the high priority of career-criminal cases, prosecutors may wish to consider establishing a major violators unit staffed by senior attorneys who would, in effect, extract such cases from routine assembly-line processing and give them *and* the associated witnesses special attention. Personal service of subpoenas and closer monitoring of witnesses are among the measures to be considered.<sup>c</sup>

### **Bolstering Witness Management Through Paralegals**

Consider the use of paralegals to assist in interviewing witnesses, obtaining statements, coordinating witness conferences, staffing a witness notification unit, coordinating requests for continuances, answering inquiries, monitoring cases for witness problems, supervising issuance and processing of subpoenas, conducting interviews and screening citizens' complaints, and performing other administrative duties not requiring the personal attention of an attorney but exceeding the normal skills and responsibilities of clerical personnel.

While the major role of paralegals is to provide professional support to the legal staff, their most important function is improving witness coopera-

<sup>c</sup> The operation of the Major Violators Unit in Washington's prosecutor's office is the subject of one publication in the Briefing Series alluded to at the end of footnote a.

tion through increasing the attention and services accorded witness matters. Prosecutors can thus direct their energies more toward the legal aspects of the case, confident that due attention is being given the administrative details of witness handling, and that they will be alerted if any problems appear imminent. In establishing a paralegal program, one should take special precautions to ensure that the paralegals are not assigned, or allowed to assume, routine duties normally performed by clerical or secretarial personnel; however, certain higher level responsibilities now being performed by the latter two groups would be reassigned to paralegals.

These observations lead to the conclusion that the only proper way to establish a paralegal program is first to identify and analyze the tasks performed by attorney, clerical, and secretarial personnel, and then to decide which jobs, plus any new functions, ought to be assigned to paralegals. In all likelihood, this will result in numerous changes in organizational structure, physical layout, work flow, procedures, and forms.

Ideally, special guidelines should be prepared for each type of paralegal position. These guidelines should include a general description of the paralegal's role, responsibilities, and overall duties; a list of the specific steps to be performed in processing each case as it passes across the paralegal's desk; a checklist of the periodic reviews and actions to be taken in connection with the monitoring of cases; instructions about what the paralegal is *not* to do, particularly those duties that must be performed by an attorney; a brief description of the special problems that are likely to be encountered and what to do about each; and a list of the reference materials the paralegal should become familiar with and refer to for technical guidance. Attorneys should be furnished a copy of these guidelines.

Although there are a number of universities and other institutions that offer courses for paralegals, most of the training will, by necessity, have to be conducted by the prosecutor's office. Individuals who have completed a year or more of law school often make good candidates; however, this should not be considered a prerequisite. The key criteria in choosing personnel for those positions should be general aptitude for paralegal type of work, industriousness, job interest, alertness, education, general intelligence, resourcefulness, personality, attitude, and ability to get along well with others.

## **Witness-oriented Training for Prosecutors**

Of course, formal training sessions for prosecutors themselves regarding various facets of witness management should be carefully considered. For example, such techniques as mock interviews of witnesses and critiquing of actual interviews should be employed.

The matter of developing and conducting the training should be delegated to personnel with special skills in both the technical aspects of the material to be covered and in training methods and techniques. The sessions should be made a regular part of the training program for new attorneys and of the refresher courses for experienced attorneys.

## **Counseling Reluctant Witnesses**

At case screening and intake, and throughout the trial, attorneys and others in contact with witnesses should be on the alert for situations where the witness indicates a reluctance to serve. If the prosecutor's representative on the scene is not successful in changing the witness' attitude, perhaps someone else, with special skills in the area of "persuasive counseling," could discuss the matter with the witness.

Such counseling may entail underscoring why witnesses are important in general and why the person exhibiting reluctance, in particular, is critical to the case at hand. Or the task of the counselor may be to unearth the underlying cause of the witness' reluctance. Perhaps the witness had been threatened, is frustrated by court delays, or is uneasy about the time he is spending away from his job. Frequently, the counselor will be able to alleviate such problems and, in so doing, prevent irreparable harm to the prosecutor's case.

## **Avoiding Overly Subjective Decisions About Uncooperative Behavior**

Prosecutors have been observed to reject cases not because of *perceived* witness noncooperation in those cases but *in anticipation* of noncooperation. For example, observations of prosecutor's practices during case screening indicate that attorneys occasionally make judgments about the likelihood of continued cooperation by those witnesses related to, or otherwise acquainted with, the defendant. There is a tendency for prosecutors, based on prior experience, to predict that those witnesses will be-



come noncooperators notwithstanding the witnesses' current behavior to the contrary<sup>d</sup>

For instance, a widow in her late fifties wanted to press charges against her son for burglary. The boy, who was 19, had been thrown out of the mother's home because he continually stole money from her. Since being thrown out, he had burglarized her apartment three times and had taken and sold items for his own pocket money. She insisted this had to stop and wanted him "sent away."

The prosecutor rejected the case on the basis that, at a later time such as at trial, the mother would surely not want to send her son to prison and would, at that time, become a noncooperator. The reason given for the rejection of the case was "witness is not consistent in her story."

In some instances the prosecutor's predictions of future noncooperation would undoubtedly prove accurate. But in other cases, witnesses might well persevere and be instrumental in securing convictions.

To help minimize the chances of mislabeling truly cooperative witnesses as noncooperators, a brief manual could be prepared outlining those types of witness behavior, etc., that constitute noncooperation. Such relatively objective bench marks could improve prosecutors' decision making in this regard and enable the chief prosecutor to monitor his assistants' adherence to the guidelines.

One such bench mark might require prosecutors to engage in a procedure that is the reverse of the aforementioned "persuasive counseling" when a case involves a witness who is related to, or otherwise acquainted with, the defendant. The prosecutor might be directed to test the witness' resolve by highlighting the upcoming prosecutory procedures, the possible sentence if the defendant is found guilty, and the various difficulties that defendants often must face as ex-offenders. Furthermore, for certain types of crimes the prosecutor could be directed to encourage complaining witnesses to seek a noncriminal resolution of the case through such means as described in the next section.

If, after all this, the witness still wishes to press criminal charges against the relative or acquaintance, the prosecutor could be instructed to regard the witness as cooperative and not to reject the case because of the prosecutor's feeling that the

witness will never follow through and will "forgive and forget" shortly before trial.

## **Providing a Noncriminal Procedure for Resolving Certain Cases**

Consider establishing, as a service to the local community, a Citizens Complaint Unit for conducting initial interviews and screening complaints of citizens who have encountered difficulties involving possible legal sanctions but possess little knowledge of the noncriminal remedial or mediatory means to solve their problems. (Such a unit also serves as intermediary in instances where, for one reason or another, the citizen is reluctant to approach the police about his complaint.)

In many neighborhood and intrafamily disputes, for example, the complainant is frequently the person who wins the race to the police station or prosecutor's office. Resolution of the dispute through arrest and formal prosecution may be unsatisfactory and a waste of scarce prosecutive and court resources.

As operated by the prosecutor's office in Washington, D.C., attorneys manning the Citizens Complaint Center may refer parties involved in intrafamily offenses to various noncriminal agencies for resolution. (See appendix D for more details.) Figures 3-3 and 3-4 are examples of the case-screening and hearing report forms utilized. Screening and interviewing are performed by paralegals, while the attorneys' services are limited to conducting hearings and initiating legal action, if necessary.

The Night Prosecutor Program in Columbus, Ohio, has similar objectives:

1. To reduce the workload of law enforcement and judicial officers by handling citizen complaints through an administrative rather than criminal process
2. To ease interpersonal tensions without resorting to a formal judicial remedy
3. To avoid the occurrence and potentially damaging consequences of an arrest record resulting from minor criminal conduct<sup>e</sup>

To the extent such programs are successful, certain types of complaining witnesses are diverted from the criminal justice system. This frees prosecutory time and energy to devote to the manage-

<sup>e</sup> For more details about this program, which LEAA has designated as an Exemplary Project, see National Institute of Law Enforcement and Criminal Justice, *Citizen Dispute Settlement* (Washington: U.S. Government Printing Office, 1974).

<sup>d</sup> This was a finding of the study summarized in Part I.

ment of those witnesses for whom the criminal justice process is an appropriate avenue for redress.

Prosecutors should be able to enlist the assistance and support of others in such efforts. Local social or welfare agencies may be willing to participate by providing space and personnel, since the work is closely akin to that performed by their offices. Nearby universities may find it beneficial to assign students to serve in the citizens complaint unit as a part of an intern program. These and other possible sources of manpower and funds should be explored.

### **Maintaining Statistics on Witness Noncooperation**

Evaluate the feasibility of recording and maintaining, for analytical purposes, statistics on victim refusals to prosecute and witness-related case rejections. Ideally, the data should be maintained in machineable form; that is, on computer tapes, punched cards, or similar media to afford easy manipulation. If a computer-based information system, such as PROMIS, is in use, the statistics can be compiled and prepared by the computer. At a minimum, the following data should be included: relationships between victims, other witnesses, and defendants; number of witnesses; and charges.

These data should be analyzed regularly, preferably displayed in chart format, and used as an early warning system for measuring any deterioration in witness attitudes and perceptions, as well as for determining the success of steps taken to improve witness cooperation. If a witness questionnaire is used (see the following section and appendix C), replies of respondents should be studied in conjunction with the statistics.

### **Obtaining Feedback from Witnesses**

Following the close of each case, including those rejected and dismissed, each witness should receive a letter of appreciation for his cooperation and some, at least, a questionnaire of the type illustrated in appendix C.<sup>f</sup>

Possibly the only time the witness is fully satisfied is when the defendant is convicted; however, it is equally important to thank those who were willing to serve but were not required to do so.

<sup>f</sup> The questionnaire is based on one developed by James L. Brandenburg, District Attorney, the Second Judicial District, Albuquerque, New Mexico. That office reports excellent responses.

Particularly in the larger jurisdictions employing assembly-line methods, expression of the prosecutor's appreciation is likely to be a brief, routine acknowledgement at best.

Special form letters, preferably written in an informal conversational style, should be sent immediately following the close of the case. If possible, the letters should be prepared by an automatic typewriter or computer, and, in any event, should be individually signed. The letter can also serve as the transmittal for the questionnaire, in which case a self-addressed, stamped return envelope should also be enclosed.

The completed questionnaires should be screened for those that are critical of the way the case was handled and other complaints. Also, those that are particularly complimentary should be selected and both types referred to the chief prosecutor for review. Periodic tabulations of the responses and preparation of charts should also prove helpful in developing and conducting training courses.

### **Obtaining Witnesses' Detailed Statements Promptly**

Applicable to securing maximum cooperation from the witness when first interviewed by prosecutors about the alleged crime, some opinion holds that forgetfulness by witnesses becomes a significant impediment when they are interviewed more than three months after the occurrence of the criminal incident.<sup>g</sup>

Among the explanations for such forgetfulness are two phenomena cited by psychologists and sociologists: First, there seems to be a general psychological tendency to forget and repress negative and threatening experiences, and to recall—faster and more fully—pleasant and positive ones. Assuming that witnessing a crime is an unpleasant experience, these findings could explain why some witnesses, if given sufficient time, “repress” at least a few of the important details of the crime or relate a fuzzy account to prosecutors, who may misinterpret such testimony as evidence of noncooperation.

Second, the wording of questions about an event, and the concreteness of terms and descriptions used,

<sup>g</sup> This forgetfulness may also apply to obtaining the witness feedback described in the previous section. Roger Hood and Richard Sparks, “Citizens' Attitudes and Police Practice in Reporting Offenses,” *Victimology*, ed. by Israel Drapkin and Emilio Viano (Lexington, Mass.: Lexington Books, D.C. Heath and Company, 1974), p. 170.

# REPORT OF CITIZEN'S COMPLAINT

**POTENTIAL DEFENDANT**

United States Attorney's Office, Superior Court Division

Last, First, and Middle Name (Print)		Sex	Date of Birth, or Age
Home Address (Include Zip Code)		Phone No.	
Work Address (Include Zip Code)		Phone No.	
Other Possible Contact Point		Phone No.	
Any previous Complaint about this person? <input type="checkbox"/> Yes <input type="checkbox"/> No or Unk <small>[ If YES, give date and attach copy of report ]</small>		Has this Person also been a Complainant? <input type="checkbox"/> Yes <input type="checkbox"/> No or Unk <small>[ If "YES" give date and attach copy of report ]</small>	
Does Potential Defendant have an Arrest Record? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown			
If "YES", complete the following:			
PDID Number	Date(s)	Charge(s)	

**COMPLAINANT**

Last, First, and Middle Name (Print)		Sex	Date of Birth
Home Address (Include Zip Code)		Phone No.	
Work Address (Include Zip Code)		Phone No.	
RELATIONSHIP OF COMPLAINANT TO POTENTIAL DEFENDANT <input type="checkbox"/> Spouse (including common law) <input type="checkbox"/> Ex-Spouse <input type="checkbox"/> Friend <input type="checkbox"/> Employer or Employee <input type="checkbox"/> Child <input type="checkbox"/> Co-habiting <input type="checkbox"/> Acquaintance <input type="checkbox"/> Stranger <input type="checkbox"/> Other Family <input type="checkbox"/> Girl or Boy Friend <input type="checkbox"/> Neighbor <input type="checkbox"/> Other (Specify):			Has this Person also been a Defendant? <input type="checkbox"/> YES (If yes give date & attach copy of report) <input type="checkbox"/> No or Unk

**OFFENSE**

Type of Offense	Date	Time	Location
Remarks (Have Police been contacted?    Y    N    If yes list name, date, time and district)			
Interviewed By	Date	Time	

**DISPOSITION**

SET HEARING	<input type="checkbox"/>	AUSA	DATE ASSIGNED	TYPE OF NOTICE
HEARINGS SET FOR	1st	TIME	DATE OF HEARING	DATE LETTER SENT
	2nd	TIME	DATE OF HEARING	DATE LETTER SENT
	3rd	TIME	DATE OF HEARING	DATE LETTER SENT
<input type="checkbox"/> ISSUE WARRANT	CHARGE (attach copy of warrant)			
<input type="checkbox"/> REFER TO	<input type="checkbox"/> Social Services <input type="checkbox"/> Small Claims Court	<input type="checkbox"/> Neighborhood Legal Service <input type="checkbox"/> Citizens Info. Service	<input type="checkbox"/> Other (Specify)	
<input type="checkbox"/> OTHER DISPOSITION (Explain)				
REMARKS:				
AUSA		DATE	DATE REFERRED TO CORPORATION COUNSEL	

.USA T-4(Ed 3-1-73)

Figure 3-3. Report of Citizen's Complaint



can either block or facilitate remembering that event. This may be particularly true for witnesses where the gap between the crime and the interview with prosecutor is wide. In such cases, prosecutors might not obtain satisfactory information unless they possess enough concrete details of the criminal event by which to jog the witness' memory.

Thus, to maximize the potential of cooperative witnesses, the common sense notion of "get to them quickly" seems to be reinforced by researchers' findings.

### **General Orientation for the Public**

In some jurisdictions, wallet-sized cards have been distributed containing information and guidance about what a person should do if he or she is a victim of, or other type of witness to, a crime. Communicating the same message, posters may be prepared for display in such public locations as transportation depots, mass transit vehicles, and pay telephone booths. Spot announcements could be developed for television and radio. A request to the telephone company might result in the information being included in the telephone directory. Among the points that the public should be alerted to are the following:

1. How to behave (stay calm and cool, be alert and observant, and, when the situation permits, take notes)
2. How and where to report the crime—if a victim, if a witness
3. Where the Crime Victims Service Center, if any, is located

One way to launch such a project is to enlist the cooperation of community leaders. Local advertising agencies may also be willing to assist by donating services or materials at cost.

Realistically, however, this type of effort should not be initiated until police/prosecutor witness-management procedures have been upgraded to a point where witnesses are treated in a professional, competent manner—that is, accorded the type of attention consistent with their critical role in the prosecutory process.

### **Notes**

1. From an editorial in the *San Francisco Examiner*. Cited in Murray Teigh Bloom, "The Witness: Forgotten Man," *Reader's Digest*, November 1974, p. 24.

# APPENDIX A. YOU, THE WITNESS

INFORMATION ABOUT YOUR ROLE AS A WITNESS,  
WHAT WILL BE EXPECTED OF YOU,  
AND A DESCRIPTION OF THE CRIMINAL JUSTICE PROCESS

Prepared as a Public Service By:  
(Name and title of  
prosecutor to be  
placed here)

IMPORTANT NAMES, ADDRESSES, AND TELEPHONE NUMBERS

INFORMATION TO BE FILLED IN BY THE WITNESS FOR OWN USE

Witness' Name \_\_\_\_\_ Date \_\_\_\_\_

Case No. \_\_\_\_\_ Accused's Name \_\_\_\_\_

Assistant Prosecuting Attorneys and Others Concerned with This Case:

Name and Title	Building and Room Number	Telephone No.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTES:

## Contents

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Glossary

This booklet will try to answer some of the questions you may have about being a witness and explain the general procedures to you. These procedures may seem confusing and complicated, but without you, the witness, and your cooperation, the police and courts cannot apprehend or convict criminals.

Criminal cases simply cannot be prosecuted unless witnesses come forward to testify. If you think it is important to reduce crime, then you will realize that you must also help. You have become a part of the system of justice. Unless you do your part, justice cannot be done.

(If there are any unfamiliar words or terms in this booklet, please see the "Glossary" at the back.)

## Why You?

You are a witness because you have seen, heard, or know something about a crime that has been committed. If you are the victim, or the owner of property stolen, damaged, or misused in the commission of a crime, you are a complaining witness; *the case cannot be prosecuted unless you press charges* and cooperate by appearing to testify. Otherwise, you may be an eyewitness, or other essential witness, and your testimony is necessary to establish the facts in the case.

You may not think that what you know about the case is very significant, but it may turn out to be highly important. Many small pieces of information are often required to determine what really happened.

## **You and the Accused**

Understandably, you might feel a bit hesitant about testifying in court. It would be far easier and less painful, possibly, not to—but then the accused might go unpunished and continue to commit criminal acts. Consequently, you could actually be doing the accused a favor by testifying, since it may discourage him from becoming a habitual criminal. Even though he or she may not eventually be convicted, or you feel the sentence was too light, your willingness to testify will have helped bring the defendant to court, an event that at the best is unpleasant and, to many, quite fearsome.

Further, there should be no reason for you to be afraid to testify. Interference with a witness by threats or acts of revenge is a serious crime in itself and a matter to which the police, the prosecutors, and the court will give particular attention and will do their utmost to prevent.

If you have any fears, or if you or your family are in any way threatened, immediately call the police or this office.

You may be asked by the defense attorney to talk to him about the case, but you have a right to refuse to talk to him if you do not want to. The defense attorney is permitted to talk to you, however, and is not doing anything wrong if he calls or asks for an appointment to speak with you. If you talk to the defense attorney, and he or she takes some kind of a written statement from you, be sure that you get a copy of that statement for yourself. If you are asked to sign anything, be sure that you read it first and also obtain a copy for yourself.

If you desire further information about this matter, do not hesitate to contact the police officer in charge of the case, or an attorney from this office, who, if requested by you, can be present during the talk with the defense attorney.

The court, in most cases, is required by law to release the defendant (accused) while he or she is awaiting trial. Defendants may be released on personal recognizance, on money bond, or on other conditions, depending on what the court decides is appropriate. Therefore, do not be surprised if you see the defendant back on the street within a day or two after his arrest.

## **Keep Track of Court Dates, Take Notes, and Ask Questions**

If, at any time throughout the progress of this case you do not understand what is happening or why, or what happens next, *ask questions*. Make a phone call. Pester someone. *You are important to the system and you have a right to know how it works.*

*Make sure that the names and telephone numbers of people you may want to call and other things you need to remember are noted on the inside front page of this booklet.*

You will receive a written notice (subpoena) containing instructions about the date, time, and place to appear as a witness. Or, in some instances, you may be personally informed by a police officer or representative of this office. *It is your duty to respond to all such instructions to appear in court.* Again, if you have any questions in this matter, please contact the police officer in charge of the case, or this office.



## **What Will It be Like to be a Witness?**

Since a defendant does not have to prove his innocence and cannot be made to testify against himself, the prosecution must prove he is guilty from other evidence. If you are a prosecution witness, the defendant's attorney may try to convince the court that you are wrong, or that your testimony cannot be believed—that you are lying or have not remembered facts correctly. This process is called "impeaching the witness." If your testimony is important, the defense attorney may try to impeach you, to show that your evidence cannot be valid. Even though you are not the one on trial, you may sometimes feel that way.

Further, you may arrive at court for trial only to be told that the trial has been continued—that is, postponed—to another date, or that the case is being dismissed. You will be notified in advance, whenever possible, that it will not be necessary for you to appear as scheduled, due to one of these reasons. Unfortunately, however, these things sometimes occur too late to get the word to you in time. *Therefore, the day before your scheduled court appearance you are urged to call the appropriate office noted on the inside front page of this booklet.*

The defense may sometimes request continuances in order to wear out the witness, so that you and the prosecution will get tired and give up. The court tries to keep continuances to a minimum but must grant legitimate requests for postponements. You can help in the matter of setting trial dates and continuances by telling the police officer in charge of the case, and the appropriate individual in this office, of any dates when it will be impossible for you to come to court.

Aside from continuances, you will probably find that the experience of being a witness involves a great deal of sitting and waiting. The court has extremely difficult scheduling problems, mostly because no one can tell in advance just how long each case will last. Special attention is being given to this problem, including the use of modern electronic computers and communications equipment. In the meanwhile, we can only ask that you bear with us.

In order to help pass the time, you may bring along reading material or something you can work on while waiting.

## **Your Rights as a Witness**

### *The Right to Avoid Self-incrimination*

You have the right not to testify if your testimony will incriminate you—that is, if it will show that you have been involved in a crime for which you may be prosecuted. However, in order to assert this right, you must appear in response to any subpoenas demanding your presence at court, where you will have to make a formal statement concerning your intention to remain silent. You cannot remain silent just because your testimony will reveal something you are ashamed of, or because it concerns a friend, or because you do not want to get involved.

### *The Husband-Wife Testimonial Privilege*

You have the right not to testify about your husband or your wife.

## *The Right to Counsel*

You have the right to consult with your own attorney about your testimony and may ask to have your lawyer present while being questioned, except during grand jury proceedings. If the rare occasion should arise where the court holds you as a *material witness* (because you are essential to the case and because you might fail to appear for whatever reason), you have the right to be provided with an attorney. Your attorney will then represent you at a hearing, where the court will determine whether it is necessary to detain you.

## **The Criminal Justice Process**

### *Apprehension and Arrest of the Accused*

The criminal justice process starts with the commission of a crime. There are three basic routes a case can take in order to be brought to court: (1) arrest of the accused at the scene of the crime; (2) arrest based on a warrant issued by the court in response to a sworn complaint; (3) arrest based on indictment by a grand jury as the result of its investigation. In all three instances, the evidence available must be sufficient to later convince the court that there is "probable cause" to believe that a crime was committed and that the person to be charged possibly took part in committing the crime.

### *Case Review and Filing of Charges by the Prosecutor*

Following the arrest of the accused by the police, the case is presented to the prosecutor. The prosecutor, as the people's representative in our system of criminal justice, has the sole responsibility for determining whether or not charges will be filed with the court. This initial processing of the case by the prosecutor is often referred to as case screening, intake, charging, or filing. After reviewing the evidence in the case, discussing the case with the police, and interviewing witnesses, if any, the prosecutor decides whether to do one or more of the following: (1) charge the accused with the same charge or charges made by the police or used in issuing the arrest warrant; (2) in connection with any given charge, increase it to a more serious charge, reduce it to a less serious charge, or drop the charge. The prosecutor also has the authority to add new charges.

The accused is frequently charged with more than one criminal offense, so the filing of charges with the court can be a complex legal procedure. The prosecutor must take into consideration not only all the applicable laws (statutes or codes) but also any of the pertinent precedent decisions of the higher local, state, and United States courts, including, of course, the Supreme Court.

If the prosecutor determines there is not sufficient evidence, or there is no legal basis for charging the accused with a crime, the case is closed and the accused released. Thus, the prosecutor's decision may be somewhat different from what you may have expected, particularly in instances where charges are reduced or dropped. In any event, the final decision is based on legal considerations rather than on personal opinions and choices.

## *Case Review and Trial by the Court*

In those instances where the prosecutor decides to prosecute the accused, the case is sent forward to the court. This initial step might be referred to as arraignment, presentment, preliminary hearing, preliminary examination, etc., depending upon the seriousness of the crime (whether a misdemeanor or felony), and the particular court system. It is at this point that the court conducts a technical examination of the case. If the court determines that there is a legal basis for conducting a trial, a date is set for the next court event, usually a trial or hearing. Generally, your first appearance in court as a witness will be at the trial.

Depending upon the size of the court, the case load, and local practices, the case may be assigned to a judge who will preside at each stage; if so, a single assistant prosecutor is usually assigned to the case too. Or, the cases may be assigned on a random basis each time they come up in court and, as a result, several judges and prosecutors may be involved in the case during the trial.

## **Noncourt Proceedings at Which Witness' Presence May be Required**

### *Lineup*

If you are a victim or an eyewitness and were not present when the defendant was arrested, you may be asked to attend a lineup at police headquarters to identify the defendant.

*At no time during the process will the defendant be able to see you, or hear you, or learn your name.* The room in which lineups are held is carefully constructed so that the defendants to be identified are in a soundproof area, usually behind one-way glass.

Before the lineup begins, police officers will explain what will happen and what you are expected to do. Be sure to ask questions about anything that bothers you or you do not understand.

If you cannot make the identification, no pressure will be put on you to do so. If you are not sure, the police officer may ask if one of the persons in the lineup resembles the person you are trying to identify. You should indicate if there is any resemblance and in what way you think the resemblance is there. If you want to hear one of the suspects speak or see one stand in profile, etc., all the suspects will be asked to do this.

### *Conferences and Hearings*

Particularly in serious crimes, you may be asked to come to the prosecutor's office for a conference or hearing. You will not be asked to attend unless your presence is urgently needed; therefore, it is important that you appear promptly, if requested.

## **What If Your Case Does Not Go to Trial?**

There are a number of reasons why a criminal case may be dismissed or dropped by the prosecution or the court before trial. None of the reasons

mean that you, the witness, are unimportant or unnecessary, or that your willingness to testify is not appreciated. Your *presence and willingness to testify may be the deciding factor* in determining what will be done in the case, particularly in getting the accused to plead guilty.

### *Pleas of Guilty*

The defendant in the case may decide to plead guilty. (The plea may only come at the last moment before trial, often because the defendant's attorney is hoping that you, the witness, will not show up, or that the case will be dropped for other reasons.)

### *Restitution*

The case may be dismissed by the court or the prosecutor if the defendant makes full restitution for property stolen or damaged. (This can be a satisfactory conclusion to the case for everyone involved.)

### *Other Dismissals*

The case may have to be dismissed because of some failure of the technical evidence, or because the defendant cannot be found or is considered incompetent to stand trial. This does not mean that anything was wrong with your testimony, however.

## **What If the Defendant Is Not Convicted?**

You may feel that justice has failed if the defendant is acquitted when you are certain he is guilty. But it is important to remember that our system of criminal justice calls for guilt beyond any reasonable doubt in order to convict someone in a criminal case. However strong the evidence seems to you, it may not be sufficient to remove all doubt from the minds of the judge or the jury. You would want that same protection for yourself if you were a defendant.

Whether a case is dismissed or the defendant acquitted, you should realize that with your help the court has done as much as it could. Even if an acquittal results, the court proceedings may sufficiently impress the defendant to deter him or her from committing future crimes.

### **Note to the Prosecutor**

In tailoring this booklet to local conditions, prosecutors may wish to add the following material:

1. A map or diagram of the immediate area where the court and prosecutor's offices are located, with key points identified and other appropriate information or instructions
2. Information on how to get to court via public transportation, along with a map or diagram

3. If fees are paid to a witness, or he or she is reimbursed for transportation or other costs, include the pertinent information, instructions, and a copy of any forms that must be submitted

## Glossary

*Arraignment:* Usually the following actions occur at this court event. The defendant is officially notified of the charges against him or her; the defendant is asked whether he or she pleads innocent or guilty, whether there will be a trial demand, either by jury or a trial by judge, if that is an option; and the terms of the defendant's pretrial release status are set.

*Bail:* Release on bond. The defendant may be released if he or she has put up money or a percentage of a sum of money required by the court as a guarantee that he or she will appear for trial.

*Complaint:* A document prepared by the prosecutor as a means for presenting the charges against the defendant to the court in certain types of cases (also see "Information").

*Contempt of Court:* This is an offense that can occur in one of two ways: (1) the show of disrespect or unacceptable behavior in the presence of the court, which can be punished immediately by the judge; or (2) outside the presence of the court, the failure to abide by an order of the court. In this case, a hearing will be held and unless the defendant can show cause why he or she should not be held in contempt, he or she will be sentenced.

*Continuance:* A postponement of a case for trial or hearing to a later date, which usually can be granted only by the court.

*Defendant:* A person (the accused) formally accused of a crime.

*Dismissal:* The dropping of a case at the request of the prosecutor or by the decision of the judge.

*Felony:* A serious crime, generally punishable by a severe penalty of more than one year. Examples of felonies are murder, robbery, burglary, kidnapping, rape, perjury, and obstruction of justice.

*Grand Jury:* A jury that hears evidence presented by the prosecutor to determine whether there is enough evidence to justify a formal criminal charge or "indictment."

*Motions Hearing:* A hearing before a judge at which the prosecutor and the defense attorney may submit motions, or formal requests, for orders or ruling by the judge. Such motions might have to do with evidence to be permitted at trial or for psychiatric examination of the accused. The judge decides whether to grant these motions. Witnesses are sometimes required at motions hearings.

*Ignoramus:* A Latin phrase meaning "we ignore," which is used by a grand jury when, instead of returning an indictment in a case, they ignore it and decide that the case should be dropped.

*Indictment:* A formal criminal charge made by a grand jury after hearing evidence presented by the prosecutor.

*Information:* A document prepared by the prosecutor as a means for presenting the charges against the defendant to the court in certain types of cases (also see "Complaint").

*Misdemeanor:* A less serious crime, generally one that is punishable by a fine or term of less than one year in prison. Examples are small thefts and unlawful entry (trespassing).

*Noile Prosequi*: A Latin phrase meaning "to be unwilling to prosecute." It is used in some jurisdictions when the prosecutor decides to drop charges and proceed no further in a case. (Also see "Dismissal.")

*Obstruction of Justice*: The use of force, or threat of force, to influence or intimidate a juror or witness. Obstruction of justice constitutes a felony.

*Parole*: The early release, under conditions of supervision, of a person who has been convicted of a crime, sentenced to prison, and has served some of that sentence.

*Perjury*: Deliberate lying under oath. Perjury is a felony punishable by a severe penalty.

*Personal Recognizance*: The method by which an arrested person is released on his or her word that he or she will return at the designated time and day.

*Petit or Petty Jury*: A jury that hears all the evidence presented by both prosecution and defense at a trial, comes to a decision concerning the facts, and presents a verdict of guilty or not guilty.

*Plea*: The defendant will be asked whether he or she wishes to admit guilt, or to deny it and go to trial on the charges. His or her answer is the plea, which may be either guilty or not guilty.

*Plea Bargaining*: A process in which the prosecutor, the defendant, and his or her attorney come to an agreement as to what charges the defendant is willing to admit guilt.

*Probable Cause*: A vague, but important, legal term referring to the amount of evidence necessary to convince someone (a reasonable person) that a crime has been committed, and that the person who is charged committed that crime.

*Probation*: The release under conditions of "good behavior" of a person convicted of a crime, as an alternative to imprisonment.

*Subpoena*: A written official summons to appear in court to give testimony under possible penalty of law for failure to appear.

*Subpoena Duces Tecum*: A subpoena that directs the witness to bring with him or her certain named documents or other evidence.

## APPENDIX B. THE WITNESS NOTIFICATION UNIT: A CASE STUDY

Research is disclosing that what the prosecutor perceives as witness noncooperation is often the product of a massive failure in communications between citizen (nonpolice) witnesses, on the one hand, and the police and prosecution on the other. Citizens may be unaware that they are considered as witnesses to a crime; they do not understand the significance of their role; they fail to receive effective communications about trial schedules. In short, "the system" obstructs witness cooperation in too many instances.

These and other witness-related problems are being attacked in Washington, D.C. by the Witness Notification Unit of the prosecutor's office.

Because of their sheer volume, misdemeanor and preliminary-stage felony cases would normally constitute the prime target for a Witness Notification Unit. At the prosecutor's office in Washington, D.C., the task of the Witness Notification Unit is greatly facilitated by PROMIS,<sup>a</sup> which automatically generates special preprinted subpoena forms advising witnesses when and where to appear for scheduled misdemeanor trials. The subpoenas, such as the one in figure C-1, are sent not only to citizen witnesses but also to arresting police officers, assisting officers, and expert witnesses.

PROMIS also automatically renotifies these witnesses when scheduled dates are changed or canceled. (If canceled due to a dismissal by the court, the prosecution, or the grand jury, the Witness Notification Unit will, according to future plans, notify each witness with a letter from the prosecutor's office expressing the government's appreciation for his or her willingness to testify.) Whenever a trial date is changed, a special PROMIS report—the Subpoena Summary Listing (figure C-2)—alerts Witness Notification Unit to whether PROMIS-generated subpoenas have been mailed to witnesses. A YES in the last column of figure C-2 indicates that a subpoena has been issued. A NO means that one was not sent due to an error in the name or address; the Witness Notification Unit follows up accordingly. When TEL appears in the last column, this informs the Witness Notification Unit that, because of the imminence of the trial, the mails would not alert the witness in time and that the unit will have to contact the individual by telephone.

Staffed primarily by paralegals, the Witness Notification Unit is occasionally unable to locate a witness at the address or phone number listed on the Subpoena Summary List. When this occurs, the staff attempts to find the individual through various directories or through another witness involved in the same case. If these and other methods fail, the arresting officer in the case is contacted and requested to assist.

The Witness Notification Unit is in an ideal position to coordinate requests for continuances from defense attorneys or prosecutors who are unable to appear in court on the originally scheduled date. They contact the Witness Notification Unit, which coordinates the scheduling of a new date that is mutually

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<sup>a</sup> Prosecutor's Management Information System. This computerized system assists the United States Attorney, who is the local prosecutor, in managing many facets of a heavy "street-crime" caseload. Approximately 16,000 allegations of such crimes are considered for prosecution annually.

Superior Court of the District of Columbia  
CRIMINAL DIVISION  
SUBPOENA

UNITED STATES OF AMERICA  
V

THE PRESIDENT OF THE UNITED STATES TO

Court Appearance Date:

┌

Court Case Number.

Date of Issue:

└

Arrest Date:

- You are hereby commanded to appear before the Superior Court of the District of Columbia for a Preliminary Hearing on the date shown above. Report at 8:30 a.m. to the United States Attorney's Office for the District of Columbia, Room 102, Building B, 400 F Street, N.W. Do not bring any witnesses, unless specifically instructed to do so.
- You are hereby commanded to appear before the Criminal Court Branch of the Superior Court for the District of Columbia at 9:00 a.m. on the date shown above as a witness for the United States and not depart the Court without leave thereof. Report to Room 310, Building A, 5th and E Streets, N.W.

Please disregard any previous notifications for this case. If you have any questions concerning your court appearance in this case, call the United States Attorney's Office for the District of Columbia at 426-7626.

WITNESS, The Honorable Chief Judge of the Superior Court of the District of Columbia.

SEAL

Clerk, Superior Court  
of the District of Columbia

(Please bring this notice with you when you come to Court)

Figure C-1. Illustrative PROMIS-Generated Subpoena for Witnesses

acceptable to all concerned—prosecutor, defense attorney, and the court. Once the prosecutor and defense attorney reach an agreement, the court's approval is usually routine. Thus, the sequence of events for the Witness Notification Unit is as follows:

1. Arrive at a date acceptable to the prosecutor and defense counsel, and check, through PROMIS, if the date conflicts with another case involving the same witness(es).
2. Ensure that the continuance request reaches the courtroom.
3. Retrieve the signed request from the court.
4. Prepare continuance documentation to update PROMIS, and notify all the parties involved.

The Witness Notification Unit performs the important job of answering inquiries from witnesses, police officers, and defense attorneys. The staff can explain court procedures and reasons for postponement to witnesses, as well as ensure that witnesses realize they *are* witnesses. Witnesses may forget the date



APPEARANCE DATE: 08/06/74

DATE: 07/17/74

<u>DEFENDANT</u>	<u>CASE NO</u>	<u>DATE</u>	<u>OFFENSE</u>	<u>LEAD CHARGE</u>	<u>PROSECUTOR</u>	<u>TYP</u>	<u>WITNESSES</u>	<u>SUB ISSUED</u>
RXXX, JOHN	03426574	05/15/74	05/08/74	SIMPLE ASSAULT	G. ROBBINS	BE	SXXXXXXXXX UNIT 2D BADGE 3967 HOME TEL XXX-XXXX OFFC TEL XXX-XXXX	YES
		-LAST ACTION-						
		CT UNABLE TO REACH						
						2E	RXXXX, LAWRENCE P M 1010 XX NW WASH DC 20037 HOME TEL XXX-XXXX OFFC TEL XXX-XXXX	YES
						9E	DR RXXX G W HOSPITAL HOME TEL XXX-XXXX OFFC TEL XXX-XXXX	NO
NXXXXXX, THOMAS	03334074	06/17/74	05/08/74	PPW GUN		3E	NXXXXXX, VIVIAN F 1309 XX NE WASH DC 20002 HOME TEL XXX-XXXX OFFC TEL XXX-XXXX	TEL
		- LAST ACTION-						
		CT UNABLE TO REACH						
						3E	NXXXXXX, LEROY SR 1309 XX NE WASH DC 20002 HOME TEL XXX-XXXX OFFC TEL XXX-XXXX	TEL

Figure C-2. PROMIS Subpoena Summary List

on which they are supposed to appear in court, as well as the court's location and the docket number of the case. The unit is prepared to answer such questions, often with a substantial assist from PROMIS' on-line capability. This feature of PROMIS enables the Witness Notification Unit staff to retrieve *immediately* summary information about all cases involving any given witness.

For example, if a witness calls the Witness Notification Unit, says his name is Robert Jones, and states he forgot the trial date and docket number of a case about which he is supposed to testify, his name is entered in PROMIS through a keyboard on a remote on-line terminal, whose television-like screen then displays all pending cases involving Robert Jones, and their status, docket number, and next trial date. If there are other witnesses with the same name or a similar-sounding name, these are displayed also, as in figure C-3, and the person handling the inquiry is alerted, asks the caller for his address, and supplies the correct information.

In essence, the Witness Notification Unit serves to guarantee clear, timely, and effective communication between prosecutor and witness. By forging this linkage, which bears so directly on the prosecutor's performance, the Witness Notification Unit fills a dangerous void created by today's assembly-line procedures—procedures that are designed to move huge case loads, but that also take the witness too much for granted.

THE FOLLOWING WITNESSES HAVE SIMILAR OR THE SAME NAME AS JONES, ROBERT					
WITNESS	ADDRESS	OFFENSE	CONTINUE	CASE	
JOANS, ROBERT	748 XXXXXX PL NW, WASH	08/24/73	09/20/73	CASE04981373	
JONES, ROBERT J	211 XXX AVE NW, WASH,	09/03/73	09/25/73	CASE05165273	
JONES, ROBERT	300 XXX AVE NW, WASH,	06/27/73	INDICTED	CASE04528273	
***** END OF INFORMATION			*****		

**Figure C-3.** PROMIS On-Line Display of Pending Casts for Witnesses

# APPENDIX C. WITNESS QUESTIONNAIRE

INSTRUCTIONS: Please circle the letter in front of the statement or statements that represent the most appropriate answer to each question. It is not necessary that you sign this questionnaire; however, if you do, the information will be held in strict confidence and in no way used against you.

1. What crime was the accused charged with in this case?
  - a. Murder or manslaughter
  - b. Aggravated battery or assault
  - c. Robbery or larceny
  - d. Drug or narcotic violation
  - e. Rape
  - f. Other sexual offense
  - g. Other (Specify): \_\_\_\_\_
  - h. Don't Know
  
2. What was the outcome of the case?
  - a. Guilty
  - b. Not Guilty
  - c. Hung jury
  - d. Dismissed
  - e. No charges filed by this office (prosecutor)
  - f. Other (Specify): \_\_\_\_\_
  - g. Don't know
  
3. What was your role in this case?
  - a. Victim
  - b. Witness
  - c. Don't know
  
4. Were you supposed to appear in court but did not appear or dropped out of the case before it was finished?
  - a. No
  - b. Yes (If "yes," please give reason below):
    1. Was not notified
    2. Notified too late
    3. Furnished incorrect court date
    4. Other (Explain): \_\_\_\_\_
  
5. How many times in the past have you testified in court?
  - a. None
  - b. Once
  - c. Twice
  - d. More than twice
  
6. What would be your personal reaction if you were requested to testify in the future?
  - a. Would serve willingly
  - b. Would be reluctant to serve
  - c. Would not serve unless forced to
  
7. What are your reasons for the answer to question 6?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>a</sup> This questionnaire is designed for use in all cases where an arrest is made. It should be transmitted to the witness by an individually signed letter from the prosecutor's office and should express appreciation for the witness' concern in seeing that justice is done. The letter ought to explain that the witness can, by completing the questionnaire, be of valuable assistance in the prosecutor's efforts to improve the criminal justice system and the future treatment of victims and witnesses of crime.

8. Were you personally acquainted with any of the following persons in the case?
- |                              |                                    |
|------------------------------|------------------------------------|
| a. Victim (If other than me) | d. Accused's attorney              |
| b. Other witness             | e. Police officer                  |
| c. Accused                   | f. Not acquainted with any of them |
9. Did anyone make threats against you in an attempt to keep you from testifying?
- a. No                      b. Yes (If "yes," who?): \_\_\_\_\_
10. Did you have any other reason to fear that you or your family might be harmed or it might otherwise prove harmful to testify in this case?
- a. No.                      b. Yes (If "yes," please explain): \_\_\_\_\_
- 
11. Did you give a written statement to the police who investigated the case?
- a. Yes                      b. No
12. Were you interviewed by an attorney from this office at the time the accused was arrested and the charges filed?
- a. Yes                      b. No
13. How would you rate this office in terms of courtesy and helpfulness?
- a. Good or excellent      b. Fair      c. Poor or bad  
d. Had no direct contact with this office.
14. How would you rate this office in terms of thoroughness and efficiency in handling the case?
- a. Good or excellent      b. Fair      c. Poor or bad  
d. Don't know or undecided
15. Please describe any weaknesses or suggestions for improvement in this office.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
16. How would you rate the police officers who handled this case in terms of courtesy and helpfulness?
- a. Good or excellent      b. Fair      c. Poor or bad
17. How would you rate the police officials in terms of thoroughness and efficiency in handling the case?
- a. Good or excellent      b. Fair      c. Poor or bad
18. Please describe any weaknesses or suggestions for improvement in police practices and procedures.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

19. In terms of the criminal justice system (police, prosecutor's office, and the court) do you feel the case received:
- More attention than it deserved?
  - Less attention than it deserved?
  - About the right amount of attention?
20. Do you have any other comments or suggestions about this office, the police, or the courts, particularly in terms of cooperation and coordination?
- \_\_\_\_\_
- \_\_\_\_\_
21. Do you have any problems at home that make it difficult for you to appear as a witness in court?
- No
  - Yes (If 'yes,' please complete items below)
    - Type of problem
      - Children
      - Other (Specify) \_\_\_\_\_
    - Suggested solution: \_\_\_\_\_
- \_\_\_\_\_
22. Do you have any problems in connection with your job or work that make it difficult for you to appear as a witness in court?
- No
  - Yes (If 'yes,' please complete items below)
    - Type of problem
      - Loss of income
      - Other (Explain) \_\_\_\_\_
    - Suggested solution: \_\_\_\_\_
- \_\_\_\_\_
23. Do you have any problems with transportation that make it difficult for you to appear as a witness in court?
- No
  - Yes (If 'yes,' describe):

PLEASE COMPLETE THE FOLLOWING QUESTIONS  
ONLY IF YOU TESTIFIED IN COURT

24. If you were interviewed by an attorney from this office (the prosecutor) before the trial, did the interview help you in testifying? (Please circle answer "d" if not interviewed before the trial.)
- Very helpful
  - Somewhat helpful
  - Of little help
  - Was not interviewed.
25. How helpful to you as a witness was the attorney from this office at time of trial?
- Very well
  - Fairly well
  - Poorly prepared
26. How well prepared for the trial was the attorney from this office?
- Very
  - Fairly well
  - Poorly prepared
  - Don't know

27. How difficult was it for you to remember the facts about the case when asked to testify?
- a. Little or no difficulty      b. Somewhat difficult  
c. Very difficult
28. How nervous were you in giving your testimony?
- a. Slightly nervous      b. Fairly nervous      c. Very nervous
29. Do you feel that you were able to give all the facts you were aware of during the testimony:
- a. Yes      b. No (If "no," explain): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
30. Do you feel that your time as a witness in this case was wasted?
- a. No  
b. Yes (If "yes" why?): \_\_\_\_\_  
\_\_\_\_\_
31. Do you feel that a correct verdict was reached in this case?
- a. Yes  
b. No (If "no," explain) \_\_\_\_\_  
\_\_\_\_\_
32. Do you feel that the accused had a better attorney than this office (the prosecutor)?
- a. Yes      b. No
33. Would you have been willing to appear as a witness if you had not been subpoenaed and ordered to testify by the court?
- a. Yes      b. No
34. Did you suffer any financial loss as a result of serving as a witness in this case?
- a. No      b. Yes (If "yes," please complete the following):
- (1) Amount of loss per appearance  
(a) Under \$20      (b) Over
- (2) Financial loss due to:
- (a) Lost wages      (c) Transportation  
(b) Baby-sitter      (d) Other (Specify): \_\_\_\_\_
35. What is your type of occupation or source of income?
- a. Hourly worker      f. Relief recipient  
b. Salaried employee      g. Student  
c. Business proprietor      h. Housewife  
d. Sales—Commission      i. Other  
e. Self-employed
36. How long after the crime was committed were you asked to testify?
- a. Less than a month      e. 4-5 months  
b. 1-2 months      f. 5-6 months  
c. 2-3 months      g. 6 months-1 year  
d. 3-4 months      h. Over 1 year



## APPENDIX D. CITIZENS COMPLAINT CENTER

Welcome to Citizens Complaint. Please sign in at the reception desk and be seated until your name is called. In the meantime, you are invited to read this pamphlet, which explains the functions the professional staff represents here.

The United States Attorney's Office is the chief prosecutor's office for the District of Columbia. It is responsible for the prosecution of all serious misdemeanors, for example, assault, threats, petit larceny, and destruction of property. It is also responsible for the prosecution of all felonies, for example, assault with a deadly weapon, rape, murder, burglary, grand larceny, and theft of automobiles.

The Office will review the complaint to determine whether a crime has been committed and whether the person complained of should be criminally prosecuted.

If the Assistant United States Attorney determines that there is sufficient evidence that a crime has been committed, he may process a warrant for the arrest and prosecution of the person believed to have committed the crime. On the other hand, the Assistant United States Attorney (or his aides) may refer the case to Social Services, the Corporation Counsel, or whichever agency is best equipped to help the person making the complaint.

The law in the District of Columbia now permits disposition of intrafamily offenses through the assistance of the Corporation Counsel.

Under the law, the Corporation Counsel may petition the court on behalf of one spouse against the other, or on behalf of one family member (or a person in a family-like relationship) against another family member with whom he or she shares a mutual residence.

Examples of intrafamily offenses would include assault, assault with a dangerous weapon, threats to do bodily harm, and destruction of personal property.

The Corporation Counsel asks the court for an order that requires the offending party not to repeat his or her criminal behavior. At the court hearing, the judge may also order the parties to attend marriage counseling or take other steps to lessen and/or resolve the family problems.

The Intrafamily Branch of Social Services cooperates with the Assistant United States Attorney and the Assistant Corporation Counsel of the District of Columbia in the handling of complaints that involve the abuse of family members, providing a variety of counseling services such as:

1. Supervision of support orders for children born out of wedlock whose fathers have been placed on probation by the Court
2. Investigation of community and police complaints of child neglect, child abuse, and child abandonment
3. Investigation of matters concerning financial support of children, parental custody, and visitation rights of parents and children
4. Marriage and family counseling in Civil Protection Orders
5. Conciliation services on a voluntary basis when requested by lawyers, the court, and interested parties to a divorce action

<sup>a</sup> This material is excerpted from a pamphlet describing the Citizens Complaint Center in Washington, D.C., which is operated by the prosecutor's office in conjunction with the local social services agency.



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