

DANGER, THREATS OR JUST FEAR

Witness intimidation in three Gauteng courts

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A witness satisfaction survey among 450 witnesses at three magistrates' courts in Gauteng shows that witness intimidation and fear are more pervasive than is generally acknowledged. These problems require responses that go beyond the Witness Protection Programme which is intended to deal only with a small number of the most extreme cases of intimidation.

The word 'witnesses' and the issue of witness intimidation usually bring to mind images of witness protection programmes. For many of us familiar with Hollywood movies, we imagine witnesses abandoning their homes and, with their entire families, moving to a new city under a new identity, to establish a new life. The real world is, however, a bit different.

Not only is this type of witness protection programme enormously disruptive to the witness, but also costly to the state. For these reasons the South African programme, which falls under the National Prosecuting Authority (NPA), primarily provides protection until the case is completed in court. Remoulding witnesses' identity, and relocating them, is an unusual occurrence. Even if costs were not an inhibitory factor, the average witness has no desire to completely uproot themselves and start a new life.

Witness protection programmes are also only used in a select number of cases. The latest NPA annual report indicates that 247 witnesses, and 252 family members, were on the programme in March 2005. These witnesses were testifying in 329 cases, a fraction of the more than a million cases heard by

the courts each year. Some of the witnesses who face the most serious risks are accomplices who have agreed to give state evidence, and these make up 80% of witnesses on the programme.¹

As has increasingly been emphasised by international research,² witness intimidation is a multi-faceted issue to which witness protection programmes may only provide an appropriate response in some of the most serious 'high level' cases.

A newly published report by the Centre for the Study of Violence and Reconciliation (CSVR) on a survey of witness satisfaction in three Gauteng magistrates' courts³ illustrates the complexity of witness intimidation and supports the international research results. The findings may also now be compared with those of the Public Service Commission's national survey of court users, conducted shortly after the CSVR study.⁴

About the study

The CSVR witness satisfaction survey was carried out late in 2003, covering 450 witnesses at three regional magistrates' courts in Gauteng. A high

proportion of the violent and other serious cases which are dealt with by our courts are heard in the regional magistrates' courts. Courts with a relatively high turnover of cases, one in Johannesburg, one in Soweto, and one in a black residential area on the East Rand, were selected for the study.

Respondents included victims of crime and other defence or prosecution witnesses. When asked 'Has there been anything about being a witness or victim that has made you feel frightened or intimidated?', 27% of respondents answered in the affirmative. While the sample of intimidated witnesses is relatively small (121 people), their responses to questions about their intimidation is nevertheless important, as this information informs our limited understanding about the subject.

As the survey data shows, there are a range of reasons why people feel afraid. In some cases there may be good reason for believing that the witness is in danger, and some are threatened or physically attacked. But in other cases witnesses' fear may not be related to the danger of physical harm, with many identifying the processes of giving evidence and undergoing cross-examination as the main reason for anxiety. Some say the general experience of attending court is the source of their worries, while for others – perhaps those who have familial or social ties to the accused – fear may be related to the possibility of conviction and imprisonment.

Which witnesses were intimidated?

Respondents confirmed what has already been illustrated by studies in other countries, namely that witnesses who experience intimidation are often the victim of the offence. In the CSVr study, victims were relatively more likely to say they had been frightened or intimidated than other witnesses appearing for the prosecution or the defence (Table 1). Even though defence witnesses were least likely to have been intimidated, one in five nevertheless said they experienced this problem. Female witnesses were more likely than males to answer this question in the affirmative.

Source of the intimidation

When asked to select the source of their intimidation from one of a number of options, over three quarters

Table 1: 'Has there been anything about being a witness that has made you feel intimidated?'

	Yes (%)	No or don't know (%)	Total (%)
<i>Witness type</i>			
Victim/injured party	36	64	100
Other prosecution witness	27	73	100
Defence witness	21	79	100
<i>Gender</i>			
Male	22	78	100
Female	35	65	100

of those involved indicated that this originated from other people (an individual and/or group) as opposed to the court process or environment. Individuals were by far the most likely single source of intimidation (59%) in the survey (Table 2).

More than a quarter of respondents say they felt intimidated by the court process or the environment. Among this group, the biggest worries were about the process of testifying, being cross-examined, and appearing in court. There was a small overlap between these categories, with 6% of witnesses indicating that they were intimidated both by other people and by the court process (Table 2).

The individuals who were intimidated by other people were asked more detailed questions about

Table 2: 'Was this intimidation by an individual, group, the whole process, or the court environment?'

	Number	%	Cumulative %
Yes by individual	59	50	50
Yes by group	20	16	66
Yes by individual and group	7	6	72
Yes by process/environment only	27	23	95
Yes by process/environment and group and individual	7	6	(100)*
Total	120	(100)*	(100)*

*Total actually exceeds 100% due to rounding.

who these people were. A significant majority (61%) indicated that they were intimidated by people related to the defence (the defendant, the defendant's friends or family, defence witnesses or the lawyer). By comparison, few respondents said the source of the intimidation was the victim, the victim's friends or family, or a witness for the prosecution (total of 15%). Even less were threatened by officials such as the police or magistrates (total of 12%).

The results above showed that victims were more likely to feel intimidated than any other type of witness. Victims were also more likely than other respondents to feel intimidated by people as opposed to the court process. Overall, 29% of victims, 20% of other prosecution witnesses, and 15% of defence witnesses felt intimidated by other people. By contrast between 5% and 7% of the total number of witnesses in all three categories indicated that they felt intimidated by the court environment or process.

When considering who witnesses felt intimidated by according to the type of respondent reporting the intimidation, the data shows that of those victims who said they felt intimidated by other people, 80% said they were intimidated by parties related to the defence – in by far the most cases, it was the defendant him/herself who intimidated the victim. Interestingly, even among witnesses for the defence, the most common source (36%) of intimidation was the defendant.

What made witnesses feel insecure

Respondents were also asked an open-ended question regarding the main thing that made them feel frightened or intimidated. Those who said their feeling of fear was related to another person or group, gave a wide variety of responses:

- A few indicated that they had been victims of attacks or attempted attacks, sometimes on their way to court. This included one shooting.
- Some respondents had been threatened with violence. In several cases this involved the threat that they or members of their families would be killed.
- A number indicated that there had been other actions by one of the parties involved in the case such as visiting their house, making remarks, or a person pointing, staring or laughing at them.

- A couple of respondents felt that having contact with the accused was intimidating. This contact came in the form of the identification parade or having to sit in the same room as the accused.
- A number of respondents said their fear was based on concerns about what might happen as a result of their being a witness. They were concerned that family and friends of the accused would do something to them, or that their house would be burnt down. A couple of witnesses were afraid because the accused or his/her associate had guns. Witnesses were also worried about the possibility that the accused might be acquitted and then victimise them.

Respondents who attributed their feeling of intimidation to the court environment or process tended to say their fear was related either to the process of testifying, or to a concern about the outcome of the case:

- A number of witnesses were intimidated by court procedures, and particularly by the process of testifying. Among this group, the biggest worry was about being cross-examined. Others said they were frightened because this was the first time they were appearing in court. The fact that the trial takes place in public, or that they might not be believed, were also concerns for witnesses.
- Some witnesses, presumably those with social or familial ties to the accused, worried about the outcome of the trial. Some were concerned that their children would be jailed, or that their children would not be provided for as a result of the accused person being imprisoned. Some also indicated that they had been disturbed by seeing other people being sentenced.
- Some witnesses simply said that they found the whole experience of being at court intimidating.

Table 3 provides an outline of the main reasons for concern among those witnesses who indicated that they felt frightened or intimidated. Roughly a third who felt insecure said they had been attacked, or threatened with violence or death.

Variations according to types of cases

Intimidation was also found to be more likely in cases involving violence than in other types of

Table 3: Main thing that made witnesses feel intimidated

Source of intimidation	Rough estimate of relative incidence %
<i>Other people</i>	
Potential danger	25
Threatened with death	14
Threatened with violence	14
Attacks or attempted attacks	5
Other actions	13
Encounter with accused person	4
Total	75
<i>Process and environment</i>	
Concern about testifying	11
Concern about trial outcome and jail	10
Whole experience was intimidating	4
Total	25

cases. When data on intimidation caused by other people was examined in relation to the type of offence that required the witness's testimony, a high correlation was found between cases of interpersonal violence and intimidation.

Overall, 50 of the 92 witnesses (54%) who said that they were intimidated by other people were appearing in cases of inter-personal violence: either assault with intent to do grievous bodily harm (assault GBH) or attempted murder, sexual offences or common assault (Table 4).

This trend is reinforced when the statistics are examined within each offence category: 33% of witnesses in assault GBH or attempted murder cases, 30% in sexual offences cases, and 29% in common assault cases said they felt intimidated by other people (Table 4). These percentages are higher than for any other type of crime recorded in the study. This makes sense because these types of violent offences are also those in which suspects or perpetrators are likely to be known to the victims. In contrast, only 14% of witnesses in robbery cases said they were intimidated by other people. Although also a violent crime, robberies are more likely to be committed by perpetrators who are strangers to the victim, than by someone they know.

Are officials notified about intimidation?

All of the witnesses who felt frightened or intimidated were asked if they had told any government official about this. One third of these witnesses said they had informed an official, with most saying they told the police or prosecutors. When asked whether they believed that the official had dealt with the issue effectively, views among witnesses were split fairly evenly, with 46% saying "no" and 44% saying "yes". A small percentage (10%) was unsure about how effectively their complaint was handled.

Comparison with the PSC survey

It is worth comparing these findings with those of the Public Service Commission (PSC) survey of court users conducted shortly after the CSVSR survey in late 2003. In the PSC study 1,133 witnesses at 42 magistrates' courts throughout South Africa were interviewed. Overall, the survey found that 22% of respondents felt intimidated at some stage during the court case. A fairly similar figure of 27% was recorded by the CSVSR.

But the two surveys provide quite different results with regard to the sources of intimidation. In the PSC survey, respondents were most likely to feel intimidated by the magistrate (33%) and prosecutors (20%). Among those respondents who were related to the defence in some way, the defence lawyers (18%), the defendant (12%) and his or her family or friends (14%) made respondents feel uneasy. The general court environment (22%) and language of the court (10%) also accounted for a significant proportion of respondents' feelings of intimidation.⁵

By contrast, the CSVSR survey found that intimidation, when caused by people, could largely be attributed to those associated with the defence. Unlike the PSC survey, relatively few respondents to the CSVSR survey said they felt intimidated by criminal justice officials.

Although the PSC study covered the whole country, the sample of intimidated witnesses (roughly 250 people) is still relatively small. The results on witness intimidation, like those of the CSVSR survey, therefore need to be seen as indicative rather than authoritative.

Table 4: Type of case in which witnesses who said they felt intimidated, appeared

	Total number who were intimidated by person/group	Total number of witnesses in this category	% intimidated by person/group
Assault GBH or attempted murder	22	66	33
Sexual offence	12	40	30
Assault common	16	56	29
Theft or handling stolen goods	13	66	20
Robbery	12	88	14
Housebreaking	4	33	12
Malicious damage to property or arson	1	5	20
Traffic offence	1	5	20
Unlawful gathering	1	5	20
Drug related offence	1	21	5
Fraud or forgery	1	19	5
Other specify	5	32	16
Do not know	1	2	50
Refused to answer	2	18	11
Total	92	456	20

Implications for tackling intimidation

The results of both the CSV and PSC surveys raise questions about how we approach the issue of 'witness intimidation'. While the CSV survey presents a slightly different picture, the PSC survey suggests that those who make witnesses feel most uncomfortable are not aggressive or vengeful suspects, but rather the officials of the criminal justice system.

Although most witnesses in both surveys also said their questions had been dealt with properly and politely by officials, the results indicate that more needs to be done to address the anxieties of witnesses about court officials and court processes. Because criminal justice officials exercise the authority of the state, they may provoke anxiety amongst members of the public. This needs to be reduced as it could jeopardise the fairness of proceedings, and unduly influence the outcome of the case.

More generally, the findings highlight that 'witness intimidation' covers three somewhat different, but related, concepts:

- threats: some witnesses have been threatened by another person;

- fear: some witnesses feel frightened; and
- danger: some witnesses may be in physical danger.⁶

These three concepts do not, however, encapsulate all dimensions of the problem of witness intimidation. As research on domestic violence illustrates, accused persons may use other forms of coercion, such as controlling the family income, to manipulate and intimidate witnesses.

Ironically, witnesses who are actually in physical danger may not experience threats or fear. Crime syndicates may, for example, not bother with threats, choosing instead to simply 'remove' witnesses for the prosecution from the picture.

As opposed to 'threats' and 'danger' which may be regarded as objective dimensions, fear on the other hand is a subjective state. Even if objectively in danger, a witness may not necessarily be afraid. Conversely, as the CSV survey illustrates, feelings of fear are not necessarily related to physical danger. Some witnesses, including many who are perhaps more timid by nature, are frightened by the very fact of having to give evidence in court.

Witness protection programmes focus on witnesses for the prosecution who are in serious physical danger, and can only therefore deal with a fraction of the overall problem. Such programmes cannot respond to or protect witnesses from potentially impatient magistrates, or aggressive cross-examination.

Viewed in this way, a more sophisticated understanding of witness intimidation is needed. In particular, attention must be given to supporting witnesses when they give evidence before a court. While the concerns of some witnesses may seem trivial or even irrational, such fears could turn a potentially good witness into an unconvincing one, and so damage the chances of a conviction or a fair trial.

A priority in tackling witness intimidation is that detectives and prosecutors, in consultation with the witness, should consistently evaluate cases to identify whether there is a danger of harm, or other intimidation, to the witness, and assess what steps are appropriate to protect the witness. Witnesses should be provided with a telephone number of someone who they should contact in the event that an attempt is made to intimidate them, or if they believe they are in danger.

One of the measures which is currently used is the denial of bail when there is reason to believe that the accused may harm or interfere with witnesses. Bail conditions forbidding the accused from making contact with the victim or other witnesses may also be imposed, and these should be strictly enforced. However, even when bail is denied, or bail conditions are adhered to, witnesses may still be vulnerable to harm or intimidation from associates of the accused.

Conclusion

As many criminal justice officials acknowledge, witnesses are central to effective crime investigation and prosecution. But although several initiatives have been developed to make courts more witness-friendly, the need to be more responsive to witnesses is not a policy priority in the criminal justice system.

As both the CSVR and PSC surveys illustrate, a range of issues needs to be addressed if witness satisfaction is to improve. Feelings of fear, and the concrete dangers facing many witnesses, need to be dealt with alongside the problems of frustration at remands and long hours spent waiting at court, the quality of facilities for witnesses, improved information, and a range of other service delivery issues. Improving the quality of service to witnesses generally – through information, facilities, and assistance with court preparedness – may also play a role in allaying the fears and concerns of many witnesses.

Endnotes

- 1 National Prosecuting Authority Witness Protection Unit annual report for the 2004/2005 financial year.
- 2 See for example, Home Office, *Speaking up for Justice*, Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System, London, Home Office, 1998.
- 3 D Bruce M and Isserow, *Putting People First? A survey of witness satisfaction in three magistrates' courts in Gauteng*, Centre for the Study of Violence and Reconciliation, Johannesburg, 2005.
- 4 Public Service Commission, *OPSC Citizen Satisfaction Survey – Evaluation of Services under Department of Justice and Constitutional Development*, unpublished report, 2005. Findings of the survey are also discussed in some detail in the CSVR report.
- 5 Respondents were allowed to select more than one option.
- 6 These concepts are discussed in more detail in a forthcoming handbook for police on working with witnesses which will be produced by CSVR.