Witness Intimidation – Criminal Justice in Crisis?

By Colmán P. Ó Donnchadha

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1. Introduction

The 'collective amnesia'[1] afflicting witnesses in Irish courts recently is a concern. It is a problem that hampers the functioning of the courts whilst simultaneously eroding public confidence in the criminal justice system. Whether or not witness intimidation is central to the collapse of the recent Liam Keane murder trial is not the particular concern of this paper. More so, are the questions posed in its wake. Should the witness protection programme be expanded or disbanded? Should Irish courts accept statements made by witnesses at pre-trial stage as substantive evidence? Should the crimes of perjury and contempt of court be placed on a statutory footing? Should the Special Criminal Court be even further mainstreamed into the 'ordinary' criminal justice system? How do we balance the rights of the accused with the rights of witnesses?

Fennell[2] described the public arena in the early 1990's as being saturated with 'sound bite' criminal discourse. In the aftermath of the collapsed Keane trial, we must surely have advanced to a super-saturated solution of quick fix remedies. Before attempting to answer the questions posed above, this document sets out to analyse the nature and extent of witness intimidation in Ireland and what measures are in place to deal with the

[1] *Justice Paul Carney reported in the Irish Times October 31st 2003.*
[2] *Fennell Caroline, "Crime and Crisis in Ireland-Justice by Illusion" Cork University Press 1993.*

problem in both domestic and European law. Based on this analysis, a review of some of the reform options available is presented.

2. What is the scope of the problem?

There is an absence of comprehensive data on either the extent or circumstances of witness intimidation in Ireland. This is understandable given that successful intimidation will surely go unreported along with the initial crime. The Law Society of Ireland stated recently that the Society "does not really believe that there is a serious sustainable problem with witness intimidation". [3] We would be doing our analysis a disservice not to analyse the accuracy of this statement. To achieve this, we must answer two questions. Firstly, what is witness intimidation? Secondly, how prevalent is it in Ireland today?

2.1. What is Witness Intimidation

Any attempt to define this problem should firstly pay cognisance to the efforts of the legislature to arrive at a definition. Section 41 (1) of the Criminal Justice Act 1999 created the statutory offence of intimidation of witnesses with a maximum sentence on conviction of 10 years imprisonment.

A person, according to the act, who "harms or threatens or in any other way intimidates or puts in fear another person … with the intention thereby of causing the investigation or the course of justice to be obstructed, perverted or interfered with shall be guilty of an offence". This definition of what constitutes witness intimidation is narrow in that it

[3] *Mr Gerry Griffin, Irish Times December 2nd.*

confines our analysis to 'overt' intimidation and indeed could prove problematic in terms of landing convictions.

For instance, it is alleged that a witness in the recently collapsed Liam Keane trial was intimidated by friends of the *victim* who were allegedly concerned that the witness was *not* going to co-operate with the court. Whilst these alleged intimidators, if guilty, could well be convicted under the Non-Fatal Offences Against the State Act of 1997, it is at least questionable whether they have the necessary mens rea to be convicted under the Criminal Justice Act of 1999.

A broader definition of witness intimidation is afforded us by The National Institute of Justice[4] in the U.S., which categorises witness intimidation into two types as follows:

- **Overt Intimidation**. This occurs when someone does something explicitly to intimidate a witness into withholding, changing or falsifying testimony.
- **Implicit Intimation**. This involves a situation in which there is a real but unexpressed (or indirectly expressed) threat of harm to anyone who may testify. Implicit intimidation is often community wide in nature and is characterised by an atmosphere of fear and non-co-operation generated by a history of violent gang retaliation against cooperating witnesses or by cultural mistrust of the criminal justice system.

[4] National Institute of Justice, *'Preventing Gang and Drug-Related Witness Intimidation',* November 1996, p 1-2 available online at www.ncjrs.org/pdffiles/163067.pdf

The UK Home Office has further added to our understanding of the concept by splitting intimidated witnesses into three categories according to the degree of intimidation experienced. [5] These are as follows:

- A small inner core of individuals who needed the high level protection afforded by witness protection programs
- A middle ring of victims of and witnesses to crime, and those who had helped the police in other ways, who had subsequently suffered non-life threatening intimidation or harassment
- An outer ring, comprising members of the general public whose perception of the possibility of being threatened or harassed was such that they were not prepared to come forward with evidence to the police, even when they themselves were the victims of crime.

This analysis of the different layers of individuals affected by intimidation is useful in the Irish context. In a relatively small jurisdiction such as Ireland, some commentators have argued that it is not possible to implement the same witness protection measures as are in place in larger jurisdictions such as the U.S.[6] It is important to broaden our definition of intimidated witnesses beyond that small inner core of individuals requiring a high level of protection.

[5] Home Office Report "*Witness Intimidation Strategies for Prevention"* 1994, p1 available online at http://www.homeoffice.gov.uk/rds/prgpdfs/fcdps55.pdf

[6] *Mr Barry Galvin in his presentation to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights available online at* http://www.irlgov.ie/oireachtas/frame.htm

2.2. How widespread is Witness Intimidation in Ireland today?

There is no empirical data as to how widespread witness intimidation is in Ireland. According to Michael Murray (Limerick State Prosecutor)[7], one in ten criminal cases cannot be successfully prosecuted in Limerick because of intimidation. In Britain, the Home Office has examined levels of witness intimidation. According to analysis of the 1998 British Crime Survey, of those who witnessed an act of vandalism, car crime or a serious fight or assault:

- 8% of witnesses experienced some level of intimidation
- 13 % of witnesses who reported crime experienced intimidation.

Verbal abuse was the most common type of intimidation at 69%. Threats were less common at 33% with physical assault and damage to property less common at 16% and 13% respectively. These figures relate to the previously defined 'overt' intimidation. Figures are not available as to the extent of 'implicit' intimidation.

The 1994 Home Office report by Maynard suggests that up to a quarter of incidents not reported by witnesses may be due to intimidation. 22% of crimes witnessed by non-victims were not reported because of fear of intimidation compared to 6% for victims.

[7] Sunday Times November 9th *"Intimidation is the stock and trade of Limerick Criminals".*

Interestingly, these figures have been interpreted both in Ireland and Britain as indicating that witness intimidation is an isolated problem.[8] It was presented to the Joint Oireachtas Committee on Justice that only 1% of victims said that the purpose of the intimidation was to stop them giving evidence. It is important to note however, that this figure relates to levels of *victim* intimidation where crime *has* been reported. Whilst it is accepted that some witnesses become victims, it is important as Farrell and Pease point out not to confuse the issues of victimisation and intimidation.[9]

If we accept the relevance of the British findings to this jurisdiction, then we are accepting that up to one in four crimes are not reported due to intimidation and that almost one in ten crimes that are reported result in overt intimidation. As such, to classify this phenomenon as 'isolated' would appear to be underestimating the scope of the problem in the same way that claims of 'rampant' intimidation would appear to overestimate it. Having identified the scope of the problem, the next task is to analyse the suitability of existing and proposed measures for tackling the problem.

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[8] *Professor Ivana Bacik in her presentation to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights available online at http://www.irlgov.ie/oireachtas/frame.htm and in the U.K. The British Crime Survey Report referring to 'only 8%'. Available online at http://www.homeoffice.gov.uk/rds/pdfs/r124.pdf*

[9] Farrell, G. and K. Pease, "*Once Bitten, Twice Bitten: Repeat Victimization and its Implications for Crime Prevention "* 1993. Police Research Group, Crime Prevention Unit Paper 46. P5

3. Current Legal Provisions:

Before joining the legislative stampede to deal with the perceived problem of witness intimidation, we need an understanding of current legal provisions under Irish law in relation to witness intimidation. We must also consider recent developments in European law and in particular the interpretation by the European Court of Justice of Article 6 of the European Convention on Human Rights.

3.1. The Common Law Position:

The common law offences of perjury and contempt of court should be included in our analysis. Following the collapsed murder trial, two witnesses face charges of perjury.[10] It is not clear that the threat of conviction for the crime of perjury is an effective measure in terms of convincing witnesses to comply with the court. It could be argued that a witness that has been effectively intimidated (or whose family has been intimidated) is unlikely to be swayed by the threat of conviction for perjury. Nonetheless, the threat of conviction exists and should be classified as one of the preventative measures available for dealing with the issue of non-cooperation with the courts.

We ask a lot of the crime of contempt. It is contempt to intimidate a witness and it is also contempt to be so intimidated that one is not willing to co-operate with the court. In *Moore v Clarke of Assize Bristol*[11], Lord Denning MR said: *"The court will always preserve the freedom and integrity of witnesses and not allow them to be intimidated in*

[10] *Amanda Mc Namara and Roy Behan both currently face charges of Perjury following the Liam Keane*

[11] [1972] 1 All ER 58 (CA, 1970).

any way, either before the trial, pending it or after it." The Law Reform Commission examined contempt of court in 1994 and made particular reference to intimidation as a contempt[12]. Since then, whilst the crime of intimidating a witness has been placed on a statutory footing, non-cooperation with the court remains as a common law offence.

This is an area that has caused quite a deal of controversy in recent times. The now retired Mr. Justice Flood was critical of Mr. Justice Carney for his handling of the collapsed trial. According to Mr Justice Flood, the power of a High Court judge is *"that you can say, 'Look, I am holding you in contempt of court until you purge your contempt – stay there for a couple of years.' Don't give them the message that it's going to be six weeks".*[13] Whether or not, this is a correct interpretation of the law is not so much the critical issue. The key point is that there appears to be a lack of clarity with regards to defining the offence and the punishment relating to it. The Law Society has recently joined the Garda Siochána in calling for this offence along with the crime of perjury to be placed on a statutory footing.[14]

3.2. Domestic Statutory Measures

The Irish legislature has been active in recent years in the area of criminal justice legislation. Events surrounding the deaths of Veronica Guerin and Gerry McCabe along with the Omagh bombing have prompted legislative reactions that have had a significant

[12] *Law Reform Commission Report on Contempt of Court 1994, Para 2.7. Available online at http://www.lawreform.ie/publications/data/lrc80/lrc_80.html*
[13] Sunday Times "*Flood Lays into Silent Witnesses"* November 9th 2003
[14] *Irish Independent November22nd 2003*

impact on our system of justice. Vincent Browne[15] points out that on average, the Irish legislature has introduced a major piece of criminal legislation each year for the past number of years. These include:

- The Criminal Justice (Drug Trafficking) Act 1996
- The Proceeds of Crime Act 1996
- The Criminal Justice (Miscellaneous Provisions) Act 1997
- The Criminal Law Act 1997
- The Non-Fatal Offences Against the Person Act 1997
- The Criminal Justice Act 1999

Of note too is the Bail Act of 1997, which it could be argued, sets out to detain individuals for what they call in science fiction circles 'pre-cognitive' crimes[16]. Whilst this paper is focused on measures implemented specific to the issue of witness intimidation, this context of reactionary reform on a piecemeal basis is important to our analysis.

3.2.1. 'Intimidation Specific' Legislation

Part VI of the Criminal Justice Act of 1999 is entitled 'Extradition and Other Matters'. 'Other Matters' on this occasion included provisions dealing with the intimidation of witnesses. These provisions were only introduced as amendments to the bill and were announced one week after those charged with the murder of Garda Gerry McCabe

[15] *Sunday Business Post November 16th*.

pleaded guilty to the lesser charge of manslaughter. News reports of the day make it clear that these measures were a direct reaction to claims by the Garda Commissioner that witness intimidation had 'played a part' in the investigation.[17]

Section 39 provides that where the court is satisfied that a person is likely to be in fear or subject to intimidation in giving evidence, that person may give evidence through a live video link. Similar provisions came in under the Criminal Justice (Evidence) Act of 1992 for victims of sexual offences.

As mentioned above, the 1999 Act also created a new statutory offence of intimidation of witnesses. Conviction of this offence would attract a maximum sentence of 10 years imprisonment. The Act also created a new offence of attempting to track down witnesses who have been relocated under the Witness Protection Scheme. This offence attracts a maximum prison sentence of up to 5 years.

3.2.2. The Witness Protection Programme

There has been a Witness Protection Programme in place in Ireland since November 1997. It is administered entirely by the Garda Síochána. The Minister for Justice of the day Mr John O'Donoghue justified the introduction of the scheme by saying that "it was a recognition that Irish society was as amenable to the threat of organised crime as any other society".[18] The operation of this scheme over the past six years has been far from satisfactory as evidenced by the scathing criticism of its operation in the *DPP v. Gilligan*

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[16] *Minority Report 20th Century Fox 2002.*
[17] Reported on RTE '6 One News'. September 02nd 1999. Available online at www.rte.ie/news/1999/0209/odonoghue.html

by Mr Justice McCracken[19]. According to the Court of Criminal Appeal, "Undoubtedly the Witness Protection Programme was badly thought out and almost developed a life of its own". It added, "One of the most worrying features is that there never seems to have actually been a programme." Instead the system remained "fluid"[20], with no clear guidelines, with witnesses increasing their demands under the programme when their time to give evidence arrived.

A scheme that was "badly thought out" and without guidelines was bound to create difficulties in Court. Issues surrounding criminal convictions on the ground of uncorroborated evidence of accomplices have subsequently arisen in the cases of *Holland, Ward* and *Meehan*. Ironically, as Fennell points out, the discrediting of evidence given by witness under the protection of the state has led to a strengthening of the acceptability of accomplice evidence.[21]

3.3. European Law

Whilst Ireland was one of the original signatories of the European Convention on Human Rights, we remain the last country out of the forty-one States of the Council of Europe not to have incorporated the European Convention on Human Rights into domestic law.[22] Even before direct incorporation however, the Irish Courts have taken cognisance of the Convention. As Geoghegan J said in *Murphy v. IRTC,* "While the European Convention on Human Rights is not part of Irish Municipal Law, regard can be had to its provisions when considering the nature of a fundamental right and perhaps more particularly the

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[18] *Dáil Debate 10 March 1999 available at* www.gov.ie/debates-99/10mar99/sect7.htm
[19] *DPP v. Gilligan Court of Criminal Appeal 8/8/2003*
[20] *Ibid*
[21] *Fennell Caroline 'The Law of Evidence of Ireland', Butterworths 2002, p16*
[22] *This will occur on December 31st 2003.*

reasonable limitations that can be placed on the exercise of that right".[23] It is important, as such, to look to Europe in order to set the context within which any legislative response to this issue can take place.

3.3.1. The European Convention on Human Rights

Article 6, paragraph 3.d is of particular importance when considering witness protection measures. It entitles the accused inter alia, to *"examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"*.

Would allowing statements made by witnesses outside of the forum of the court be acceptable to the European Court of Human Rights? The rights of the accused as referenced in Article 6 of the Convention have not been interpreted as meaning that the statement of a witness must *always* be made in court and in public if it is to be admitted as evidence. According to Recommendation Rec (1997) 13 on intimidation of witnesses and rights of the defence, the use in this way of statements obtained at the pre-trial stage is not in itself inconsistent with the Convention provided that the rights of the defence have been respected.[24] As a rule, those rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making a statement or at a later stage in the proceedings.[25]

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[23] *Murphy v. Independent Radio and Television Commission [1999] 1 IR 12*

[24] *Explanatory Memorandum to Recommendation Rec (1997) 13. Available online at http://cm.coe.int/stat/E/Public/1997/ExpRep(97)13.htm*

The European Convention on Human Rights has thus not categorically rejected the use as evidence at the trial of statements previously made by witnesses to the police or judicial authorities. These statements made outside the public court hearing may be used as evidence, provided compensatory measures are available for the defence ensuring, particularly, the opportunity to challenge, at some stage, the credibility and reliability of the witness and his or her evidence.

It appears also that a statement made by an anonymous witness can in principle be used, but only if there is corroborative evidence. The recommendation on intimidation addresses the question of anonymity. It aims particularly at providing for rules that could ensure that anonymity is consistent with the rulings of the European Court of Human Rights.[26] In the *Doorson* case, the Amsterdam court decided not to disclose the identity of anonymous witnesses to the defence. Nevertheless, no violation of the Convention was found, as it was established that the handicaps under which the defence laboured were sufficiently counterbalanced by the procedures followed by the judicial authorities.[27]

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[25] *Asch Case, Judgment of 26 April 1991, Series A, No.203*
[26] *Ibid 24 Para. 37*
[27] *Doorson case, judgment of 26 March 1996, Report of Judgment and Decisions, No. 6, p. 446*

4. A Review of Reform Proposals:

From our earlier analysis, it is clear that there will be some form of legislative response to the problem in the context of the current controversy. The Minister for Justice is on record as saying that "although most criminal activity is generally well covered by the existing extensive criminal law, due to the nature and inventiveness of criminals and the changing pattern in crime in society, it is necessary to constantly review our criminal law." [28]

4.1. Proposals from the Minister for Justice:

Minister McDowell outlined a number of areas being considered for reform in his presentation to the Joint Oireachtas Committee including:

- The role of the Special Criminal Court
- Increasing the Garda Síochána's powers of arrest, search and detention
- Whether it would be feasible to make it a crime to knowingly participate in the activities of a criminal organisation
- The re-classification of saliva as a 'non-intimate sample' so that it can be taken from suspects without their consent
- The acceptance as substantive evidence of a formal statement made by witnesses before the trial.

[28] *Presentation by Minister Michael McDowell to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights available online at http://www.irlgov.ie/oireachtas/frame.htm*

The Special Criminal Court is relevant in the context of an acknowledgment going back to 1939 that there are situations where ordinary courts are to be deemed inadequate.[29] There have been calls, in response to the current perceived intimidation problem for increased use of the Special Criminal Court. These calls are misleading. Witnesses remain a feature of the Special Criminal Court and indeed it has been questioned whether the answer to the problem of jury intimidation was necessarily to dispense with juries.[30]

It remains to be seen whether making it easier to arrest suspects for 'membership' of what may amount to *ad hoc* arrangements to commit crime will have an impact on the problem of witness intimidation. Likewise, any significant increase in the powers of Gardaí needs to be considered both in the context of the implication for civil liberties and the impact on community acceptance of the validity of the force. This latter point is seen as key in tackling implicit intimidation.[31] A response such as this which attempts to alienate those members of so-called 'gangland' organisations from the rest of the community initiates as Fennell points out a "rights abrogation which is ultimately not restricted from some, but ironically, meted out to all."[32]

It is surprising that no mention has been made by the Minister of the suggestions from both the Law Society and the Garda Siochána that the crimes of perjury and contempt be placed on a statutory footing.[33] It is hard to argue against the theory that clearer

[29] The Special Criminal Court finds it's legitimacy in Article 38.3 of the Irish Constitution which states:" Where it may be determined in accordance with such laws that the ordinary courts are inadequate to secure the effective administration of justice and preservation of public peace and order".
[30] *Law Society Gazette, Vol 95 No. 6 July 2001 p10*
[31] *Ibid No. 4, p50.*
[32] *Ibid No. 21, preface.*
[33] *Ibid No.3*

guidelines would be beneficial in this area. The spectacle of a former High Court judge criticising a judicial colleague for the manner in which he dealt with these alleged offences does little to inspire public confidence in the system. However, where a witness has been intimidated to the extent that they are unwilling to stand over their statements, it is nonetheless questionable whether the fear of sanctions from the court will be enough to secure co-operation.

The remainder of this paper considers the important issue of the acceptance of witness statements before going on to discuss lessons from other jurisdictions in terms of the operation of a Witness Protection Programme.

4.2. Acceptance of witness statements as substantive evidence

Much has been made in the media of the acceptance of pre-trial statements made by witnesses as substantive evidence. The implications of such a proposal are significant. There has been an incremental erosion of the rule against hearsay in recent times. Under the Proceeds of Crime Act 1996, s 6 allows hearsay evidence of a member of the Criminal Assets Bureau. Under the Offences Against the State (Amendment) Act 1998,s 4 admits what would otherwise be inadmissible hearsay in relation to inferences that may be drawn with regard to membership of an unlawful organisation. With the introduction of the Bail Act 1997 it is now, according to Fennell, not improbable that hearsay evidence will be presented with regard to apprehension of future crimes.[34] As such, the proposal to admit pre-trial witness statements even when those witnesses refuse to stand

[34] *Ibid No. 21 p304*

over them should not come as a surprise given the willingness of the Irish legislature to chip away at the rule against hearsay as the needs of the hour demand.

Such a move, without reference to the principle at hand would be dangerous. However convenient this proposal might appear in the context of the recent collapsed trial, it is important to consider the rights of the accused. The idea has been put forward, and has met with approval, that all witness interviews should be videotaped. This is not however a key point. What is important is the acceptance or otherwise of that videotape as substantive evidence rather than as evidence as to the credibility of the hostile witness.

4.3. The operation of the Witness Protection Programme

According to press reports, the Minister for Justice is considering 'expanding' the Witness Protection Programme.[35] He made no reference to the scheme in his presentation to the Joint Oireachtas Committee. As outlined above, this programme has attracted severe criticism recently. In light of these criticisms, it is opportune to consider the very nature of the scheme rather than an expansion of its operation. Lessons can be learned from other jurisdictions. Looking to Australia, John Fenely[36] points out that a professional and accountable witness protection scheme must balance the need of law enforcement with the needs of the witness and this will be more likely to occur in a System which:

[35] The Sunday Times November 16th 2003.
[36] John Fenely, '*8th International Anti Corruption Conference*,' Lima Peru 1997. Available online at http://www.transparency.org/iacc/8th_iacc/papers.html

- separates those responsible for the investigation from the management of the witness protection scheme;
- has in place professional informant management plans and investigation management plans; and
- has regard for the ongoing social and emotional needs of the witness.

By taking this holistic approach to witness protection the law enforcement agencies will according to Fenely, maintain the public's confidence in witness protection schemes and thereby ensure that witnesses continue to be available to give evidence and otherwise assist law enforcement agencies in the fight against serious crime and corruption.

Experience from the U.S. lends support to the need for a professional and accountable approach to witness protection. According to the U.S. Justice Department,[37] a formal structure is important in order to achieve the benefits of inter-agency cooperation and efficient use of resources. The National Institute of Justice provide five reasons for a highly structured and formal approach to witness protection:

1. To avoid inefficiencies. A structured programme that involves all stakeholders will avoid expensive breakdowns in co-operation.
2. To ensure secrecy of witness security arrangements. A formal system needs to be in place to ensure that witness information is protected.

[37]Ibid No.4, p.60.

3. To maintain a constant commitment to program objectives by all co-operating agencies.

4. To provide a consistent contact person for intimidated witnesses. A structured programme should provide witnesses a single contact person other than a member of the investigative team who can provide the type of consistent, around the clock support that is most likely to encourage the witness to testify.

5. To facilitate evaluation. No programme should be in place without a formal evaluation process. It is important to monitor the effectiveness witness protection in terms of how may people received assistance, whether any witness being protected have been harmed and whether convictions have been obtained in cases in which witnesses received assistance.

So, what is being advocated is a highly formal and professional structure that is capable of being evaluated on an on-going basis. In the absence of any information of how the Irish Witness Protection Programme operates, the criticisms of McCracken J. must stand. As such, it is disappointing that in the context of the current debate, the Minister does not appear to be prioritising reform in this area. The concept of witness protection may not receive much attention because of the assumption that, given the fact that Ireland is small relative to other jurisdictions that the operation of such a scheme is unworkable. This assumption must be challenged. There are more witnesses to crime than the 'inner core' of individuals who may need re-location and even these would benefit from a professional and accountable approach to their protection.

5. Conclusion:

This paper set out to analyse the nature and extent of witness intimidation in Ireland. It found that the issue is significant and requiring attention but by no means as extensive as one might be led to believe by the media. Following this, an analysis of the current law took place. This analysis pointed to a history of legislating in times of perceived 'crisis'. Indeed, as was pointed out, the most significant effort to address the issue of witness intimidation by the Irish legislature took the form of an amendment to a Bill that was announced during a debate on the killing of Garda Gerry McCabe. Indeed, there may be difficulties with this legislation when one considers whether the mens rea for the crime of witness intimidation exists where the intimidators are attempting to get the witness to tell the truth.

The starting point for a review of the reform options available was the presentation by the current Minister for Justice of his own proposals. This paper found that the thrust of the Minister's proposals focus on making it easier to identify and prosecute members of 'criminal gangs'. The danger of this approach is that using enhanced powers of arrest and detention in an effort to separate 'them' from 'us' ironically leads to the lowest common denominator of civil rights for both 'them' and 'us'. Finally, this paper has called for reference to principle in considering the acceptance of pre-trial witness statements as substantive evidence before calling for a reform rather than an expansion of the Witness Protection Programme. It is clear from the foregoing analysis that reform is needed. It is also clear that some of this reform is needed as a result of hastily enacted legislation in the past. Festina lente!