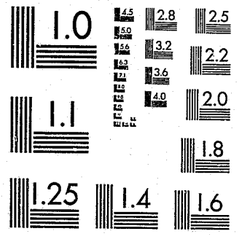

Department of Justice

STATEMENT

OF

JAMES I. K. KNAPP
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND THE ADMINISTRATION OF JUSTICE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

THE WITNESS SECURITY PROGRAM

ON

JUNE 22, 1983

Mr. Chairman, I appreciate this opportunity to appear before the Subcommittee today to discuss H.R. 3086, a bill entitled "United States Marshals Service and Witness Security Reform Act of 1983" and its impact on the Witness Security Program. With me here today is Gerald Shur, Associate Director, Office of Enforcement Operations who administers the Program for the Criminal Division.

The bill is divided into two parts. Title I deals with the Witness Security Program and Title II deals with the Marshals Service. The comments contained in this statement concern Title I. Our basic position is one of support for this legislation, with three significant exceptions which will be discussed below.

The Witness Security Program is one of the most effective and most important tools in the prosecution of organized criminal conspiracies. Over the years, the Program has grown to a structured, multi-service program that seeks not only to assure the security of protected witnesses but also to address the variety of other problems faced by individuals and families who must adopt new identities and relocate to safer areas of the country. In this period of growth, the Attorney General has been called upon to develop special procedures and techniques to deal with the protection and relocation of witnesses.

We believe that the Program in its present form accords fully with the intent of the 1970 legislation establishing the Program (Title V of the Organized Crime Control Act of 1970, P.L. 91-452, 84 Stat. 933). The Department, however, has long supported legislation describing in more detail the authority the Attorney General may exercise in making the Program effective. To the extent that Title I of this legislation would also accomplish this purpose, we support it. For example, proposed section 3521(b) emphasizes that the Program is not limited to security considerations, but should extend -- as it now does -- to concerns about the social and psychological difficulties faced by the relocated witness. This section also lists specific services that may be provided. Section 3523 provides guidance in our dealings with State authorities, and proposed section 3524 provides clear authority for the Attorney General to enter into contracts or other agreements to carry out the purposes of the Witness Security Program. The legislation also provides for the active supervision of witnesses who are on state parole or probation by federal probation officers, a measure which we strongly support.

Despite our support of the foregoing provisions, we believe that this bill should be modified in several key respects because it contains provisions which would significantly and detrimentally alter the Witness Security Program. We have three

fundamental concerns: (1) the contract-like language contained in Section 3521 (d)(1)(a); (2) the delegation provisions which omit reference to the Director and Associate Director of the Office of Enforcement Operations; and (3) the provisions for judicially ordered disclosure.

We oppose Section 3521(d)(1)(a), because it appears to create a contract between the parties in that there is an exchange, i.e., the promise of Program services, which includes payment of money, by the government for the promise to comply with the terms of the agreement including "the agreement of the person, if a witness or a potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings . . ." Any compensation for providing testimony is strictly prohibited by Title 18 U.S.C. 201(h) and (i). This issue is now handled by a Memorandum of Understanding, a statement drafted by the Marshals Service detailing the services to be furnished to the witness, which the witness signs and acknowledges that he has read and understood.

Section 3521(d)(1)(a) is clearly a departure from the language presently contained in the Memorandum of Understanding which states:

> ". . . This memorandum is not a contract or an agreement to provide protection or maintenance assistance to the witness in return for testimony . . ."

This language is designed to emphasize that there is not an exchange of money for testimony.

The relationship between the government and the witness is not contractual. Participation in the Program is voluntary, and acceptance in the Program is within the discretion of the Attorney General. The services provided by the government to a witness are not a payment to the witness for his testimony, as they would appear to be in this bill. These services are a means of providing protection against the danger created by the witness carrying out the obligation of all our citizens to testify in court concerning the commission of a crime.

We believe the Memorandum of Understanding now in use is sufficient for our needs. We object to the provision in the bill requiring that either the Attorney General, the Associate Attorney General, or Assistant Attorney General, Criminal Division, sign the agreement. It is appropriate for a representative of the United States Marshals Service to sign this document since it is that agency which provides the services described. In addition, the United States Marshals Service is a neutral body, free from any prosecutorial concerns. Retaining this authority in the United States Marshals Service preserves the integrity of the Program, dispelling any implications of a "bargain."

We also object to Section 3521(d)(3). This Section omits from the delegation to approve applications for the Witness Security Program the Director and Associate Director of the

Office of Enforcement Operations, Criminal Division, who presently exercise the authority to perform this function. We believe that this authority should remain where it is, and therefore recommend that it be delegated also to the Director and Associate Director of the Office of Enforcement Operations.

The Office of Enforcement Operations was created in the Criminal Division in February 1979, and was assigned sole responsibility for the Division's role in the Witness Security Program. The creation of the Office of Enforcement Operations resulted not only in the centralization of control over admissions to the Program, but also in the application of uniform admission criteria. The Office of Enforcement Operations now has the primary authority for determining which witnesses will be assisted in the Program. As a result, a tightening up of the admission process and a greater uniformity of application of rules now exists over that which occurred prior to the creation of the office.

The initial application to use the Program is submitted by the United States Attorney, the chief federal law enforcement officer in the judicial district. The Office of Enforcement Operations has implemented the use of the Witness Security Program Application Form, which requires the prosecutor to submit very specific and detailed information about the significance of the case, the prospective defendants, the witness' testimony, and the anticipated benefits of successful prosecution. The Office of Enforcement Operations forwards a copy of the prosecutor's

application to the appropriate litigative section in the Criminal Division, where it is reviewed for significance of prosecution, significance of defendants in light of their criminal activity, and the significance of the witness' testimony.

In addition, the investigative agency involved submits to its headquarters a report detailing the threat to the witness and describing the need to use the Program. Agency headquarters reviews the report and forwards it, along with the headquarters' recommendation, to the Office of Enforcement Operations. In the Federal Bureau of Investigation, four people actually review the report, including the Chief of the Organized Crime Intelligence Unit and the headquarters case supervisor.

While these two independent reviews are being conducted, the United States Marshals Service interviews the witness and the adult members of the household to ensure that the witness understands what the Program can and cannot do and to identify any problems which may arise in the relocation process. In addition, the witness is advised to obey all laws and to comply with all regulations of the Program or risk being terminated from the Program. This report is reviewed by five people at the United States Marshals Service headquarters. The United States Marshals Service then forwards a copy of this preliminary interview report to the Office of Enforcement Operations, along with its recommendations concerning the witness' suitability for the Program.

When this process is completed, seven people in the Office of Enforcement Operations review and consider all four reports before making a decision. If the investigative agency headquarters determines there is no threat to the witness, the prosecutor's request is denied. If the litigative section determines the case is not important, or that the witness' testimony is not essential, or that the evidence is not sufficient for conviction, the request is denied. If the United States Marshals Service determines that the witness is not a suitable candidate for the Program and the anticipated problems in relocation are insurmountable, the request is denied. Occasionally, authorization is given despite the United States Marshals Service objections with the understanding that the authorization is based on the witness' participation in necessary programs such as drug counseling, treatment for alcohol abuse, or psychiatric care.

The delegation of authority to approve Witness Security Program applications as it presently exists has proven effective and efficient. The sharp decline in the usage of the Program since the Office of Enforcement Operations was created is the direct result of the efforts of the Director and Associate Director to carefully screen applications. The Witness Security Program was developed in 1970. In 1971, 92 witnesses were protected. From 1975 through 1977, an average of 450 new witnesses entered the Program each year. In February, 1979, the Office of Enforcement Operations was created to administer the

Program and Program entries decreased significantly. In FY 1980, there were 315 entries into the Program. In FY 1981, there were 260 and in FY 1982, 300. In the first 8 months of FY 1983, 200 persons have been placed in the Witness Security Program. In addition, monitoring of admissions by the Office of Enforcement Operation has resulted in a significant upgrading of the prosecutions for which witnesses are placed in the Program and an increased certainty that there is no other alternative to ensure the witness' safety at that time.

As written, Section 3521(d)(3) places an extraordinary burden on persons who are charged with a great many responsibilities. This designation to approve Witness Security Program applications would not just be burdensome to the named designees, but would result in some disadvantage to the operation of the Program. In many cases time is a crucial factor and applications must be processed very quickly. Additionally, the volume of witness security requests would be unduly burdensome on the designees, and the new Narcotics Task Forces will cause increased use of the Program. To ask persons already charged with a high level of responsibility to add a task of this nature, and to by-pass an office which is charged with the responsibility of the day to day administration and coordination of the Witness Security Program, is not prudent. Further complications arise in the absence or unavailability of the designee who is already overburdened with sufficient real time problems (i.e. wire taps).

Section (f)(1) of 3521 provides for the resolution of civil matters involving relocated witnesses. This section requires the Attorney General to accept service of process for the witness, make a return of service to the plaintiff, and assert the intentions of the witness in response to the judgment.

Acceptance of service of process by the Attorney General for the witness would create an agency relationship which should be clearly limited to service of process. However, it should not be in the province of the Attorney General to convey to the plaintiff the intentions of the witness regarding compliance with the judgment. Instead, it is suggested that the following language provides sufficient safeguards to the plaintiff.

> . . . If a judgment in such action is entered against that person, the Attorney General shall take appropriate steps to urge the person to comply with the judgment. If the person has not complied with the judgment within a reasonable time, the Attorney General shall, after considering the danger to the person and whether the person has the ability to respond to the judgment, (1) disclose the identity and location of the person to the plaintiff entitled to recovery pursuant to the judgment and/or (2) direct the person to take

such action in accordance with the judgment as the Attorney General determines is appropriate. 1/

Section 3521(f)(?) provides for judicial review of the Attorney General's disclosure decision. We oppose this provision because we believe that it could open the door for unnecessary and costly litigation against the United States. An unwarranted judicial decision could needlessly endanger a witness' life.

We recommend an alternative approach. First, a recently authorized procedure would continue under which the Associate Attorney General would direct the Marshals Service to disclose the location of the witness to legitimate judgment creditors in the event that the witness willfully refused to pay a legitimate debt. Second, a statute could provide for the use of a court appointed master to enforce judgment where the Associate Attorney General determines there would be undue danger to the witness if his address was disclosed to creditors. The master would be furnished with all necessary powers. This approval would require the Attorney General to divulge the witness' location only to the master and not to a third party.

We believe this approach should be given a chance to work before the Pandora's box of judicially ordered disclosure is opened.

1/ S. 474, 98th Congress, 1st. Session

I hope you will consider these comments and suggestions and I appreciate the opportunity to present them. We will be pleased to answer any questions the Subcommittee may have.

END