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UNITED STATES GENERAL ACCOUNTING OFFICE
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FOR RELEASE DURING HEARINGS
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STATEMENT OF

WILLIAM J. ANDERSON, DIRECTOR

GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES

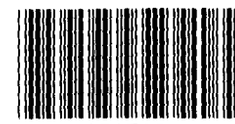
AND THE ADMINISTRATION OF JUSTICE

HOUSE COMMITTEE ON THE JUDICIARY

ON H.R. 3086

Mr. Chairman and Members of the subcommittee, we appreciate the opportunity to testify before you today on our past and present work relating to the activities of the U.S. Marshals Service, and on H.R. 3086. This bill would amend existing laws governing the protection of Government witnesses, the performance of U.S. marshal duties, and the fees that can be charged by marshals for serving process and rendering other services in connection with litigation in Federal courts.

We recently completed several reviews of the operations of the U.S. Marshals Service and U.S. marshals which resulted in



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three reports to Senator Max Baucus who requested the studies. [1]/ The most recent report concerned the Witness Security Program. At your request, Mr. Chairman, we are currently examining criminal activity by protected witnesses and the types and outcomes of cases prosecuted with their assistance. Our testimony today will focus on aspects of the bill concerning the Witness Security Program. Overall, we support the bill. We do believe, however, that several sections need clarification or expansion.

RECENT GAO REPORT ON THE WITNESS SECURITY PROGRAM

Our most recent report directly relates to a significant portion of this bill. We reported that protected witnesses are able to avoid legal obligations to the detriment of various third parties because the Justice Department would not disclose information on a witness' new identity or location to resolve a civil dispute. This practice shielded witnesses from civil obligations whenever they refused to comply with court orders because third parties could not identify either who and/or where to sue to seek the enforcement of their legal rights. This resulted in:

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[1]/These reports are "U.S. Marshals' Dilemma: Serving Two Branches of Government" (GGD-82-3, April 19, 1982); "U.S. Marshals Can Serve Civil Process and Transport Prisoners More Efficiently" (GGD-82-8, April 22, 1982); and "Changes Needed In Witness Security Program" (GAO/GGD-83-25, March 17, 1983).

--Non-relocated parents, who were either separated or divorced, having difficulty exercising their legally established parental rights with respect to their relocated minor children.

--Creditors being hindered in their efforts to recover debts owed to them by witnesses.

To its credit, the Justice Department has taken several actions which we believe will mitigate these types of problems in the future. Specifically, it has (1) taken a more aggressive stance in verifying child custody orders before relocations take place, (2) offered to facilitate neutral site visitations for non-relocated parents and their children, and (3) issued an internal memorandum to help facilitate the collection of unpaid debts by witnesses.

Contrary to our report, the Justice Department believes these administrative initiatives are adequate to address this problem and that legislation is unnecessary. However, being administrative in nature, these initiatives are always subject to change. Moreover, in situations when the third party believes the disclosure of a witness' identity is crucial to his/her enforcement of a judgment, the Department makes the final decision. We believe that overall public interests would be better served if existing law was amended to provide the Attorney General with guidance concerning his role in resolving

third party problems and the circumstances under which disclosure will occur. We also believe that such legislation should provide third party judgment holders with the opportunity for judicial review of the facts on which the Department based its nondisclosure decision. As such, we are pleased that this bill proposes legislation to establish such a judicial review process. We will comment more on this portion of the bill later.

GAO'S ON-GOING EFFORT TO EVALUATE THE WITNESS SECURITY PROGRAM

During hearings before this subcommittee last September, the subject of protected witnesses committing new crimes after entering the program was discussed at length. As a result of those hearings, Mr. Chairman, you requested that we initiate a study to determine the nature and extent of criminal activity by protected witnesses. At that time you also requested that we look at several other related issues including selection procedures for admitting witnesses to the program and the effect of supervision by probation officers on the criminal activity of witnesses. Recently, we began to receive information from the Justice Department necessary to examine these matters. I will briefly discuss the status of our work which is about one-third complete.

Criminal activity by protected witnesses

Regarding criminal activity by protected witnesses, the Marshals Service, with cooperation from the FBI, is in the process of providing us with criminal history information (rap

sheets) for the approximately 800 witnesses who entered the program during fiscal years 1979 and 1980. To date we have received information for 378 (or 48 percent) of the 800 witnesses.

Of the 378 witnesses for whom we have information, 86 (or 23 percent) have been arrested [2] since their admission to the program. This percentage is probably somewhat understated because the calculation included some witnesses who have been incarcerated either all or most of the time they were in the program.

The 86 witnesses who were arrested were charged with a variety of crimes, ranging from shoplifting to murder. A summary of the crimes for which the sample witnesses have been arrested is detailed in appendix I to this statement.

Prosecutive results of cases involving protected witnesses' testimony

The Office of Enforcement Operations, the component of Justice's Criminal Division responsible for admitting persons to the program, is in the process of providing us with information on the results of prosecutions involving 308 protected witnesses' testimony. It was agreed that the Office of Enforcement Operations would provide us with summaries of all cases

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[2]We realize that a conviction might be a more appropriate definition of recidivism, however, the ultimate disposition reporting on the rap sheets was such (under 50 percent) that we believe arrest is the best available indicator. The use of arrest also coincides with an April 1982 Marshals Service study.

involving witnesses admitted to the program between June 1, 1979, and May 31, 1980. This time period was chosen for two reasons. First, it provides a sufficient amount of time for the completion of almost all cases in which these witnesses testified. Second, it provides a view of the program which is reflective of current conditions in that major changes in admission practices took place in February 1979.

To date we have received prosecutive results information for 144 (or 47 percent) of the 308 witnesses who entered the program during this time period. For each case, we received a summary of the nature of the case, a list of all defendants and their roles in the case, charges, the witnesses' relation to the case, a description of the threat to the witness, a statement regarding what forum (grand jury and/or trial) the witness testified in, and the outcome of the case with regard to each defendant (including the sentence imposed).

Generally, we found that witnesses have testified, and prosecutions have been achieved in cases involving such groups as organized crime families, narcotics trafficking rings, and prison gangs. In appendix II we have compiled a matrix which indicates the types of cases for which the Department has admitted witnesses to the program. The common thread or reason for admittance running through the vast majority of the cases we analyzed was the threat of reprisal or potential harm to the witness.

Overall, information that we have received to date shows that for cases prosecuted with the testimony of protected witnesses,

--the conviction rate for defendants was about 78 percent, and

--the median prison sentence imposed was in the 4 to 6 year range.

A detailed listing of this information is contained in appendixes III and IV.

COMMENTS ON H.R. 3086

At this time, we would like to offer comments on H.R. 3086. Overall, we support the bill. We believe it addresses many of the concerns that have been raised by us and others regarding the Witness Security Program. However, we believe that several sections need clarification or expansion.

Providing information on protected witnesses to law enforcement agencies

We believe that a potential difficulty exists in fulfilling the joint purposes of sections 3521(b)(1)(F) and 3521(b)(3). Section 3521(b)(1)(F) provides that, upon request, the Attorney General must provide relevant information to State and local law enforcement officials on protected witnesses. However, section 3521(b)(3) provides that a recipient cannot further disclose

this information without authorization of the Attorney General. Without the authorization, the potential exists for such information to have limited value to State and local law enforcement officials if the prohibition against further disclosure applies to using this information for law enforcement purposes directed against the witness, such as in a judicial or grand jury proceeding. This matter could be addressed by revising section 3521(b)(3) to provide that the sanctions in that subsection do not apply to disclosure by a State or local law enforcement official in a judicial or grand jury proceeding directly related to the protected person.

There is one other matter related to section 3521(b)(1)(F) that we would like to advise the subcommittee about at this time. It involves the sharing of protected witness information through on-line computer systems. It is a matter that we are considering as a part of our review for this subcommittee and one about which we have not yet reached a conclusion.

We agree with the principle underlying section 3521(b)(1)(F) that requires the Department to share available information about protected witnesses with State and local law enforcement officials who request it. However, we believe the present structure of one source of this information creates the possibility of State and local officials not receiving accurate information on the criminal records of protected witnesses.

The type of information State and local law enforcement agencies would initially seek from the Justice Department is whether a suspect has a criminal record. This can generally be obtained from Justice in two ways. One way is by requesting a subject's rap sheet through a fingerprint search and the second way is through an inquiry of the National Crime Information Center (NCIC). NCIC is a centralized computer center connected by a telecommunications network to terminals located in Federal, State and local criminal justice agencies throughout the United States, Canada and Puerto Rico. One component of NCIC is an on-line criminal history file.

The Justice Department has implemented a mechanism to transfer a protected witness' rap sheet to the requesting State or local law enforcement agency in a secure manner. However, because of security concerns, the Department has not cross-indexed a witness' arrest record from his/her old identity to the new identity within NCIC's on-line criminal history system. As a result, a check of the criminal history file of NCIC under a witness' new identity would produce a "no record" response even if the witness had an arrest history under an old identity. Such "no record" responses are likely to be inaccurate because an estimated 95 percent of witnesses have criminal backgrounds. We are considering a solution to this difficult problem as part of our on-going work for the subcommittee.

Assessment of the risk to a community resulting from a witness' relocation

Section 3521(c) would require the Attorney General to make a written assessment of the possible risk of danger to persons and property in the community where a witness is to be relocated. It would also require the Attorney General to certify that the need for the witness' testimony outweighs the risk of danger to the public. The proposed legislation would prohibit the Attorney General from protecting witnesses if the risk of danger to the public outweighs the need for the person's testimony.

We support the concept of considering the risk to the public in the program's decisionmaking process. In this regard, we note that the bill also authorizes Federal probation officers to supervise State probationers and parolees admitted to the program. This addresses longstanding concerns over the lack of supervision of these individuals. Further, as you are aware, the Marshals Service has begun giving witnesses psychological tests which can help identify potential problems with witnesses. We believe both of these efforts can reduce the risks to the public.

However, it should be recognized that this section requires the Attorney General to make difficult assessments about the future actions of witnesses. It is unclear as to the specific

basis on which the Attorney General is to make his assessment. For example, does the risk of danger intend to cover only criminal actions by protected witnesses, or also civil matters? Further, within the broad categories of criminal and civil matters, what types of violations constitute a danger to people and property in the community? Are financial and familial considerations to be evaluated? Because of the difficulty in making such assessments, the Congress may want to provide the Attorney General additional guidance in this area.

A question also arises concerning the purpose of requiring that the Attorney General's risk assessment be in writing and be certified. Since the section does not provide for the written assessments or certifications to be submitted to and reviewed by the Congress, it is unclear whether they are for the purpose of congressional oversight. Further, it is not clear whether the written assessment and certification would be available to a plaintiff in litigation who alleges that the Department improperly admitted a person to the Witness Security Program. To alleviate any potential controversy, it would be useful if the purpose and proposed use of the Attorney General's written assessment and certification were clarified.

Responsibilities of protected persons under agreement

Section 3521(e) states, in part, that the Attorney General may terminate the protection provided by the program to any person who substantially breaches the agreement established between that person and the Attorney General pursuant to section 3521(d)(1). Section 3521(d)(1) lists four responsibilities of the protected person which will be set forth in the agreement. Two of these deal with matters related to the person's testimony or security. A third provides that the person not commit a crime punishable by a prison term, and a fourth is a general provision requiring the person to cooperate with reasonable requests of Government employees providing protection. We have two comments to offer in relation to these responsibilities.

First, it is not clear whether the third responsibility would include an offense punishable, for example, by 90 days in a county jail as opposed to a prison. Second, it is not clear if, or under what circumstances, failure by the person to abide by civil penalties or remedies could be encompassed either by the fourth responsibility, or by section 3521(f)(1) which authorizes the Attorney General to order the person to comply with court ordered judgments. In any event, we believe that subsection(d)(1) should clearly include as part of the agreement,

the responsibility of the person not to commit any criminal offense and to comply with court orders in any civil dispute. In this way, protected persons clearly would be on notice of the types of behavior on which their continued protection is conditioned.

Civil proceedings

Sections 3521(f)(1) and (2) are designed to address a problem that various third parties--such as creditors--have experienced after persons have been relocated by the Government. The problem is the inability to enforce a judgment against a person when his/her new identity and location are unknown.

These sections contain most of the elements we recommended in our recent report to deal with these circumstances. Overall, we believe that the bill as drafted indicates a strong desire to improve the opportunity for third parties to obtain satisfaction of court ordered judgments. However, we would like to suggest some revisions for the subcommittee's consideration.

Corrective action by the Attorney General

Section 3521(f)(1) provides that if the Attorney General determines that the protected person has not made reasonable efforts to comply with the judgment, he may either disclose the person's identity and location to the plaintiff, or enter an

order requiring the person to comply with the judgment. A protected person's failure to comply with the Attorney General's order would constitute a substantial breach which may lead to termination of his/her protection. This raises a question concerning what relief would actually accrue to a third party judgment holder.

First, we note that termination under subsection(e) is not mandatory even for a substantial breach. Further, because termination of protection is not defined and may be viewed as an alternative to disclosure, it is unclear whether termination will result in a third party receiving the information needed to seek enforcement of the court judgment against a protected person.

For these reasons, we believe that regardless of whether the Attorney General is authorized and decides to terminate protection, the legislation should clearly provide that disclosure will occur in instances when a witness is terminated under subsection(f)(1).

Could a hearing be obtained?

Subsection(f)(2)(A) provides that third parties shall be entitled to a judicial hearing if the Attorney General unreasonably fails to disclose information. This suggests that some evaluation by the court of the Attorney General's decision must be made before the hearing could be obtained. We believe this poses a difficult procedural hurdle for the third party.

In the proposed legislation contained in our recent report, a third party would be entitled to a hearing simply if the requested information was not provided. The reasonableness of the Attorney General's decision was to be considered by the district court in deciding whether to affirm the Attorney General's nondisclosure decision or to issue an order requiring him to disclose the requested information. Subsection(f)(2)(B) of this bill similarly addresses this matter. We continue to believe that the opportunity for a third party to merely obtain a hearing should not be conditioned on his/her ability to satisfy some burden of proof. Accordingly, we recommend striking the word "unreasonably" from subsection(f)(2)(A).

Responsibility of the Attorney General

In our recently issued report, we suggested legislation that would require the Attorney General to disclose the new identity and location of a witness to third parties with judgments unless it can be established that the disclosure could likely result in harm to the witness or the witness does not have the ability to comply with the judgment. With this type of duty clearly defined, a court can more clearly assess whether the Attorney General has met his responsibilities under the law when disputes over disclosure arise.

Section 3521(f)(1), however, provides that the Attorney General may disclose after considering the danger to the protected person. We believe that the responsibility of the Attorney General and the basis for a court to review the implementation of that duty would be clearer if the legislation provided that the Attorney General shall disclose witness-related information to a third party unless the disclosure could likely result in physical harm to the witness. Otherwise, the Attorney General would have discretion not to disclose even though his consideration of the danger to the witness indicates there is little chance of harm. Also, the subcommittee may wish to adopt the provision in our proposed legislation which authorizes the Attorney General to consider the person's ability to comply with the judgment since neither party would benefit from a disclosure under this circumstance.

Victim compensation program

Section 3522 establishes a separate fund to compensate victims of crimes committed by protected witnesses. It authorizes a maximum of $2,000,000 to be appropriated in each of fiscal years 1985 and 1986 from fines collected under section 1963 of Title 18, United States Code (Racketeering Influenced Corrupt Organization - RICO). Our review of statistics collected by the Administrative Office of the U.S. Courts for statistical years

1979, 1980, and 1981 showed that the average amount of fines imposed per year under the RICO statute was $1.2 million.

We realize the bill's $2 million figure represents a ceiling. However, the Administrative Office's average figure of $1.2 million is for fines imposed, not for fines collected. The amount collected, in all likelihood, would be considerably lower. Therefore, the subcommittee might want to consider alternative sources of revenue for this compensation fund.

Supervision of State probationers and parolees

The bill contains an amendment to section 3655 of Title 18, United States Code, which would authorize Federal probation officers to supervise protected individuals who enter the program while on State probation or parole. In the past, even Federal probationers and parolees who entered the program were not supervised because of the potential security implications related to transferring their records from the danger area to the relocation area. Recently, a mechanism was implemented for Federal probationers and parolees which satisfies the Marshals Service's security concerns. We believe this same mechanism can be used for supervising witnesses on State probation or parole who enter the program. However, there is a matter we want to call to the subcommittee's attention.

Under both probation or parole, a person must comply with certain specified conditions. Sanctions can be imposed against those persons who fail to follow those specified conditions. It is not clear under this bill what will occur if a protected witness on parole or probation for conviction of a State crime violates a condition of parole or probation while under the supervision of a Federal probation officer. It is questionable whether the officer would have the legal means to enforce parole or probation conditions established by a State court or other State authority. We recommend that the subcommittee consider further amending section 3655 to also provide that if the person violates the condition of probation or parole, (1) the probation officer report such violation to the responsible State authority and (2) return the person to the custody of the State, upon request.

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This concludes our prepared statement. We hope this information will be helpful to the subcommittee in its efforts to evaluate the Witness Security Program and during its deliberation on this legislation. We would be pleased to respond to any questions at this time.

APPENDIX I

ARREST CHARGES AGAINST PROTECTED WITNESSES

Charge	Number of witnesses (note a)	Number of charges (note a)
Burglary/Larceny/Theft	26	36
Narcotic-related	17	25
Fraud/Forgery	16	24
Assault/Battery	15	19
Firearm-related	12	15
Armed Robbery/ Robbery	11	12
Parole/Probation/ Bond Default	10	12
Stolen Property Crimes	7	9
Driving-related	5	9
Vehicle-related	6	7
Shoplifting	5	7
Impersonating/Obstructing Police Officer	5	6
Murder/Homicide	4	4
Disorderly Conduct	4	4
Miscellaneous	22	24
	165	213

a/The number of witnesses arrested and number of charges are greater than 86 because many witnesses were arrested more than once and/or were charged with different types of crimes at the same arrest.

APPENDIX II

MATRIX OF PROGRAM USE
BY CRIMES AND CRIMINALS a/

	One crime by person or group	Motorcycle gang	Prison gang	Major Organized crime group	Public official	Union official	White collar profession	Other Organized crime groups	
Weapons/ explosives	1	1	-	1	-	1	-	1	5
Arson	3	-	-	5	-	-	-	1	9
Murder/conspiracy to murder	9	1	5	4	-	-	-	1	20
Corruption	1	-	-	1	6	2	1	-	11
Rape	1	2	-	-	-	-	-	-	3
Extortion/ loansharking	-	1	-	10	-	-	-	-	11
Burglary	-	-	-	1	-	-	-	1	2
Prostitution	-	-	-	-	-	-	-	2	2
Counterfeiting	1	-	-	-	-	-	-	4	5
Robbery	5	1	-	1	-	-	-	6	13
Pornography	-	-	-	1	-	-	-	-	1
Drug related	1	4	-	7	1	-	2	24	39
Tax evasion	-	-	-	3	-	-	-	2	5
Interstate trans. of stolen goods	1	-	-	6	-	-	-	7	14
Fraud/ swindles	2	-	-	3	-	-	-	-	5
Kidnapping	-	-	-	-	-	-	-	2	2
Other	1	-	1	2	2	-	-	4	10
	26	10	6	45	9	3	3	55	

a/This maxtrix represents information received from the Office of Enforcement Operations for 144 witnesses admitted to the program between June 1, 1979, and May 31, 1980. These witnesses testified in 125 cases. Additional information is to be received on the other 164 witnesses admitted to the program during this same period.

APPENDIX III

RANGES OF SENTENCES IMPOSED IN CASES INVOLVING PROTECTED WITNESSES (note a)

Range of sentence	Times imposed	Percent
Life	13	2.6
Greater than 20 years	27	5.4
Sixteen to 20 years	13	2.6
Ten to 15 years	81	16.2
Eight to less than 10 years	28	5.6
Six to less than 8 years	26	5.2
Four to less than 6 years	89	17.8
Two to less than 4 years	95	19.0
One to less than 2 years	34	6.8
Less than 1 year	29	5.8
Probation only	65	13.0
	500	100.0

a/The sentences of 57 of the total of 557 convicted defendants are presently unknown.

APPENDIX IV

OUTCOMES FOR DEFENDANTS

Category	Number	Percent
Convicted	557	77.6
Acquitted	a/ 66	9.2
Dismissed	46	6.4
Pending	25	3.5
Fugitive	5	.7
Murdered	4	.6
Not Indicted	3	.4
Severed/No Retrial	3	.4
Pretrial Diversion	3	.4
No Case Brought	2	.3
No Verdict/No Retrial	1	.1
Immunity Granted	1	.1
Declined Prosecution/ Mental Incompetency	1	.1
Civil Case/No Prosecution	1	.1
	718	b/ 99.9

a/Two cases accounted for 26, or 39 percent, of the acquittal total. It should be noted, however, that the Justice Department plans to retry 17 of these defendants.

b/Percentage does not equal 100.0 due to rounding.